

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.

Office of Children and Family Services

NOTICE OF ADOPTION

Parent Advocate Regulations

I.D. No. CFS-21-10-00007-A

Filing No. 759

Filing Date: 2010-07-22

Effective Date: 2010-08-11

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

Action taken: Addition of section 441.2(o) and amendment of section 441.21(b)(1) and (2) of Title 18 NYCRR.

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

Subject: Parent Advocate Regulations.

Purpose: Expand the category of individuals who may be used to complete casework contact requirements.

Text or summary was published in the May 26, 2010 issue of the Register, I.D. No. CFS-21-10-00007-P.

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

Text of rule and any required statements and analyses may be obtained from: Public Information Office, NYS Office of Children and Family Services, 52 Washington Street, Rensselaer, N.Y. 12144, (518) 473-7793

Assessment of Public Comment

The Office of Children and Family Services (OCFS) received comments from the Executive Director of a community organization, the Executive Director of a public foundation that uses philanthropy to increase the influence and improve the lives of disempowered people, the Commis-

sioner of a social service district, the Executive Director of a legal services agency, the Director of a social service district, and a joint letter from the Attorney in Charge and Executive Director of two legal service agencies.

The community organization, public foundation, and a legal service agency sent letters of strong support of this regulation.

1) One social service district representative stated that the regulation was unnecessary and that the regulations could result in a reduction of the quality of care being provided by local departments of social services (LDSS). The commenter also stated that parent advocates do not work for the county and therefore could not be construed as agents of the Department of Social Services.

Response: This regulation is not mandatory. Counties may choose to use parent advocates for a limited number of parent or relative casework contacts as described in the regulation. If a county does not wish to use parent advocates in this manner they are under no obligation to do so. In addition, the parent advocate can be an employee of the LDSS or of an agency under contract with the LDSS.

2) There were two comments related to the training of parent advocates. One social service district representative stated that only CORE-trained casework staff should be responsible for making mandated contacts with parents and relatives. Legal service agency representatives stated there needed to be guidance regarding the training that parent advocates need, especially related to risk and safety assessments.

Response: Each LDSS can determine what is an appropriate level of training a parent advocate must undergo before being assigned responsibility to work with a parent of a child in foster care, and consequently, responsibility for completing a subset of casework contacts. This training can include concepts from the CORE training. OCFS agrees that LDSSs and voluntary agencies need to have some guidance regarding the training of parent advocates, and to that end, OCFS is in the processes of developing an Informational Letter (INF) to accompany these regulations. This INF will provide best practice guidance regarding the use of parent advocates to make casework contacts and includes a section on recommended training.

3) Legal services agency representatives expressed concerns that by allowing parent advocates to complete casework contacts there will be a blurring of the role between caseworker and advocate. They stated that the nature of the relationship between parent and advocate will be compromised because the parent will know that the advocate will be providing feedback and input to the caseworker.

Response: Currently parent advocates are primarily used as a way to engage families and be a liaison between the family and the caseworker. Though parent advocates work closely with parents and are expected to advocate for them, it is also expected that there will be ongoing communication between the caseworker for the family and the advocate. This communication includes the advocate discussing with the caseworker any concerns they have about the family and the parent's progress towards his or her goals. This regulation change should not change the expectation that regular communication needs to occur between the advocate and the caseworker with regards to case planning.

4) One comment related to the purpose of casework contacts with parents and relatives. Legal service agency representatives stated that safety and risk assessments need to occur at every casework contact with the family, or at the very least on a monthly basis. They further stated that they had particular concerns regarding casework contacts when children are at home on trial discharge.

Response: While one of the purposes of casework contacts is "assessing whether the child would be safe if he or she was to return home, and the potential for future risk of abuse or maltreatment if he or she was to return home", that is not the only purpose of these contacts. Assisting the family in resolving the issues that brought the child into care and supporting family involvement with the child are also essential elements of casework contacts. In relation to casework contacts with parents or relatives, working on resolving the issues that brought the children into care is an essential piece of these contacts, and, certainly, would be an appropri-

ate activity for parent advocates to assist families with during casework contacts with them. Furthermore, although there is not an expectation that every casework contact requires a formalized risk and safety assessment, as noted in the regulatory amendment, a parent advocate would be expected to discuss any concerns they observed during a casework contact with the case planner/or child's caseworker so that the case planner or child's caseworker can follow-up on any noted issues of safety or risk. When a child is on trial discharge, while the parent advocate may be used to complete contacts with the parent or relative, at least monthly casework contacts with the child must continue to occur and must be made by the case planner or child's caseworker. Since a majority of these contacts must take place at the child's residence, in all likelihood, the parent would also be seen and may be part of the conversation.

5) One comment related to supervision of visits between foster children and their parent or relative. Legal service agency representatives stated that the section of the regulatory amendment that states that parent advocates can be used for "coaching for productive visitation between parents and their children" should not be permitted as a substitute for a caseworker's presence at supervised visits.

Response: There is no requirement that visits between the parent or a relative and the child be supervised by the case planner or child's caseworker. Unless supervision is required by court order, supervision of visitation is decided on a case by case basis, and visits may be supervised by other staff at the agency, foster parents, or no one at all as the case progresses towards reunification. In addition, the section of regulation quoted above pertains to a parent advocate offering advice to the parent on making their visits productive and does not pertain to the supervision of visitation.

6) One comment related to the role of the parent advocate during casework contacts. Legal service agency representatives stated that because a parent advocate uses their own personal experiences in supporting parents going through similar circumstances they would not be able to make the "objective determinations that are needed for casework contacts." They further stated that caseworkers are required to have extensive training in separating their own experiences from those of the clients.

Response: There are no training requirements for child welfare caseworkers other than CORE training for child protective caseworkers. The INF that will be issued as a result of these amendments to casework contacts will provide guidance regarding the recommended training for parent advocates. We will include your suggestion that parent advocates receive training on separating their own experiences from those of the clients in that INF.

Accordingly, the proposed regulations were not revised.

Education Department

EMERGENCY RULE MAKING

Establishment of Clinically Rich Graduate Level Teacher Preparation Program

I.D. No. EDU-18-10-00016-E

Filing No. 763

Filing Date: 2010-07-27

Effective Date: 2010-07-27

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

Action taken: Amendment of sections 52.1, 52.21 and 80-5.13 of Title 8 NYCRR.

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

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

Specific reasons underlying the finding of necessity: The proposed amendment is designed to 1) address immediate personnel shortages facing New York high need schools and school districts; and 2) promote student growth and achievement. The proposed amendment increases the number of qualified individuals who will be attracted to teaching careers through graduate level clinically rich pilot programs.

Research studies show that school leaders are critical to helping improve student performance and preparation programs grounded in

intensive clinical experiences prepare effective school leaders (Educational Leadership Policy Standards, 2008). To maximize student growth and achievement in high need schools, the Department will select program providers for graduate level clinically rich principal preparation pilot programs through a Request for Proposal (RFP) process.

In order to ensure that any program selected to offer a clinically rich principal preparation program is of high quality, the Board of Regents will establish a Blue Ribbon Commission to evaluate all applications. This Blue Ribbon Commission will be comprised of highly renowned teacher educators. The Blue Ribbon Commission will make recommendations to the Board of Regents for those programs that should be authorized to establish clinically rich principal preparation programs, both from collegiate and non-collegiate providers or in combination. The goal is to create a process that will ensure a rigorous programmatic review and to select only the highest quality providers to assist in the preparation of principals for our high need schools.

To participate in the clinically rich principal preparation program, program providers will be required to meet certain eligibility requirements, including written collaboration agreements with high need schools, faculty, curriculum, mentoring and training requirements.

In order to fill the personnel shortages for effective school building leaders in high need schools in the 2011-2012 school year, an emergency action is necessary for the preservation of the general welfare in order to timely implement the provisions of the proposed amendment to provide school districts and BOCES with timely notice of the eligibility requirements and the program registration requirements for the pilot program and to complete the competitive bidding process for the selection of program providers before the 2011-2012 school year.

Emergency action is also necessary at the July 2010 Board of Regents meeting in order to ensure that the regulations remain continuously in effect until the regulation becomes effective on August 11, 2010. The emergency rule adopted at the May Regents meeting is only effective for 90 days and will expire on July 29, 2010. To avoid the adverse effects of a lapse in the emergency rule, another emergency action is necessary at the July Regents meeting to readopt the rule, effective July 29, 2010 so that it may remain continuously in effect until it can be adopted and made effective as a permanent rule.

Subject: Establishment of clinically rich graduate level teacher preparation program.

Purpose: Establishes program registration standards for pilot program and authorizes certain non-collegiate institutions to participate.

Substance of emergency rule: To maximize student growth and achievement in high need schools, the Board of Regents propose an amendment to the regulations to establish a clinically rich teacher preparation pilot program. Presented below is a summary of the proposed amendment.

Registration Requirement for the Pilot Program

Paragraph (5) of subdivision (a) of section 52.1 of the Commissioner's regulations is added to require a clinically rich pilot program to meet the program registration standards outlined in Section 52.21(b)(5) of the Regulations of the Commissioner of Education.

Definition of Transitional B certificate

Subparagraph (xvi) of paragraph (1) of subdivision (b) of section 52.21 of the Regulations of the Commissioner of Education is amended to revise the definition of Transitional B certificate to include a teaching certificate obtained by a candidate enrolled in the Model-B track of a clinically rich graduate level teacher preparation pilot program.

Program Registration Standards for Clinically Rich Pilot Program

Paragraph (5) of subdivision (b) of section 52.21 of the Regulations of the Commissioner of Education is added to establish the program registration requirements for the clinically rich pilot program.

The proposed amendment authorizes certain institutions with an educational mission, other than colleges and universities and institutions of higher of education, that are selected by the Board of Regents, to offer two models of the clinically rich graduate level teacher preparation pilot program. The Model A- residency teacher preparation track is for candidates working with a teacher of record and the Model B residency teacher preparation track is for candidates employed as the teacher of record.

Subparagraph (i) of paragraph (5) states that the purpose of the program is to increase the supply of highly effective teachers in high need subject in high need schools.

Subparagraph (ii) provides a sunset date of June 30, 2016 for the pilot program.

Subparagraph (iii) defines high need school, institution, teacher of record and teacher-mentor.

Subparagraph (iv) establishes the general requirements for both tracks of the pilot program. Specifically, this subparagraph makes the general requirements in section 52.1 and 52.2 applicable and the general requirements for registration of curricula in teacher education as set forth under section 52.21(b)(1), (b)(2)(i), (b)(ii)(a), (b)(2)(ii)(b), (b)(2)(ii)(c)(1) and (b)(2)(iv) of the Commissioner's regulations. This subparagraph also requires program to meet the following requirements.

Clause (a) of this subparagraph requires collaboration between institutions participating in the program and partnering high needs schools, specifying the roles of each partner in the design, implementation, and evaluation of the pilot programs; the selection and evaluation criteria and recruitment process for teacher-mentors and the various types of assessments used to evaluate candidates.

Clause (b) of this subparagraph requires programs to meet certain admission requirements, including a requirement that candidates hold a baccalaureate or graduate degree with a 3.0 cumulative grade point average; an undergraduate or graduate major in the subject of the certificate sought; that candidates provide a written commitment to teach for at least four years in a high need school upon graduation and that candidates seeking certification in early childhood education, childhood education, middle childhood education-generalist, or a candidate seeking to teach students with disabilities at those developmental levels complete an undergraduate or graduate major in a liberal arts and sciences subject or interdisciplinary field.

Clause (c) establishes the requirements for the curriculum and clinical experience for both tracks of the pilot program.

Subclause (1) of clause (c) requires the curriculum to include research-based skills and best practices aligned with the newly developed teacher standards. In addition, the curriculum shall be offered by qualified faculty who demonstrate that they understand high need schools; and the pedagogical preparation shall include graduate study designed to permit the candidate to obtain the pedagogical core requirements for programs leading to an initial certificate.

Subclause (2) of clause (c) establishes the requirements for the clinically rich experience component. Prior to assigning the candidate to a classroom, the institution shall enter into a written agreement with the high need school to establish a plan for at least one continuous school year of mentored clinical experience by the assigned teacher-mentor for the candidate and a support by a team comprised of certain individuals. Program faculty shall supervise the candidate at least twice each month and work in collaboration with the teacher-mentor to evaluate candidates and provide feedback. The program shall also provide courses and seminars designed to link educational theory with clinical experiences.

Clause (d) provides that successful completion of the pilot program shall lead to a professional Master of Arts in Teaching degree. The Board of Regents will issue a professional Master of Arts in Teaching degree to candidates who complete the requirements in an institution other than an institution of higher education.

Clause (e) states that upon completion of the program, a designated officer of the institution shall recommend the candidate for an initial certificate.

Clause (f) requires program providers to have a formal written agreement with partnering high need schools to provide continued mentoring support for program graduates during their first year of teaching.

Subparagraph (v) requires candidates in the Model A track to complete the clinical experience component with an assigned teacher of record who shall also be the candidate's teacher-mentor.

Subparagraph (vi) sets for specific requirements that apply to only the Model B track in addition to the general requirements described above.

Clause (a) of subparagraph (vi) requires candidates in the Model B track to complete an introductory component, leading to a Transitional B certificate in a certificate title in the classroom teaching services.

Clause (b) of subparagraph (vi) requires program candidates in Track B of the pilot program who are teaching with a Transitional B certificate to receive weekly program faculty supervision and daily mentoring by an assigned teacher-mentor during the first eight weeks of teaching and continued mentoring by an assigned teacher mentor during the remainder of the time that the candidate is enrolled in the program and teaching.

Clause (c) of subparagraph (vi) requires candidates to meet program standards for good academic progress in order to retain the Transitional B certificate.

Requirements for a Transitional B certificate

Section 80-5.13 of the Commissioner's regulations is amended to revise the requirements for a transitional B certificate to include the program registration requirements for the Model B-residency teacher preparation track of the clinically rich graduate level teacher preparation pilot program.

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-18-10-00016-P, Issue of May 5, 2010. The emergency rule will expire September 24, 2010.

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

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

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

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

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

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

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

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

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

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

Subdivision (1) of section 3004 of the Education Law authorizes

the Commissioner of Education to prescribe, subject to the approval of the Regents, regulations governing the examination and certification of teachers employed in all public schools in the State.

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

2. LEGISLATIVE OBJECTIVES:

The proposed amendment carries out the objectives of the above-referenced statutes by modifying the requirements in the Regulations of the Commissioner of Education for teacher education programs, by establishing a graduate level clinically rich pilot program.

3. NEEDS AND BENEFITS:

The purpose of creating the graduate level clinically rich pilot program is to address the retention issue in high need schools and improve student growth and achievement. New York State will need 100,000 new teachers within the next five to ten years. Fifty percent of New York's teachers will be eligible to retire this decade and 70 percent within 20 years. The teacher shortage is already evident. Educational leaders have advised the State Education Department that they are having difficulty recruiting certified, qualified teaching staff in any schools but particularly in high need schools.

The proposed amendment would authorize institutions, other than institutions of higher of education, to offer the graduate level clinically rich pilot program. Such institutions shall include, but not be limited to, cultural institutions, libraries, research centers, and other organizations with an educational mission that are selected by the Commissioner for participation through the RFP process.

To prepare effective teachers for high need schools, the graduate level clinically rich pilot program shall include at least one continuous school year of mentored clinical experience, grounded in the teaching standards currently being developed, and centered on practicing research-based teaching skills that make a difference in the classroom. Pedagogical study linking theory and practice will be embedded in the clinical experience.

4. COSTS:

(a) Cost to State government: The amendment will not impose any additional cost on State government, including the State Education Department. The State Education Department will use existing staff and resources to select program providers for the pilot programs through a Request for Proposal (RFP) process.

(b) Cost to local government: The proposed amendment is permissive in nature and only affects high need schools and school districts that wish to participate in a graduate level clinically rich pilot program. The proposed amendment requires such school districts to provide mentoring for the candidates in the pilot program. The State Education Department estimates that, on average, it will cost a school district about \$6,200 for each teacher per year to provide the mentoring, while they are in the graduate level clinically rich pilot program.

(c) Cost to private regulated parties: The proposed amendment is permissive in nature. The Department anticipates that institutions who elect to participate in this program will incur the same costs for the development and implementation of this a program as they would for a traditional teacher education program.

(d) Costs to the regulatory agency: As stated above in Costs to State Government, the amendment does not impose any additional costs on the State Education Department. The Department anticipates that it will be able to use existing faculty and resources to approve these programs and for the selection of participating institutions.

5. LOCAL GOVERNMENT MANDATES:

Any institution that participates in this pilot program shall execute a written agreement with each partnering high need school which shall include the following: (1) the specific roles of the institution and the high need school in the recruitment, preparation, and mentoring of candidates, as well as their roles in sustaining this pilot program in the long term; (2) the selection and evaluation criteria and the recruitment process for teacher-mentors; and (3) the various types of assessments that will be used to evaluate candidates throughout the program, and how such assessments will be utilized to prescribe study and experiences that will enable candidates to develop the knowledge, under-

standing, and skills necessary to successfully meet the requirements of this program and to obtain certification upon completion of the program.

These institutions will also be required to enter into a written agreement with the high need school, prior to assigning the candidate to a classroom in such high need school, wherein the high need school must agree to establish a plan for at least one continuous school year of mentored clinical experience by an assigned teacher-mentor and provide support by a team comprised of a faculty member of the program, the school principal or designee, the assigned teacher-mentor, and a school curriculum supervisor or specialist. Program faculty will also be required to supervise the candidate and promote the linking of theory and practice by observing and advising the candidate at least twice each month during the clinical experience and shall work in collaboration with the assigned teacher-mentor to evaluate candidates and provide feedback. During the clinical experience component of the program, the institution shall also provide courses and seminars that are designed to link educational theory with clinical experiences.

An institution that elects to participate in this program will also be required to have a formal written agreement with partnering schools or districts to provide continued mentoring support for graduates of the pilot program during their first year of teaching, which shall include, but not be limited to, setting selection criteria, and the recruitment and training processes for mentors; and developing plans to provide research-based professional development programs for mentors and graduates.

Institutions that choose to offer Track B of the program (which leads to a Transitional B certificate) must also provide weekly program faculty supervision and daily mentoring by an assigned teacher-mentor during the first eight weeks of teaching and continued mentoring by an assigned teacher mentor during the remainder of the time that the candidate is enrolled in the program and teaching.

6. PAPERWORK:

Any institution that participates in this program shall execute a written agreement with each partnering high need school which shall include the following: (1) the specific roles of the institution and the high need school in the recruitment, preparation, and mentoring of candidates, as well as their roles in sustaining this pilot program in the long term; (2) the selection and evaluation criteria and the recruitment process for teacher-mentors; and (3) the various types of assessments that will be used to evaluate candidates throughout the program, and how such assessments will be utilized to prescribe study and experiences that will enable candidates to develop the knowledge, understanding, and skills necessary to successfully meet the requirements of this program and to obtain certification upon completion of the program.

An institution shall also have a formal written agreement with partnering schools or districts to provide continued mentoring support for graduates of the pilot program during their first year of teaching, which shall include, but not be limited to, setting selection criteria, and the recruitment and training processes for mentors; and developing plans to provide research-based professional development programs for mentors and graduates.

7. DUPLICATION:

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

8. ALTERNATIVES:

There were no significant alternative proposals considered.

9. FEDERAL STANDARDS:

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

10. COMPLIANCE SCHEDULE:

If adopted as an emergency measure at the April Regents meeting, the proposed amendment will become effective on May 1, 2010. A second emergency adoption will be necessary at the July Regents meeting to ensure that the regulations remain continuously in effect until the regulation becomes effective on August 11, 2010. It is unnecessary to delay implementation of the proposed amendment because of its permissive nature.

Regulatory Flexibility Analysis

a) Small Businesses:

1. Effect of rule:

The purpose of the proposed amendment is to establish program registration standards for a clinically rich graduate level pilot program and to authorize institutions, other than institutions of higher education, with an education mission and that are selected by the Board of Regents, to offer teacher preparation programs under this pilot program. Some of these institutions may be small businesses.

2. Compliance requirements:

Any institution that participates in this pilot program shall execute a written agreement with each partnering high need school which shall include the following: (1) the specific roles of the institution and the high need school in the recruitment, preparation, and mentoring of candidates, as well as their roles in sustaining this pilot program in the long term; (2) the selection and evaluation criteria and the recruitment process for teacher-mentors; and (3) the various types of assessments that will be used to evaluate candidates throughout the program, and how such assessments will be utilized to prescribe study and experiences that will enable candidates to develop the knowledge, understanding, and skills necessary to successfully meet the requirements of this program and to obtain certification upon completion of the program.

These institutions will also be required to enter into a written agreement with the high need school, prior to assigning the candidate to a classroom in such high need school, wherein the high need school must agree to establish a plan for at least one continuous school year of mentored clinical experience by an assigned teacher-mentor and provide support by a team comprised of a faculty member of the program, the school principal or designee, the assigned teacher-mentor, and a school curriculum supervisor or specialist. Program faculty will also be required to supervise the candidate and promote the linking of theory and practice by observing and advising the candidate at least twice each month during the clinical experience and shall work in collaboration with the assigned teacher-mentor to evaluate candidates and provide feedback. During the clinical experience component of the program, the institution shall also provide courses and seminars that are designed to link educational theory with clinical experiences.

An institution that elects to participate in this program will also be required to have a formal written agreement with partnering schools or districts to provide continued mentoring support for graduates of the pilot program during their first year of teaching, which shall include, but not be limited to, setting selection criteria, and the recruitment and training processes for mentors; and developing plans to provide research-based professional development programs for mentors and graduates.

Institutions that choose to offer Track B of the program (which leads to a Transitional B certificate) must also provide weekly program faculty supervision and daily mentoring by an assigned teacher-mentor during the first eight weeks of teaching and continued mentoring by an assigned teacher mentor during the remainder of the time that the candidate is enrolled in the program and teaching.

3. Professional services:

The proposed amendment does not require small businesses to contract for additional professional services to comply.

4. Compliance costs:

The proposed amendment is permissive in nature and any costs associated with the proposed amendment only apply to institutions and high need schools that elect to participate in the pilot program. However, for each teacher certification candidate in the pilot program, the State Education Department estimates that it will cost a high need school or school district that elects to participate in the program approximately \$6,200 per year to provide mentoring. The Department also anticipates that for any institution that elects to participate in the pilot program, it will incur the same costs for the development and implementation of both tracks of this program as they would for a traditional teacher education program and that such institutions could use existing faculty to meet supervision requirements of the proposed amendment.

5. Economic and technological feasibility:

See above response to compliance costs. The proposed amendment would not require schools or school districts to secure special technology to comply.

6. Minimizing adverse impact:

As stated above, the proposed amendment is permissive in nature. It only applies to institutions that wish to participate in a graduate level clinically rich pilot program. Because of the nature of the proposed amendment, it is unnecessary to minimize adverse impacts on small businesses.

7. Small business participation:

The conceptual framework of the graduate level clinically rich pilot program was shared with the State Professional Standards and Practices Board for Teaching and comments were solicited from this board. This is an advisory group to the Board of Regents and the Commissioner of Education on matters pertaining to teacher education, certification, and practice. The board has representatives from school districts across the State.

b) Local Governments:

1. Effect of rule:

The purpose of the proposed amendment is to establish program registration standards for a clinically rich graduate level pilot program and to authorize institutions, other than institutions of higher education, that are selected by the Board of Regents, to offer teacher preparation programs under this pilot program. High need schools and school districts may opt to participate and collaborate with institutions that are selected by the Board of Regents to participate in this program.

2. Compliance requirements:

Any institution that participates in this pilot program shall execute a written agreement with each partnering high need school which shall include the following: (1) the specific roles of the institution and the high need school in the recruitment, preparation, and mentoring of candidates, as well as their roles in sustaining this pilot program in the long term; (2) the selection and evaluation criteria and the recruitment process for teacher-mentors; and (3) the various types of assessments that will be used to evaluate candidates throughout the program, and how such assessments will be utilized to prescribe study and experiences that will enable candidates to develop the knowledge, understanding, and skills necessary to successfully meet the requirements of this program and to obtain certification upon completion of the program.

These institutions will also be required to enter into a written agreement with the high need school, prior to assigning the candidate to a classroom in such high need school, wherein the high need school must agree to establish a plan for at least one continuous school year of mentored clinical experience by an assigned teacher-mentor and provide support by a team comprised of a faculty member of the program, the school principal or designee, the assigned teacher-mentor, and a school curriculum supervisor or specialist. Program faculty will also be required to supervise the candidate and promote the linking of theory and practice by observing and advising the candidate at least twice each month during the clinical experience and shall work in collaboration with the assigned teacher-mentor to evaluate candidates and provide feedback. During the clinical experience component of the program, the institution shall also provide courses and seminars that are designed to link educational theory with clinical experiences.

An institution that elects to participate in this program will also be required to have a formal written agreement with partnering schools or districts to provide continued mentoring support for graduates of the pilot program during their first year of teaching, which shall include, but not be limited to, setting selection criteria, and the recruitment and training processes for mentors; and developing plans to provide research-based professional development programs for mentors and graduates.

Institutions that choose to offer Track B of the program (which leads to a Transitional B certificate) must also provide weekly program faculty supervision and daily mentoring by an assigned teacher-mentor during the first eight weeks of teaching and continued mentoring by an assigned teacher mentor during the remainder of the time that the candidate is enrolled in the program and teaching.

3. Professional services:

The proposed amendment does not require schools or school districts to contract for additional professional services to comply.

4. Compliance costs:

The proposed amendment is permissive in nature and any costs associated with the proposed amendment only apply to institutions and high need schools that elect to participate in the pilot program. However, for each teacher certification candidate in the pilot program, the State Education Department estimates that it will cost a high need school or school district that elects to participate in the program approximately \$6,200 per year to provide mentoring. The Department also anticipates that for any institution that elects to participate in the pilot program, it will incur the same costs for the development and implementation of both tracks of this program as they would for a traditional teacher education program and that such institutions could use existing faculty to meet supervision requirements of the proposed amendment.

5. Economic and technological feasibility:

See above response to compliance costs. The proposed amendment would not require schools or school districts to secure special technology to comply.

6. Minimizing adverse impact:

The proposed amendment is expected to have a positive impact on high need schools and school districts by increasing the supply of highly effective teachers in high need subjects in high need schools. As stated above, the proposed amendment is permissive in nature. It only applies to high need schools and school districts that wish to participate in a graduate level clinically rich pilot program. Because of the nature of the proposed amendment, it is unnecessary to minimize adverse impacts on school districts.

7. Local government participation:

The conceptual framework of the graduate level clinically rich pilot programs was shared with the State Professional Standards and Practices Board for Teaching and comments were solicited from this board. This is an advisory group to the Board of Regents and the Commissioner of Education on matters pertaining to teacher education, certification, and practice. The board has representatives from school districts across the State.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:

The proposed amendment will impact institutions that elect to offer a clinically rich principal preparation program, which may include colleges and universities and institutions other than institutions of higher education that are selected by the Board of Regents to participate in this program. Such institutions may include cultural institutions, libraries, research centers, and other organizations with an educational mission. The proposed amendment will also impact high need schools and school districts in New York State that elect to participate in this program. These high need schools and institutions may be located in the 44 rural counties with fewer than 200,000 inhabitants and the 71 towns and urban counties with a population density of 150 square miles or less.

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

Any institution that participates in this pilot program shall execute a written agreement with each partnering high need school which shall include the following: (1) the specific roles of the institution and the high need school in the recruitment, preparation, and mentoring of candidates, as well as their roles in sustaining this pilot program in the long term; (2) the selection and evaluation criteria and the recruitment process for principal-mentors; (3) a commitment to actively recruit and select candidates who demonstrate excellence in teaching, experience working as advocates for children and families in high need schools, leadership capability, and a sincere intent to serve as instructional leaders; (4) the various types of assessments that will be used to evaluate candidates throughout the program, and how such assessments will be utilized to prescribe study and experiences that will enable candidates to develop the knowledge, understanding, and skills necessary to successfully meet the requirements of this program and to obtain certification upon completion of the program.

These institutions will also be required to enter into a written agreement with the high need school, prior to assigning the candidate to a classroom in such high need school, wherein the high need school must agree to establish a plan for at least one continuous school year of mentored clinical experience by an assigned principal-mentor and provide support by a team of program faculty, teacher and administrators at the high need school and the superintendent. Program faculty will also be required to supervise the candidate and promote the linking of theory and practice by observing and advising the candidate at least twice each month during the clinical experience and shall work in collaboration with the assigned principal-mentor to evaluate candidates and provide feedback. During the clinical experience component of the program, the institution shall also provide courses and seminars that are designed to link educational theory with clinical experiences.

An institution that elects to participate in this program will also be required to have a formal written agreement with partnering schools or districts to provide continued mentoring support for graduates of the pilot program during their first year in a school leadership position, which shall include, but not be limited to, setting selection criteria, and the recruitment and training processes for mentors; and developing plans to provide research-based professional development programs for mentors and school leaders.

3. Costs:

The proposed amendment is permissive in nature and any costs associated with the proposed amendment only apply to institutions and high need schools that elect to participate in the pilot program. However, for each candidate in the pilot program, the State Education Department estimates that it will cost a high need school or school district that elects to participate in the program approximately \$6,200 per year to provide mentoring. The Department also anticipates that for any institution that elects to participate in the pilot program, it will incur the same costs for the development and implementation of this program as they would for a traditional principal preparation program and that such institutions could use existing faculty to meet supervision requirements of the proposed amendment.

4. Minimizing adverse impact:

Implementation of the proposed rule will not have a negative impact on entities or individuals located in rural communities. The proposed amendment is permissive in nature. Only program providers that wish to offer a clinically rich principal preparation pilot program are required to meet the new requirements for such programs. High need schools and school districts that elect to participate in the pilot program will benefit by having access to a larger pool of teacher candidates, although they will have the expense of providing mentoring support.

The proposed amendment relates to requirements for teaching certification to qualify for service in the State's public schools. The State Education Department does not believe that establishing a different standard for teachers who live or work in rural areas is warranted. A uniform standard ensures the quality of the State's teaching workforce.

5. Rural area participation:

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

Job Impact Statement

The purpose of the proposed amendment is to create a clinically rich graduate level teacher preparation pilot program to address the retention issues in high need schools and improve student growth and achievement. The purpose of the proposed amendment is to establish program registration standards for the clinically rich graduate level pilot program and to authorize institutions, other than institutions of higher education, that are selected by the Board of Regents to offer teacher preparation programs under this pilot program. Such institutions may include, but not be limited to, cultural institutions, libraries,

research centers, and other organizations with an educational mission that are selected by the Board of Regents to participate in the program.

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

Assessment of Public Comment

Since publication of a Notice of Proposed Rule Making in the State Register on May 5, 2010, the State Education Department received comments about the proposed amendments relating to the establishment of clinically rich teacher preparation pilot programs. The following is a summary of the comments and the responses of the Education Department.

1. COMMENT: Many oppose the Model B pilot because it differs substantially from a traditional teacher residency program.

DEPARTMENT RESPONSE: The Department supports expanding the definition of teacher residencies to develop additional pathways to attract teachers for high need shortage areas. The Model B pilot is similar to the Transitional B program that has been in existence for 10 years.

2. COMMENT: A few expressed concern over the collection and use of student achievement data.

DEPARTMENT RESPONSE: The Department is currently developing the Request for Proposal (RFP) for pilot programs and will explain more fully how student data will be collected and used in these pilot programs.

3. COMMENT: A few opposed the 30 credit content requirement as an admission standard and suggested the use of competency examinations in lieu of this requirement.

DEPARTMENT RESPONSE: Colleges have historically used rigorous examinations to meet specific course requirements. An applicant for this pilot may identify whether such an exam approach will be taken, and to what extent. The Blue Ribbon Commission will determine the appropriateness of this approach.

4. COMMENT: A few were opposed to the doctoral and terminal degrees requirement of faculty.

DEPARTMENT RESPONSE: To ensure the high quality of instruction of candidates, the Department believes that the current rigorous faculty regulations ensure the highest caliber of program instructors.

5. COMMENT: Many were concerned that non-collegiate institutions could not offer the depth and breadth of preparation taught at Institutions of Higher Education (IHE).

DEPARTMENT RESPONSE: In order to ensure that selected programs offer a clinically rich teacher preparation program of the high quality, the Board of Regents will establish a Blue Ribbon Commission, comprised of highly renowned teacher educators, to evaluate all applications. The Commission will recommend those applicants that should be authorized to establish clinically rich teacher preparation programs to the Board of Regents, from collegiate and non-collegiate providers or in combination. The goal is to ensure a rigorous programmatic review and to select only the highest quality providers to assist in the preparation of teachers for high need schools. Emphasis will be on educating teachers in a holistic educational approach for the teaching profession, not in training teachers. IHEs have historically prepared teachers with this emphasis in educating teachers and the Department will require all providers to meet the registration standards for these pilot programs. For non-collegiate providers, the Regents will only award the master's degree if the institution has demonstrated that candidates have successfully completed all elements of the program authorized by the Regents. The Department encourages partnerships and recognizes the value of such collaborations between potential providers. Partnerships between collegiate and non-collegiate providers will be encouraged in the RFP.

6. COMMENT: A few were concerned with the scope of the clinical experiences and the possibly creating a two tier system benefiting the staffing of wealthy districts.

DEPARTMENT RESPONSE: The regulations require collaboration with only high need schools for their clinical experiences. This pilot program will not be a factor in creating a two tier system.

7. COMMENT: Some expressed that the regulations were hastily written and not research based.

DEPARTMENT RESPONSE: Through research in current clinically based teacher residency programs was completed prior to the thoughtfully drafting regulations.

8. COMMENT: Concern was expressed about the negative impact the pilot programs would have on programs already in existence.

DEPARTMENT RESPONSE: The pilots are intended for a very specific, small cohort of candidates committed to teaching in high need schools upon graduation. There should be no significant impact.

9. COMMENT: A few expressed concerns over lack of experience of non-collegiate entities providing such programs and of the role and timeframe of the Blue Ribbon Commission.

DEPARTMENT RESPONSE: The Blue Ribbon Commission will be provided adequate time and resources to thoroughly evaluate all applications for the pilot programs.

10. COMMENT: Concern was expressed with the lack of definition for the terms used in the regulations specific to the pilots.

DEPARTMENT RESPONSE: All terms specific to the pilots are defined in the regulations and will be further developed in the RFP.

11. COMMENT: There is need for more specific data on regional supply and demand in New York State.

DEPARTMENT RESPONSE: The Department is progressing with the State's initiative for developing a data collection system that will incorporate regional data on teacher supply and demand across the State.

12. COMMENT: There is a preference for Middle States accreditation over NCATE, TEAC, and RATE because Middle States is the entity that accredits all master degree programs. Other commenters questioned the timeframe for accreditation in this pilot program.

DEPARTMENT RESPONSE: The proposed programs will be focused exclusively for preparing candidates to become effective teachers and the regulation specifies that teacher preparation programs must achieve accreditation through a nationally recognize program accreditor within seven years of program registration. Middle States, is an institutional accreditor.

13. COMMENT: A master's degree is an academic degree and should be granted solely by IHE.

DEPARTMENT RESPONSE: The Regents will assure the quality of the program through a rigorous selection process by the Blue Ribbon Commission, and the program will be held to rigorous program registration standards, including prescribed curriculum and faculty requirements and at least one year of mentored experience in the classroom. Only graduates of such programs may be awarded an M.A.T degree by the Regents. The provider's faculty must also ensure that the graduate level work required to award the degree is sufficiently rigorous.

14. COMMENT: Organizations should have an established record of improving student achievement.

DEPARTMENT RESPONSE: The establishment of the Blue Ribbon Commission ensures that all applications are held to the same standards as traditional teacher preparation programs and demonstrate a proven history of improving student achievement.

15. COMMENT: Concern was expressed that graduates of these pilots will have difficulty being admitted into doctoral programs because their master's degrees were awarded by the Board of Regents (BOR) and that there is a conflict of interest with the BOR awarding these degrees.

DEPARTMENT RESPONSE: Education Law § 208 authorizes the Board of Regents to award degrees and the Board currently uses this authority to award degrees for graduates of institutions operating under a provisional charter and institution that have closed. The Blue Ribbon Commission, has been charged with ensuring that those applying through the RFP process meet the established criteria, including extensive quality assurance processes.

16. COMMENT: Concern was expressed that there was no dialogue between New York State and stakeholders.

DEPARTMENT RESPONSE: For the purposes of these pilots, as

required under the State Administrative Procedures Act, the Department has engaged the public through a 45-day public comment period. The Department has received and reviewed comments on the regulations from higher education institutions. The Commissioner has also reached out to, and met with Deans from CUNY, SUNY, and independent colleges, as well as P-12 Educators. The Department will continue to have ongoing discussions with stakeholders to explore ideas for improving education in high need schools and shortage areas throughout the State.

17. COMMENT: Concern was expressed that the four year commitment by graduates would have a negative impact on provider programs and this should include a financial incentive.

DEPARTMENT RESPONSE: We encourage providers to provide financial incentives. The commitment of graduates is based on research to ensure the retention of qualified teachers and will be contingent upon the demand for teachers in high need schools.

18. COMMENT: One commenter expressed concern that the research indicates the failure of alternately prepared teachers.

DEPARTMENT RESPONSE: The Department supports continuing research in this area.

19. COMMENT: There has been no systematic study of the impact of the existing accreditation system.

DEPARTMENT RESPONSE: The Department continues to assess teacher preparation outcomes data, such as performance on state certification examinations. The proposed clinically rich preparation programs represent a pilot, one purpose of which is to gather data on the effectiveness of this alternative model.

20. COMMENT: New York State Education Department should differentiate the major requirements for teacher candidates in the 5-9 and 7-12 teacher education programs.

DEPARTMENT RESPONSE: Section 52.21(b) of the Regulations of the Commissioner of Education specifies the program registration requirements for certification in these content areas.

21. COMMENT: It is not feasible for program faculty to be able to observe a teacher candidate twice a month.

DEPARTMENT RESPONSE: Many teacher preparation programs meet or exceed this level of supervision to ensure that candidates are supported and mentored throughout their program.

22. COMMENT: Concern was expressed that there will be massive teacher layoffs in Fall 2010.

DEPARTMENT RESPONSE: The focus of the pilot programs will be on high need schools and shortage areas. Historically these positions are hard to fill and, with current teachers looking for positions, a deeper pool of potential hires will be available for STEM and other high need subjects in our high need schools. The proposed amendment should not have any significant impact on teacher layoffs.

23. COMMENT: Concern was expressed that an IHE's ability to prepare teachers through an alternate pathway will be diluted thus creating additional competition.

DEPARTMENT RESPONSE: The Department appreciates that, when the State was in need of preparing teachers through an expedited pathway to address teacher shortages in high need areas, IHEs met this demand by successfully preparing teachers through an alternate certification pathway. The continuing demand for teachers specifically prepared to be effective in high need areas indicates the need for innovative programs to address this specific need. The Blue Ribbon Commission will choose those providers for the pilots that, according to the standards identified in the RFP and Regulation, provide evidence of their ability to successfully meet the identified need. IHEs and non-IHE providers are able to compete for the pilot. The nature of these intense and highly focused programs is not anticipated to impact any successful IHE programs already in place.

24. COMMENT: Concern was expressed that non-collegiate providers will not be able to meet the needs of all student populations.

DEPARTMENT RESPONSE: Providers will be expected to provide evidence that they will be able to meet the needs of all student populations, and this criterion will be addressed in the RFP and the Blue Ribbon Commission will be selecting only those providers that

can meet the needs of such students. Only providers that can demonstrate a proven history of improving student achievement for all students including Students with Disabilities and English language learners will be considered for the pilots.

25. COMMENT: Concern was expressed that it would be more efficient to make changes in established programs rather than develop alternative programs.

DEPARTMENT RESPONSE: The Regents' number one concern is the education of the children in New York State. The Department believes that these clinically rich pilot programs will address the student population in the State most affected by poverty by preparing highly effective teachers for high need schools. The Blue Ribbon Commission will ensure that the highest caliber of providers will be chosen to prepare teachers in these schools. Research will be conducted on the pilots in order to replicate the best practices in preparing teachers for high need areas.

26. COMMENT: An assessment of the quality and effectiveness of the pilot programs need to be assessed.

DEPARTMENT RESPONSE: The Department anticipates developing a RFP for the purpose of analyzing the impact on student achievement and teacher preparation through these pilots. Results of this research will be made public.

27. COMMENT: One commenter expressed concern that the regulations were done as an emergency rulemaking, as opposed to the usual rulemaking procedures.

DEPARTMENT RESPONSE: Emergency action was needed in order to ensure the timely implementation of the provisions of the proposed amendment to provide stakeholders with timely notice of the eligibility requirements and the program registration requirements for the pilot program so that they might complete the competitive bidding process for available funding before the 2011-2012 school year.

EMERGENCY RULE MAKING

Academic Intervention Services (AIS)

I.D. No. EDU-31-10-00004-E

Filing No. 765

Filing Date: 2010-07-27

Effective Date: 2010-07-27

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

Action taken: Amendment of section 100.2(ee) of Title 8 NYCRR.

Statutory authority: Education Law, sections 101(not subdivided), 207(not subdivided), 305(1) and (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 State Education Department is proposing modified requirements for the provision of Academic Intervention Services (AIS) during the 2010-2011 school year based on several factors, including: (1) the change in cut scores for the grades 3-8 assessments in English language arts and mathematics which determine student proficiency; (2) the fact that such changes will not be announced to the field until late July or early August; and (3) the fiscal impact that school districts may experience because of the increase in the number of students required to receive AIS. The proposed requirements would hold districts harmless from the expected fiscal impact of the change in cut scores. School districts will continue to have the option to offer services to those children who they feel are in need of the additional support.

Specifically, the proposed amendment provides that for the 2010-2011 school year only:

(1) Students scoring at or below a scale score of 650 must receive academic intervention instructional services.

(2) Students scoring above a scale score of 650 but below level 3/proficient will not be required to receive academic intervention instructional and/or student support services unless the school district deems it necessary.

(3) Each school district shall develop and maintain on file a uniform

process by which the district determines whether to offer AIS during the 2010-11 school year to students who scored above a scale score of 650 but below level 3/proficient on a grade 3-8 English language arts or mathematics State assessment in 2009-10.

(4) In recognition of the effects on school districts of a change in cut scores for such school year, a waiver is given for the 2010-2011 school year from the requirement that school districts review and revise their description of AIS based on student performance results.

Since the Board of Regents meets at monthly intervals, and does not meet in August, the earliest the proposed amendment could be adopted by regular action, after publication of a Notice of Proposed Rule Making and expiration of the 45-day public comment period prescribed in State Administrative Procedure Act (SAPA) section 202, would be the October 18-19, 2010 Regents meeting. Because SAPA provides that an adopted rule may not become effective until a Notice of Adoption is published in the State Register, the earliest the proposed amendment could become effective if adopted at the October Regents meeting, is November 10, 2010. However, school districts need to know now what the modified requirements for AIS will be so that they may plan and timely implement AIS for the 2010-2011 school year.

Emergency Action is necessary for the preservation of the general welfare to immediately establish modified requirements for the provision of Academic Intervention Services for the 2010-2011 school year, for purposes of minimizing the potential fiscal impact on school districts of an anticipated change in cut scores for the grades 3-8 assessments in English language arts and mathematics, and thereby ensure the timely implementation of the modified AIS requirements by school districts in the 2010-2011 school year.

Subject: Academic Intervention Services (AIS).

Purpose: To establish modified requirements for AIS during the 2010-2011 school year.

Text of emergency rule: Subdivision (ee) of section 100.2 of the Regulations of the Commissioner of Education is amended, effective July 27, 2010, as follows:

(ee) Academic intervention services.

(1) Requirements for providing academic intervention services (AIS) in kindergarten to grade three. Schools shall provide academic intervention services to students in kindergarten to grade three when such students:

(i) are determined, through a district-developed or district-adopted procedure that meets State criteria and is applied uniformly at each grade level, to lack reading readiness based on an appraisal of the student, including his/her knowledge of sounds and letters; or

(ii) are determined, through a district-developed or district-adopted procedure applied uniformly at each grade level, to be at risk of not achieving the State designated performance level in English language arts and/or mathematics. This district procedure may also include diagnostic screening for vision, hearing and physical disabilities pursuant to article 19 of the Education Law, as well as screening for possible limited English proficiency or possible disability pursuant to Part 117 of this Title.

(2) Requirements for providing academic intervention services in grade four to grade eight. Schools shall provide academic intervention services when students:

(i) score below the State designated performance level on one or more of the State elementary assessments in English language arts, mathematics, social studies or science; *provided that for the 2010-2011 school year only, the following shall apply for the English language arts and mathematics assessments:*

(a) *those students scoring at or below a scale score of 650 shall receive academic intervention instructional services; and*

(b) *those students scoring above a scale score of 650 but below level 3/proficient shall not be required to receive academic intervention instructional and/or student support services unless the school district, in its discretion, deems it necessary. Each school district shall develop and maintain on file a uniform process by which the district determines whether to offer AIS during the 2010-2011 school year to students who scored above a scale score of 650 but*

below level 3/proficient on a grade 3-8 English language arts or mathematics State assessment in 2009-2010, and shall no later than the commencement of the first day of instruction either post to its Website or distribute to parents in writing a description of such process.

(ii) are limited English proficient (LEP) and are determined, through a district-developed or district-adopted procedure uniformly applied to LEP students, to be at risk of not achieving State learning standards in English language arts, mathematics, social studies and/or science, through English or the student's native language. This district procedure may also include diagnostic screening for vision, hearing, and physical disabilities pursuant to article 19 of the Education Law, as well as screening for possible disability pursuant to Part 117 of this Title; or

(iii) are determined, through a district-developed or district-adopted procedure uniformly applied, to be at risk of not achieving State standards in English language arts, mathematics, social studies and/or science. This district procedure may also include diagnostic screening for vision, hearing, and physical disabilities pursuant to article 19 of the Education Law, as well as screening for possible limited English proficiency or possible disability pursuant to Part 117 of this Title.

(3) . . .

(4) Description of academic intervention services.

(i) . . .

(ii) The description of academic intervention services shall be approved by each local board of education by July 1, 2000. In the New York City School District, the New York City Board of Education may designate that the plans be approved by the chancellor or his designee or by community school boards for those schools under their jurisdiction. Beginning July 1, 2002 and every two years thereafter, each school district shall review and revise its description of academic intervention services based on student performance results; *except that this requirement shall not apply to student performance results for the 2010-2011 school year, which shall be excluded from such review.*

(iii) . . .

(iv) . . .

(5) . . .

(6) . . .

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-31-10-00004-P, Issue of August 4, 2010. The emergency rule will expire October 24, 2010.

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

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

Education Law section 207 empowers the Board of Regents and the Commissioner to adopt rules and regulations to carry out the 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.

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 education.

Education Law section 3204(3) provides for the courses of study in the public schools.

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 academic intervention services (AIS).

3. NEEDS AND BENEFITS:

The proposed amendment would establish modified requirements for the provision of AIS during the 2010-2011 school year based on several factors, including: (1) the change in cut scores for the grades 3-8 assessments in English language arts and mathematics which determine student proficiency; (2) the fact that such changes will not be announced to the field until late July or early August; and (3) the fiscal impact that school districts may experience because of the increase in the number of students required to receive AIS. The purpose of the proposed amendment is to provide flexibility to school districts in providing AIS during the 2010-2011 school year in order to hold districts harmless from the expected fiscal impact of an increase in the number of students required to receive AIS as a result of a change in cut scores for the grades 3-8 assessments in English language arts and mathematics. School districts will continue to have the option to offer services to those children who they feel are in need of the additional support.

Specifically, the proposed amendment provides that for the 2010-2011 school year only:

(1) Students scoring at or below a scale score of 650 must receive academic intervention instructional services.

(2) Students scoring above a scale score of 650 but below level 3/proficient will not be required to receive academic intervention instructional and/or student support services unless the school district deems it necessary.

(3) Each school district shall develop and maintain on file a uniform process by which the district determines whether to offer AIS during the 2010-11 school year to students who scored above a scale score of 650 but below level 3/proficient on a grade 3-8 English language arts or mathematics State assessment in 2009-10, and shall post to its Website or distribute to parents in writing a description of such process no later than the commencement of the first day of instruction.

(4) In recognition of the effects on school districts of a change in cut scores for such school year, a waiver is given for the 2010-2011 school year from the requirement that school districts review and revise their description of AIS based on student performance results.

4. COSTS:

(a) Costs to State government: None.

(b) Costs to local government: The proposed amendment establishes modified requirements for the provision of AIS during the 2010-2011 school year to provide flexibility to school districts and to hold districts harmless from the expected fiscal impact of an increase in the number of students required to receive AIS as a result of a change in cut scores for the grades 3-8 assessments in English language arts and mathematics which determine student proficiency. School districts may incur some costs associated with distributing to parents of students a written description of the district's process for determining whether AIS will be offered to students who scored above a scale score of 650 but below level 3/proficient on a grade 3-8 English language arts or mathematics State assessment in 2009-2010. However, the proposed amendment allows school districts to post the description on its Website in lieu of distributing to parents, and it is anticipated that any associated costs would be minimal and can be absorbed using existing district staff and resources. More importantly, any such costs would be more than offset by the reduction in costs to schools districts resulting from implementation of the modified AIS requirements in the 2010-2011 school year.

(c) Costs to private regulated parties: None.

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

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment establishes modified requirements for the provision of AIS during the 2010-2011 school year to provide flexibility to school districts and to hold districts harmless from the expected fiscal impact of an increase in the number of students required to receive AIS as a result of a change in cut scores for the grades 3-8 assessments in English language arts and mathematics which determine student proficiency. As part of the modified requirements, the proposed amendment requires each school district to develop and maintain on file a uniform process by which the district determines whether to offer AIS during the 2010-2011 school year to students who scored above a scale score of 650 but below level 3/proficient on a grade 3-8 English language arts or mathematics State assessment in 2009-2010, and to either post to its Website or distribute to parents in writing a description of such process no later than the commencement of the first day of instruction.

6. PAPERWORK:

The proposed amendment requires each school district to develop and maintain on file a uniform process by which the district determines whether to offer AIS during the 2010-2011 school year to students who scored above a scale score of 650 but below level 3/proficient on a grade 3-8 English language arts or mathematics State assessment in 2009-2010, and to either post to its Website or distribute to parents in writing a description of such process no later than the commencement of the first day of instruction.

7. DUPLICATION:

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

8. ALTERNATIVES:

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.

Regulatory Flexibility Analysis

1. EFFECT OF RULE:

The proposed amendment applies to each school district within the State.

2. COMPLIANCE REQUIREMENTS:

The proposed amendment establishes modified requirements for the provision of academic intervention services (AIS) during the 2010-2011 school year to provide flexibility to school districts and to hold districts harmless from the expected fiscal impact of an increase in the number of students required to receive AIS as a result of a change in cut scores for the grades 3-8 assessments in English language arts and mathematics which determine student proficiency. As part of the modified requirements, the proposed amendment requires each school district to develop and maintain on file a uniform process by which the district determines whether to offer AIS during the 2010-2011 school year to students who scored above a scale score of 650 but below level 3/proficient on a grade 3-8 English language arts or mathematics State assessment in 2009-2010, and to either post to its Website or distribute to parents in writing a description of such process no later than the commencement of the first day of instruction.

Specifically, the proposed amendment provides that for the 2010-2011 school year only:

(1) Students scoring at or below a scale score of 650 must receive academic intervention instructional services.

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(3) Each school district shall develop and maintain on file a uniform process by which the district determines whether to offer AIS during the 2010-11 school year to students who scored above a scale score of 650 but below level 3/proficient on a grade 3-8 English language arts or mathematics State assessment in 2009-10, and shall post to its

Website or distribute to parents in writing a description of such process no later than the commencement of the first day of instruction.

(4) In recognition of the effects on school districts of a change in cut scores for such school year, a waiver is given for the 2010-2011 school year from the requirement that school districts review and revise their description of AIS based on student performance results.

3. PROFESSIONAL SERVICES:

The proposed amendment imposes no additional professional service requirements on school districts.

4. COMPLIANCE COSTS:

The proposed amendment establishes modified requirements for the provision of AIS during the 2010-2011 school year to provide flexibility to school districts and to hold districts harmless from the expected fiscal impact of an increase in the number of students required to receive AIS as a result of a change in cut scores for the grades 3-8 assessments in English language arts and mathematics which determine student proficiency. School districts may incur some costs associated with distributing to parents of students a written description of the district's process for determining whether AIS will be offered to students who scored above a scale score of 650 but below level 3/proficient on a grade 3-8 English language arts or mathematics State assessment in 2009-2010. However, the proposed amendment allows school districts to post the description on its Website in lieu of distributing to parents, and it is anticipated that any associated costs would be minimal and can be absorbed using existing district staff and resources. More importantly, any such costs would be more than offset by the reduction in costs to schools districts resulting from implementation of the modified AIS requirements in the 2010-2011 school year.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The proposed rule does not impose any technological requirements on school districts. Economic feasibility is addressed under the Costs section above.

6. MINIMIZING ADVERSE IMPACT:

The purpose of the proposed amendment is to provide flexibility to school districts in providing academic intervention services (AIS) during the 2010-2011 school year in order to hold districts harmless from the expected fiscal impact of an increase in the number of students required to receive AIS as a result of a change in cut scores for the grades 3-8 assessments in English language arts and mathematics. School districts will continue to have the option to offer services to those children who they feel are in need of the additional support.

7. SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION:

Comments on the proposed rule were solicited from school districts through the offices of the district superintendents of each supervisory district in the State, and from 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 establishes modified requirements for the provision of academic intervention services (AIS) during the 2010-2011 school year to provide flexibility to school districts and to hold districts harmless from the expected fiscal impact of an increase in the number of students required to receive AIS as a result of a change in cut scores for the grades 3-8 assessments in English language arts and mathematics which determine student proficiency. As part of the modified requirements, the proposed amendment requires each school district to develop and maintain on file a uniform process by which the district determines whether to offer AIS during the 2010-2011 school year to students who scored above a scale score of 650 but below level 3/proficient on a grade 3-8 English language arts or

mathematics State assessment in 2009-2010, and to either post to its Website or distribute to parents in writing a description of such process no later than the commencement of the first day of instruction.

Specifically, the proposed amendment provides that for the 2010-2011 school year only:

(1) Students scoring at or below a scale score of 650 must receive academic intervention instructional services.

(2) Students scoring above a scale score of 650 but below level 3/proficient will not be required to receive academic intervention instructional and/or student support services unless the school district deems it necessary.

(3) Each school district shall develop and maintain on file a uniform process by which the district determines whether to offer AIS during the 2010-11 school year to students who scored above a scale score of 650 but below level 3/proficient on a grade 3-8 English language arts or mathematics State assessment in 2009-10, and shall post to its Website or distribute to parents in writing a description of such process no later than the commencement of the first day of instruction.

(4) In recognition of the effects on school districts of a change in cut scores for such school year, a waiver is given for the 2010-2011 school year from the requirement that school districts review and revise their description of AIS based on student performance results.

The proposed rule imposes no additional professional services requirements on school districts in rural areas.

3. COMPLIANCE COSTS:

The proposed amendment establishes modified requirements for the provision of AIS during the 2010-2011 school year to provide flexibility to school districts and to hold districts harmless from the expected fiscal impact of an increase in the number of students required to receive AIS as a result of a change in cut scores for the grades 3-8 assessments in English language arts and mathematics which determine student proficiency. School districts may incur some costs associated with distributing to parents of students a written description of the district's process for determining whether AIS will be offered to students who scored above a scale score of 650 but below level 3/proficient on a grade 3-8 English language arts or mathematics State assessment in 2009-2010. However, the proposed amendment allows school districts to post the description on its Website in lieu of distributing to parents, and it is anticipated that any associated costs would be minimal and can be absorbed using existing district staff and resources. More importantly, any such costs would be more than offset by the reduction in costs to schools districts resulting from implementation of the modified AIS requirements in the 2010-2011 school year.

4. MINIMIZING ADVERSE IMPACT:

The purpose of the proposed amendment is to provide flexibility to school districts in providing academic intervention services (AIS) during the 2010-2011 school year in order to hold districts harmless from the expected fiscal impact of an increase in the number of students required to receive AIS as a result of a change in cut scores for the grades 3-8 assessments in English language arts and mathematics. School districts will continue to have the option to offer services to those children who they feel are in need of the additional support.

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 establishes modified requirements for the provision of academic intervention services (AIS) during the 2010-2011 school year to provide flexibility to school districts and to hold districts harmless from the expected fiscal impact of an increase in the number of students required to receive AIS as a result of a change in cut scores for the grades 3-8 assessments in English language arts and mathematics which determine student proficiency.

The proposed rule will not have an adverse impact on jobs or employment opportunities. Because it is evident from the nature of the rule 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.

EMERGENCY RULE MAKING

Teacher Certification Flexibility to Avoid or Mitigate Reductions in Force

I.D. No. EDU-32-10-00004-E

Filing No. 760

Filing Date: 2010-07-23

Effective Date: 2010-07-23

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

Action taken: Amendment of section 80-4.3 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207(not subdivided), 3001 and 3004(1)

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

Specific reasons underlying the finding of necessity: The purpose of the proposed amendment is to provide flexibility from the current teacher certification requirements to allow school districts and BOCES to reassign effective classroom teachers to another grade level during this demonstrated immediate fiscal crisis in order to avoid or mitigate reductions in force. School districts and the New York State Council of School Superintendents requested that the Regents consider flexibility in the following three areas to help them retain effective teachers while meeting key staffing needs during the current fiscal crisis:

Grades 7-12 Academic Area Certification Extended to Grades 5 and 6

The proposed amendment provides a level of flexibility in certification similar to that of the Experiment in Organizational Change. During a period of fiscal crisis, a district could reassign a teacher who is employed by the district and certified in the classroom teaching service in a subject area in grades 7-12 to teach that same subject area in grades 5 or 6 through a limited extension to the teacher's existing certificate. The limited extension will be valid for two years and shall be valid with that employing entity only. A full extension will be issued to the candidate if the candidate completes six semester hours of coursework in Middle Childhood education.

Childhood Education Extended to Kindergarten

The proposed amendment authorizes a teacher who is currently certified in childhood education (grades 1-6) to be reassigned to teach kindergarten under a limited extension to their existing certificate for a two-year period while they complete six semester hours of pedagogical coursework in early childhood education. At that point, the Department will issue the teacher a full extension to teach kindergarten.

Childhood Education Extended to Grades 7 and 8

Similar to the regulation on the Experiment in Organizational Change, the proposed amendment authorizes a certified and qualified elementary school teacher (grades 1-6) to be reassigned to a position teaching an academic subject in grades 7 and 8. The teacher would need to have appropriate educational and experience for such teaching assignment as demonstrated by earning Highly Qualified status under NCLB in order to be granted a limited extension to their existing certificate title. Also, the teacher must agree to successfully complete the content specialty test in that subject area and complete six semester hours of coursework in Middle Childhood Education, within the next two years to qualify for the full certificate extension when their limited extension expires.

Emergency action is necessary at the July 2010 Board of Regents meeting in order to ensure that the regulations remain continuously in effect until the regulation becomes effective on August 11, 2010. Pursuant to State Administration Procedure Act § 202(1)(a), a rule may not be adopted until after 45-days from publication of a Notice of Proposed Rule Making in the State Register. The Notice of Proposed Rule Making was published in the State Register on May 5, 2010 and the 45-day comment period expired on June 21, 2010. It is anticipated the proposed amendment will be adopted at the July Regents meeting and will become effective until August 11, 2010. However, the emergency rule adopted at the May Regents meeting is only effective for 90 days and will expire on July 29, 2010. To avoid the adverse effects of a lapse in the emergency rule, another emergency action is necessary at the July Regents meeting to readopt the rule as an emergency measure, effective July 29, 2010 so that it remains continuously in effect until it can be adopted and made effective as a permanent rule.

Subject: Teacher certification flexibility to avoid or mitigate reductions in force.

Purpose: To allow school districts and BOCES to reassign effective teachers to another grade level to avoid reduction in work force.

Text of emergency rule: New subdivisions (k), (l) and (m) are added to section 80-4.3 of the Regulations of the Commissioner of Education is amended, effective July 23, 2010, to read as follows:

(k) Requirements for the issuance of a limited extension to teach a subject in grades 7-8 during a period of immediate fiscal crisis and a 7-8 grade level extension.

(1) Purpose. The purpose of extensions issued under this subdivision, subject to their period of applicability as set forth in paragraph (2) of this subdivision, is to authorize a teacher who is currently employed and certified in the classroom teaching service in childhood education (grades 1-6) or students with disabilities (grades 1-6) or an equivalent certificate title authorizing the teaching of all common branch subjects in childhood education (grades 1-6) to be reassigned by the employing entity to teach that subject in grades 7-8 during a demonstrated fiscal crisis to avoid or mitigate a reduction in force consistent with the requirements of law.

(2) Applicability. The provisions of this subdivision shall apply commencing April 27, 2010 and end on June 30, 2013.

(3) Limitations. A limited extension issued under this subdivision shall be valid for two years from its effective date and shall not be renewable. A limited extension may be issued to a teacher currently employed by an employing entity that meets the requirements in paragraph (4) of this section. A limited extension shall authorize a candidate to teach a subject in grades 7-8 with that employing entity only. Thereafter, a 7-8 grade level extension may be issued to such teacher upon completion of the requirements in paragraph (5) of this subdivision and shall authorize the teacher to teach a subject in grades 7 and 8 in any employing entity.

(4) Requirements for limited extension. Notwithstanding the provisions of this section, a limited extension may be issued to a candidate in a specific subject area for grades 7 and 8 provided that the candidate meets the requirements in each of the following subparagraphs:

(i) The candidate shall hold a valid provisional, permanent, initial or professional certificate in the classroom teaching service in childhood education (grades 1-6) or students with disabilities (grades 1-6) or an equivalent certificate title authorizing the teaching of all common branch subjects in grades 1 through 6; and

(ii) The candidate shall submit a statement by the Chancellor, in the case of employment with the City School District of the City of New York; or by the superintendent, in the case of other employing boards; or by the chief school officer, in the case of employment with another entity required by law to employ certified teachers certifying that:

(a) the employing entity seeks to reassign a currently employed teacher to a new teaching position in grades 7-8 in a subject area in the classroom teaching service;

(b) the candidate meets the qualification requirements of section 120.6 of this Title, relating to the No Child Left Behind Act of 2001;

(c) the employing entity is in an immediate fiscal crisis and the issuance of an extension in grades 7-8 to such candidate will avoid or mitigate a reduction in force;

(d) the employing entity will provide appropriate support to the currently employed teacher undertaking a new teaching assignment under a limited extension to ensure the maintenance of quality instruction for students;

(e) the employing entity will require, as a condition of employment under the extension, the candidate's enrollment in study at an institution of higher education to complete the requirements in paragraph (5) of this subdivision; and

(f) the employing entity will not assign the employed teacher to teach courses for high school credit;

(5) Requirements for 7-8 grade level extension in a subject. Notwithstanding the provisions of this section, an extension to teach a subject in grades 7 and 8 provided that the candidate successfully completes the New York State Teacher Certification Examination content specialty test in the subject for which a certificate extension is being sought and six semester hours of coursework in middle childhood education.

(l) Requirements for a limited extension to teach kindergarten during a period of immediate fiscal crisis and a kindergarten extension.

(1) Purpose. The purpose of extensions issued in this subdivision, subject to their period of applicability as set forth in paragraph (2) of this subdivision, is to authorize a teacher who is currently employed and certified in the classroom teaching service in childhood education (grades 1-6) or students with disabilities (grades 1-6) or an equivalent certificate title authorizing the teaching of all common branch subjects in childhood education (grades 1-6) to be reassigned by the employing entity to teach kindergarten during a demonstrated immediate fiscal crisis to avoid or mitigate a reduction in force consistent with the requirements of law.

(2) Applicability. The provisions of this subdivision shall apply commencing April 27, 2010 and end on June 30, 2013.

(3) *Limitations.* A limited extension issued under this subdivision shall be valid for two years from its effective date and shall not be renewable. A limited extension may be issued to a teacher currently employed by an employing entity, provided that the requirements in paragraph (4) of this section are met. A limited extension shall authorize a candidate to teach kindergarten with that employing entity only. Thereafter, a kindergarten extension may be issued to such teacher upon completion of the requirements in paragraph (5) of this subdivision and shall authorize the teacher to teach kindergarten in any employing entity.

(4) *Requirements for a limited extension.* Notwithstanding the provisions of this section, a limited extension may be issued to a candidate to teach kindergarten provided that the candidate meets the requirements in each of the following subparagraphs:

(i) The candidate shall hold a valid provisional, permanent, initial or professional certificate in the classroom teaching service in childhood education (grades 1-6) or students with disabilities (grades 1-6) or an equivalent certificate title authorizing the teaching of all common branch subjects in grades 1 through 6; and

(ii) The candidate shall submit a statement by the Chancellor, in the case of employment with the City School District of the City of New York; or by the superintendent, in the case of other employing boards; or by the chief school officer, in the case of employment with another entity required by law to employ certified teachers certifying:

(a) the employing entity seeks to reassign a currently employed teacher to a new teaching position in kindergarten;

(b) the candidate meets the qualification requirements of section 120.6 of this Title, relating to the No Child Left Behind Act of 2001;

(c) the employing entity is in an immediate fiscal crisis and the issuance of a limited extension in kindergarten to such candidate will avoid or mitigate a reduction in force;

(d) the employing entity will provide appropriate support to the currently employed teacher undertaking a new teaching assignment under an extension to ensure the maintenance of quality instruction for students; and

(e) the employing entity will require, as a condition of employment under the extension, the candidate's enrollment in study at an institution of higher education to complete the requirements in paragraph (5) of this subdivision.

(5) *Requirements for kindergarten extension.* Notwithstanding the provisions of this section, a kindergarten extension may be issued to a candidate provided that the candidate satisfactorily completes six semester hours of pedagogical coursework in early childhood development.

(m) *Requirements for the issuance of a limited extension to teach a subject in grades 5-6 during a period of immediate fiscal crisis and a 5-6 grade level extension in a subject.*

(1) *Purpose.* The purpose of extensions issued under this subdivision, subject to their period of applicability as set forth in paragraph (2) of this subdivision, is to authorize a teacher who is currently employed and certified in the classroom teaching service in a certain subject in grades 7-12 and who has demonstrated an appropriate academic background to teach in the subject area of his/her grade 7-12 certificate, to be reassigned by the employing entity to teach that subject in grades 5-6 during a demonstrated immediate fiscal crisis to avoid or mitigate a reduction in force, consistent with the requirements of law.

(2) *Applicability.* The provisions of this subdivision shall apply commencing April 27, 2010 and end on June 30, 2013.

(3) *Limitations.* A limited extension issued under this subdivision shall be valid for two years from its effective date and shall not be renewable. A limited extension may be issued to a teacher currently employed by an employing entity that meets the requirements in paragraph (4) of this section. A limited extension shall authorize a candidate to teach a subject in grades 5-6 with that employing entity only. Thereafter, a 5-6 grade level extension may be issued to such teacher upon completion of the requirements in paragraph (5) of this subdivision and shall authorize the teacher to teach a subject in grades 5-6 in any employing entity.

(4) *Requirements for a limited extension to teach a subject in grades 5-6.* Notwithstanding the provisions of this section, a limited extension may be issued to a candidate in a subject for grades 5-6 provided that the candidate meets the requirements in each of the following subparagraphs:

(i) The candidate shall hold a valid provisional, initial, permanent, or professional certificate in English language arts (7-12), language other than English (7-12), mathematics (7-12), biology (7-12), chemistry (7-12), earth science (7-12), physics (7-12), or social studies (7-12); and

(ii) The candidate shall submit a statement by the Chancellor, in the case of employment with the City School District of the City of New York; or by the superintendent, in the case of other employing boards; or by the chief school officer, in the case of employment with another entity required by law to employ certified teachers certifying:

(a) the employing entity seeks to reassign a currently employed teacher to a new teaching position in grades 5-6 in a subject area in the classroom teaching service;

(b) the candidate meets the qualification requirements of section 120.6 of this Title, relating to the No Child Left Behind Act of 2001;

(c) the employing entity is in an immediate fiscal crisis and the issuance of a limited extension to such candidate to teach grades 5-6 will avoid or mitigate a reduction in force;

(d) the employing entity will provide appropriate support to the currently employed teacher undertaking a new teaching assignment under a limited extension to ensure the maintenance of quality instruction for students; and

(e) the employing entity will require, as a condition of employment under the extension, the candidate's enrollment in study at an institution of higher education to complete the requirements in paragraph (5) of this subdivision.

(5) *Requirements for a 5-6 grade level extension in a subject area.* A 5-6 grade level extension may be issued to a candidate in a specific subject area provided that the candidate meets the requirements of subdivision (b) of this section.

This notice is intended to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires October 20, 2010.

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

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

Section 3001 of the Education Law provides that no teacher shall be authorized to teach in the public schools of the State if there are not in possession of a teacher's certificate issued by the Department.

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

2. LEGISLATIVE OBJECTIVES:

The proposed amendment carries out the legislative objectives of the above-referenced statutes by providing flexibility from the current teacher certification requirements to allow school districts and BOCES to reassign effective classroom teachers to teach students at different grade levels during this demonstrated immediate fiscal crisis to avoid or mitigate reductions in force.

3. NEEDS AND BENEFITS:

The purpose of the proposed amendment is to provide flexibility from the current teacher certification requirements to allow school districts and BOCES to reassign effective classroom teachers to teach students at different grade levels during this demonstrated immediate fiscal crisis in order to avoid or mitigate reductions in force. School districts and the New York State Council of School Superintendents requested that the Regents consider flexibility in the following areas to help them retain effective teachers while meeting key staffing needs during the current fiscal crisis:

Grades 7-12 Academic Area Certification Extended to Grades 5 and 6

The proposed amendment provides a level of flexibility in certification similar to that of the Experiment in Organizational Change. During a period of fiscal crisis, a district could reassign a teacher who is employed by the district and certified in the classroom teaching service in a subject area in grades 7-12 to teach that same subject area in grades 5 or 6 through a limited extension to the teacher's existing certificate. The limited extension will be valid for two years and shall be valid with that employing entity only. A full extension may be issued to the candidate if the candidate meets the requirements within those two years.

Childhood Education Extended to Kindergarten

The proposed amendment authorizes a teacher who is currently certified in childhood education (grades 1-6) to be reassigned to teach kindergarten under a limited extension to their existing certificate for a two-year period while they complete six semester hours of pedagogical coursework in early childhood education. At that point, the teacher could apply for the full extension to teach kindergarten.

Childhood Education Extended to Grades 7 and 8

Similar to the regulation on the Experiment in Organizational Change, the proposed amendment authorizes a certified and qualified elementary school teacher (grades 1-6) to be reassigned to a position teaching an academic subject in grades 7 and 8. The teacher would need to have appropriate education and experience for such teaching assignment as demonstrated by earning Highly Qualified status under NCLB in order to be granted a limited extension to their existing certificate title. Also, the teacher must agree to: 1) successfully complete the Content Specialty Test in that subject area, and 2) complete 6 semester hours of course work in Middle Childhood Education, within the next two years to qualify for the full certificate extension when their limited extension expires.

4. COSTS:

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

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

(c) Costs to private regulated parties: In general, the proposed amendment does not impose any additional compliance costs on school districts and BOCES. However, in order to obtain an extension under the proposed amendment, the cost of the certificate will be \$100 per candidate, which is the amount currently required for candidates seeking a certificate.

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

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment applies to both school districts and boards of cooperative educational services. Therefore, the mandates in Section 3 apply to school districts and BOCES.

6. PAPERWORK:

The proposed amendment requires the candidate to submit a written certification from the Chancellor, the superintendent or by the chief school officer containing certain information, when applying for an extension under the proposed amendment.

7. DUPLICATION:

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

8. ALTERNATIVES:

No alternatives were considered.

9. FEDERAL STANDARDS:

There are no Federal standards that establish certification requirements for teachers, except the No Child Left Behind Act. The proposed amendment is consistent with federal standards.

10. COMPLIANCE SCHEDULE:

The proposed amendment became effective on April 27, 2010 in order to avoid or mitigate reduction in force decisions that must be made by school districts or BOCES in a demonstrated fiscal crisis.

Regulatory Flexibility Analysis**(a) Small Businesses:**

The purpose of the proposed amendment is to provide teacher certification flexibility during a demonstrated fiscal crisis to allow school districts and BOCES to reassign effective classroom teachers to teach students at different grade levels to avoid reductions in force. Because it is evident from the nature of the proposed amendment that it does not affect small businesses, no further measures were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses is not required and one has not been prepared.

(b) Local governments:

The proposed amendment relates to flexibility in teacher certification requirements for teachers across the State.

1. EFFECT OF RULE:

The purpose of the proposed amendment is to provide teacher certification flexibility during a demonstrated fiscal crisis to allow school districts and BOCES to reassign effective classroom teachers to teach students at different grade levels to avoid reductions in force.

2. COMPLIANCE REQUIREMENTS:

School districts and the New York State Council of School Superintendents requested that the Regents consider flexibility in the following areas to help them retain effective teachers while meeting key staffing needs during the current fiscal crisis:

Grades 7-12 Academic Area Certification Extended to Grades 5 and 6

The proposed amendment provides a level of flexibility in certification similar to that of the Experiment in Organizational Change. During a period of fiscal crisis, a district could reassign a teacher who is employed by the district and certified in the classroom teaching service in a subject area in grades 7-12 to teach that same subject area in grades 5 or 6 through a limited extension to the teacher's existing certificate. The limited extension will be valid for two years and shall be valid with that employing entity only. A full extension may be issued to the candidate if the candidate meets the requirements within those two years.

Childhood Education Extended to Kindergarten

The proposed amendment authorizes a teacher who is currently certified in childhood education (grades 1-6) to be reassigned to teach kindergarten under a limited extension to their existing certificate for a two-year period while they complete six semester hours of pedagogical coursework in early childhood education. At that point, the teacher could apply for the full extension to teach kindergarten.

Childhood Education Extended to Grades 7 and 8

Similar to the regulation on the Experiment in Organizational Change,

the proposed amendment authorizes a certified and qualified elementary school teacher (grades 1-6) to be reassigned to a position teaching an academic subject in grades 7 and 8. The teacher would need to have appropriate education and experience for such teaching assignment as demonstrated by earning Highly Qualified status under NCLB in order to be granted a limited extension to their existing certificate title. Also, the teacher must agree to: 1) successfully complete the Content Specialty Test in that subject area, and 2) complete 6 semester hours of course work in Middle Childhood Education, within the next two years to qualify for the full certificate extension when their limited extension expires.

3. PROFESSIONAL SERVICES:

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

4. COMPLIANCE COSTS:

The proposed amendment is permissive in nature and any costs associated with the proposed amendment only apply to candidates that wish to be reassigned to a new grade level. However, to obtain a limited extension, the cost of the extension will be \$100 per candidate, which is the amount currently required for candidates seeking an extension.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

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

6. MINIMIZING ADVERSE IMPACT:

The proposed amendment provides flexibility to school districts and BOCES across the State. The proposed amendment provides flexibility from the current teacher certification requirements to allow school districts and BOCES to reassign effective classroom teachers to teach students at different grade levels during this demonstrated immediate fiscal crisis.

7. LOCAL GOVERNMENT PARTICIPATION:

Comments on the proposed rule were solicited from the State Professional Standards and Practices Board for Teaching. This is an advisory group to the Board of Regents and the Commissioner of Education on matters pertaining to teacher education, certification, and practice. The Board has representatives of school districts and BOCES across the State. Comments on the proposed rule were also solicited from the BOCES District Superintendents, New York State Council of School Superintendents, New York State United Teachers, New York State School Boards Association, School Administrators Association of New York State, and New York State Association of School Personnel Administrators.

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

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

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

The purpose of the proposed amendment is to provide flexibility from the current teacher certification requirements to allow school districts and BOCES to reassign effective classroom teachers to different grade levels to avoid or mitigate reductions in force. School districts and the New York State Council of School Superintendents requested that the Regents consider flexibility in the following areas to help them retain effective teachers while meeting key staffing needs during the current fiscal crisis:

Grades 7-12 Academic Area Certification Extended to Grades 5 and 6

The proposed amendment provides a level of flexibility in certification similar to that of the Experiment in Organizational Change. During a period of fiscal crisis, a district could reassign a teacher who is employed by the district and certified in the classroom teaching service in a subject area in grades 7-12 to teach that same subject area in grades 5 or 6 through a limited extension to the teacher's existing certificate. The limited extension will be valid for two years and shall be valid with that employing entity only. A full extension may be issued to the candidate if the candidate meets the requirements within those two years.

Childhood Education Extended to Kindergarten

The proposed amendment authorizes a teacher who is currently certified in childhood education (grades 1-6) to be reassigned to teach kindergarten under a limited extension to their existing certificate for a two-year period while they complete six semester hours of pedagogical coursework in early childhood education. At that point, the teacher could apply for the full extension to teach kindergarten.

Childhood Education Extended to Grades 7 and 8

Similar to the regulation on the Experiment in Organizational Change, the proposed amendment authorizes a certified and qualified elementary school teacher (grades 1-6) to be reassigned to a position teaching an academic subject in grades 7 and 8. The teacher would need to have appropriate education and experience for such teaching assignment as demonstrated by earning Highly Qualified status under NCLB in order to be granted a limited extension to their existing certificate title. Also, the

teacher must agree to: 1) successfully complete the Content Specialty Test in that subject area, and 2) complete 6 semester hours of course work in Middle Childhood Education, within the next two years to qualify for the full certificate extension when their limited extension expires.

3. COSTS:

The proposed amendment is permissive in nature and any costs associated with the proposed amendment only apply to candidates that wish to be reassigned to a new grade level. However, to obtain a limited extension under the proposed amendment, the cost of the certificate will be \$100 per candidate, which is the amount currently required for candidates seeking an extension.

4. MINIMIZING ADVERSE IMPACT:

The proposed amendment provides flexibility to school districts and BOCES located across the State. The proposed amendment provides flexibility from the current teacher certification requirements to allow school districts and BOCES to reassign effective classroom teachers to teach students at different grade levels during this demonstrated immediate fiscal crisis.

5. RURAL AREA PARTICIPATION:

Comments on the proposed rule were solicited from the State Professional Standards and Practices Board for Teaching. This is an advisory group to the Board of Regents and the Commissioner of Education on matters pertaining to teacher education, certification, and practice. The Board has representatives of school districts and BOCES located in rural areas of New York State. Comments on the proposed rule were also solicited from the District Superintendents, New York State Council of School Superintendents, New York State United Teachers, New York State School Boards Association, School Administrators Association of New York State, and New York State Association of School Personnel Administrators, the constituencies of which include those from rural areas.

Job Impact Statement

The purpose of the proposed amendment is to provide teacher certification flexibility during a demonstrated fiscal crisis to allow school districts and BOCES to reassign effective classroom teachers to another grade level to avoid reductions in force. The proposed amendment will have no impact on the number of jobs or employment opportunities in New York State. Accordingly, a job impact statement is not required and one has not been prepared.

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

Standing Committees of the Board of Regents

I.D. No. EDU-32-10-00007-EP

Filing No. 766

Filing Date: 2010-07-27

Effective Date: 2010-07-27

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

Proposed Action: Amendment of section 3.2 of Title 8 NYCRR.

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

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

Specific reasons underlying the finding of necessity: The proposed amendment is necessary to reorganize the committee structure of the Board of Regents so that the Board may more effectively meet its statutory responsibilities. The proposed amendment conforms the Rules of the Board of Regents to the recent reconfiguration of the standing committees of the Board of Regents, as follows:

(1) The Committee on Elementary, Middle, Secondary and Continuing Education will be renamed the "Committee on P-12 Education."

(2) A new Committee on Adult Education and Workforce Development will be created.

(3) The Committee on Vocational and Education Services for Individuals with Disabilities is abolished, and its functions regarding vocational rehabilitation will be transferred to the Committee on Adult Education and Workforce Development, and its functions regarding special education programs and services for students with disabilities will be transferred to the Committee on P-12 Education.

(4) The adult education and workforce development functions of the Committee on P-12 Education will be transferred to the Committee on Adult Education and Workforce Development.

(5) The functions of the Committee on Adult Education and Workforce Development regarding proprietary school supervision are specified.

(6) The former Committee on Policy Integration and Innovation is abolished.

In addition, several minor technical changes are made to the Rules to add a reference to Regents work groups and to provide for reasonable notice of meetings to committee members.

The Board of Regents has determined that the reorganization of the committee structure is necessary to assist the Board of Regents to effectively meet its responsibilities to govern the University of the State of New York, determine the educational policies of the State and oversee the State Education Department. The committee reorganization is also consistent with a current restructuring of the Department's internal organization. The proposed amendment will conform the Regents Rules to recent changes to the names and functions of certain Regents standing committees so that they may efficiently and effectively carry out the Board's work. The minor technical changes with conform the Rules to the current nomenclature and practice used by the Board.

Emergency action to adopt the proposed amendment is necessary for the preservation of the general welfare in order to immediately conform the Rules of the Board of Regents to recent reorganization of the committee structure of the Board of Regents, so that the committees involved may efficiently assume their respective duties beginning with the next succeeding Regents meetings, and thereby assist the Board of Regents to efficiently and effectively meet its statutory responsibilities.

It is anticipated that the proposed amendment will be presented for adoption at the October 2010 Regents meeting, which is the first scheduled meeting after expiration of the 45-day public comment period prescribed in the State Administrative Procedure Act.

Subject: Standing Committees of the Board of Regents.

Purpose: To conform the Regents Rules to a recent reorganization of the Regents Committees.

Text of emergency/proposed rule: Section 3.2 of the Rules of the Board of Regents is amended, effective July 27, 2010, as follows:

§ 3.2. Committees.

(a) The chancellor shall appoint the following standing committees and designate the leadership of each committee:

[(1) Policy Integration and Innovation.]

[(2)] (1) Higher Education.

[(3) Elementary, Middle, Secondary and Continuing Education]

(2) P-12 Education.

[(4)] (3) Cultural Education.

[(5)] (4) Ethics.

[(6)] (5) Professional Practice.

[(7) Vocational and Educational Services for Individuals with Disabilities] (6) Adult Education and Workforce Development.

(b) The chancellor, vice chancellor, and any chancellor emeritus who is also a current member of the Board of Regents shall be ex officio members of each standing committee, *subcommittee*, *task force* and *work group*.

(c) The chancellor from time to time may establish subcommittees, [and] task forces and *work groups* and shall designate the members and chairperson of any subcommittee, [or] task force or *work group*.

(d) The functions of the standing committees shall include:

[(1) Committee on Policy Integration and Innovation:

(i) provides a forum for debate and recommendation on innovation and cross-cutting issues;

(ii) identifies policy research, evaluation needs and implementation strategies;

(iii) plans board retreats and training;

(iv) plans the periodic evaluation of the commissioner by the board;

(v) guides the creation of the 24-month calendar;

(vi) monitors implementation of board priorities; and

(vii) identifies technology needs and implementation strategies.]

[(2)] (1) Committee on Higher Education:

- (i) . . .
- (ii) . . .
- (iii) . . .
- (iv) . . .
- (v) . . .
- (vi) . . .
- (vii) . . .
- (viii) . . .

[(3) Committee on Elementary, Middle, Secondary and Continuing Education] (2) *Committee on P-12 Education shall have the following functions with respect to elementary, middle and secondary education, including special education programs and related educational services to students with disabilities:*

- (i) develops policy recommendations regarding elementary, middle and secondary education, [workforce preparation and continuing education], and coordination of interagency agreements and activities;
- (ii) reviews the monitoring of elementary, middle and secondary education [and workforce preparation and continuing education] programs, services, and results;
- (iii) monitors State aid programs to elementary, middle and secondary schools;
- (iv) seeks input from the public and the professional field concerning elementary, middle and secondary education [and workforce preparation and continuing education] policies and practices;
- (v) reviews and approves amendments to the Rules of the Board of Regents and Regulations of the Commissioner of Education pertaining to elementary, middle and secondary education [and workforce preparation and continuing education];
- (vi) reviews the provision of technical assistance to elementary, middle and secondary schools;
- (vii) develops legislative and budgetary proposals for elementary, middle and secondary education [and workforce preparation and continuing education] and monitors the advocacy of such proposals, and leads in pressing for legislative and budgetary priorities within the department and with the Legislature;
- (viii) initiates studies and activities leading to the improvement of educational conditions and outcomes for children from birth through high school graduation [and adults in workforce preparation and continuing education programs]; and
- (ix) reviews and makes recommendations to the full board on incorporation and chartering of institutions and organizations proposing to offer prekindergarten, kindergarten, elementary, middle or secondary education programs.

[(4)] (3) Committee on Cultural Education:

- (i) . . .
- (ii) . . .
- (iii) . . .
- (iv) . . .
- (v) . . .
- (vi) . . .
- (vii) . . .
- (viii) . . .

[(5)] (4) Committee on Ethics:

- (i) . . .
- (ii) . . .
- (iii) . . .
- (iv) . . .
- (v) . . .
- (vi) . . .

[(6)] (5) Committee on Professional Practice:

- (i) . . .
- (ii) . . .
- (iii) . . .
- (iv) . . .
- (v) . . .
- (vi) . . .
- (vii) . . .
- (viii) . . .
- (ix) . . .
- (x) . . .
- (xi) . . .

[(7) Committee on Vocational and Educational Services for Individuals with Disabilities] (6) *Committee on Adult Education and Workforce Development:*

- (i) develops policy recommendations regarding *adult education and workforce development*, vocational rehabilitation, [and special education] and *proprietary school supervision*, overall coordination of *such programs and services* [vocational and educational services to individuals with disabilities], and coordination of interagency agreements and activities;
- (ii) monitors the implementation of *adult education and workforce development*, vocational rehabilitation, [and special education programs and services] and *proprietary school supervision*, and interagency agreements;
- (iii) develops legislative and budgetary proposals for *adult education and workforce development*, vocational rehabilitation [, special education and related educational services for individuals with disabilities], and *proprietary school supervision*, and monitors the advocacy of such proposals, and leads in pressing for legislative and budgetary priorities within the department and with the Legislature;
- (iv) reviews and approves amendments to the Rules of the Board of Regents and Regulations of the Commissioner of Education relating to *adult education and workforce development*, vocational rehabilitation [, special education and related educational services for individuals with disabilities;] , and *proprietary school supervision*, and
- (v) seeks input from the public and professional field on policies and practices concerning *adult education and workforce development*, vocational rehabilitation [, special education and related educational services for individuals with disabilities] , and *proprietary school supervision*.
- (e) Each committee shall examine into and report to the Regents respecting matters pertaining to its functions and related subjects.
- (f) Each committee shall meet at the time and place designated by its leadership, and *reasonable* notice thereof shall be [mailed] *provided* to each member of the committee [five days prior to the date of such meeting].

(g) The chancellor may appoint special temporary committees, and may also appoint delegates for special occasions where in the chancellor's judgment it is proper and desirable that the Regents or the department be represented.

(h) The commissioner in consultation with the chancellor shall designate members of the staff whose function it will be to advise and assist each committee in the performance of its work.

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 October 24, 2010.

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

Data, views or arguments may be submitted to: Richard L. Nabozny, Associate Attorney, State Education Department, Office of Counsel, State Education Building, Room 148, 89 Washington Avenue, Albany, NY 12234, (518) 473-4921, email: legal@mail.nysed.gov

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

Education Law section 207 gives the Board of Regents broad

authority to adopt rules to carry into effect the laws and policies of the State pertaining to education and the functions, powers and duties conferred upon the University of the State of New York and the State Education Department. Inherent in such authority is the authority to adopt rules concerning the internal management and committee structure of the Board of Regents.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment is necessary to conform the Regents Rules to a recent reorganization of the committee structure of the Board of Regents to assist the Board in meeting its statutory responsibility to determine the educational policies of the State and to carry out the laws and policies of the State relating to education.

3. NEEDS AND BENEFITS:

The proposed amendment is necessary to reorganize the committee structure of the Board of Regents so that the Board may more effectively meet its statutory responsibilities. The proposed amendment conforms the Rules of the Board of Regents to the recent reconfiguration of the standing committees of the Board of Regents, as follows:

(1) The Committee on Elementary, Middle, Secondary and Continuing Education will be renamed the "Committee on P-12 Education."

(2) A new Committee on Adult Education and Workforce Development will be created.

(3) The Committee on Vocational and Education Services for Individuals with Disabilities is abolished, and its functions regarding vocational rehabilitation will be transferred to the Committee on Adult Education and Workforce Development, and its functions regarding special education programs and services for students with disabilities will be transferred to the Committee on P-12 Education.

(4) The adult education and workforce development functions of the Committee on P-12 Education will be transferred to the Committee on Adult Education and Workforce Development.

(5) The functions of the Committee on Adult Education and Workforce Development regarding proprietary school supervision are specified.

(6) The former Committee on Policy Integration and Innovation is abolished.

In addition, several minor technical changes are made to the Rules to add a reference to Regents work groups and to provide for reasonable notice of meetings to committee members.

The Board of Regents has determined that the reorganization of the committee structure is necessary to assist the Board of Regents to effectively meet its responsibilities to govern the University of the State of New York, determine the educational policies of the State and oversee the State Education Department. The committee reorganization is also consistent with a current restructuring of the Department's internal organization. The proposed amendment will conform the Regents Rules to recent changes to the names and functions of certain Regents standing committees so that they may efficiently and effectively carry out the Board's work. The minor technical changes with conform the Rules to the current nomenclature and practice used by the Board.

4. COSTS:

(a) Cost to State government: None.

(b) Cost to local government: None.

(c) Costs to private regulated parties: None.

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

The proposed amendment relates to the internal organization of the Board of Regents and merely reorganizes the committee structure of the Board of Regents, and will not impose any costs on State and local government, private regulated parties or the State Education Department.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment relates to the internal organization of the Board of Regents and consequently will not impose any program, service, duty or responsibility on local governments.

6. PAPERWORK:

The proposed amendment does not impose any reporting, record-keeping or other paperwork requirements.

7. DUPLICATION:

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

8. ALTERNATIVES:

There are no significant alternatives and none were considered.

9. FEDERAL STANDARDS:

The amendment does not exceed any minimum federal standards for the same or similar subject areas, since it relates solely to the internal organization of the Board of Regents of New York State and there are no federal standards governing such.

10. COMPLIANCE SCHEDULE:

The proposed amendment relates solely to the internal organization of the Board of Regents and will not impose compliance requirements on local governments or private parties.

Regulatory Flexibility Analysis

The proposed amendment relates to the internal organization of the Board of Regents and therefore will not have any adverse economic impact or impose any compliance requirements on small businesses or local governments. Because it is evident from the nature of the proposed amendment that it will have no impact on small businesses or local governments, no further steps were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis is not required and one has not been prepared.

Rural Area Flexibility Analysis

The proposed amendment relates to the internal organization of the Board of Regents and therefore will not have any adverse economic impact or impose any compliance requirements on entities in rural areas. Because it is evident from the nature of the proposed amendment that it will have no impact on entities in rural areas of the State, no further steps 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 the internal organization of the Board of Regents and 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 on jobs or employment opportunities, no further steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

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

Age and Four-Year Limitations for Participation in Senior High School Athletic Competition

I.D. No. EDU-32-10-00009-EP

Filing No. 767

Filing Date: 2010-07-27

Effective Date: 2010-07-27

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

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

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

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

Specific reasons underlying the finding of necessity: The proposed amendment establishes a process for granting a waiver from the age and four-year limitations for senior athletic competition in section 135.4 of the Commissioner's Regulations to students with disabilities, as defined in section 4401 of the Education Law, and thereby permit their participation in non-contact sports for an additional fifth year in school. Under this waiver process, the student must apply for and be granted a waiver by the superintendent of schools or the chief executive officer of a non-public school. Such a waiver would be available under limited circumstances to students with disabilities who meet certain criteria specified in the proposed amendment.

The proposed amendment will advance initiatives of inclusion of students with disabilities in the overall academic experience by allowing these students who would otherwise not be able to participate in interscholastic athletic competition due to their age or years in school to participate in a sport for an additional season if they have not yet graduated as a result of their disability delaying their education. This amendment is designed to offer students with disabilities continued socialization with teammates during practice and games and to further develop the student's skills and personal abilities associated with participation in such sport, all while assuring the safety of the given student and the other students competing in the sport and preserving fair athletic competition.

In order for school districts to timely and efficiently implement the waiver process for the 2010-2011 school year, they must be provided with sufficient notice of the waiver eligibility requirements. The waiver process involves an in-depth assessment of each waiver request on a case-by-case basis, and among other requirements, requires the student to undergo a medical evaluation, which will require some time. The proposed amendment also provides for a review process by the local section of the State Public High School Athletic Association and the State Public High School Athletic Association, which also needs to be implemented in a timely manner.

Since the Board of Regents meets at monthly intervals, and does not meet in August, the earliest the proposed amendment could be adopted by regular action, after publication of a Notice of Proposed Rule Making and expiration of the 45-day public comment period prescribed in State Administrative Procedure Act (SAPA) section 202, would be the October 18-19, 2010 Regents meeting. Because SAPA provides that an adopted rule may not become effective until a Notice of Adoption is published in the State Register, the earliest the proposed amendment could become effective if adopted at the October Regents meeting is November 10, 2010. Therefore, adoption by regular action would preclude eligible students with disabilities from participating in most of, if not all, of the Fall 2010 interschool athletic season.

Emergency action is necessary for the preservation of the general welfare to timely implement for the 2010-2011 school year the process for granting waivers from the age and four-year limitations for senior athletic competition to eligible students with disabilities, and thereby permit their timely participation in non-contact athletic competition for a fifth season in high school.

Subject: Age and four-year limitations for participation in senior high school athletic competition.

Purpose: To provide a waiver for a student with a disability to participate in certain high school sports for a fifth year.

Text of emergency/proposed rule: 1. 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 July 27, 2010, 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, 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 is a direct result of the illness, accident or other circumstance beyond the control of the student, the pupil will be required to attend school or one or more additional semesters in order to graduate.

(ii) If the chief school officer demonstrates to the satisfaction of the section that the pupil's failure to enter competition during one or more seasons of a sport is caused by such pupil's enrollment in a national or international student exchange program or foreign study program, that as a result of such enrollment the pupil will be required to attend school for one or more additional semesters in order to graduate, and that the pupil did not enter competition in any sport while enrolled in such program, such pupil's eligibility shall be extended accordingly in such sport.

2. Clause (d) of subparagraph (ii) of paragraph (7) of subdivision (c) of section 135.4 of the Regulations of the Commissioner of Education is added, effective July 27, 2010, as follows:

(d) Waiver from the age requirement and four-year limitation for interschool athletic competition for students with disabilities in senior high school grades 9, 10, 11, and 12. For purposes of this clause, the term non-contact sport shall include swimming and diving, golf, track and field, cross country, rifle, bowling, gymnastics, skiing and archery, and any other such non-contact sport deemed appropriate by the Commissioner. A student with a disability, as defined in section 4401 of the Education Law, who has not yet graduated from high school may be eligible to participate in a senior high school noncontact athletic competition for a fifth year under the following limited conditions:

(1) such student must apply for and be granted a waiver to the age requirement and four-year limitation prescribed in subclause (b) (1) of this subparagraph. A waiver shall only be granted upon a determination by the superintendent of schools or chief executive officer of the school or school system, as applicable, that the given student meets the following criteria:

(i) such student has not graduated from high school as a result of his or her disability delaying his or her education for one year or more;

(ii) such student is otherwise qualified to compete in the athletic competition for which he or she is applying for a waiver and the student must have been selected for such competition in the past;

(iii) such student has not already participated in an additional season of athletic competition pursuant to a waiver granted under this subclause;

(iv) such student has undergone a physical evaluation by the school physician, which shall include an assessment of the student's level of physical development and maturity, and the school physician has determined that the student's participation in such competition will not present a safety or health concern for such student; and

(v) the superintendent of schools or chief executive officer of the school or school system has determined that the given student's participation in the athletic competition will not adversely affect the opportunity of the other students competing in the sport to successfully participate in such competition.

(2) Such student's participation in the additional season of such athletic competition shall not be scored for purposes of such competition.

(3) A decision granting or denying a waiver shall be immediately submitted to the local section of the New York State Public High School Athletic Association for review and approval. If, upon such review, the waiver is denied, an appeal may be taken to the New York State Public High School Athletic Association within two weeks from receipt of such decision. Such athletic association shall review evidence, hear oral arguments from interested parties, and shall have the power to affirm, reverse, or modify the decision. The determina-

tion of such association may be appealed to the Commissioner of Education, in accordance with Education Law section 310, within 30 days of the date of the determination.

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 October 24, 2010.

Text of rule and any required statements and analyses may be obtained from: Chris Moore, State Education Department, Office of Counsel, State Education Building Room 148, 89 Washington Avenue, Albany, New York 12234, (518) 473-8296

Data, views or arguments may be submitted to: John B. King, Jr., Senior Deputy Commissioner of P-12, State Education Department, Office of P-12 Education, State Education Building Room 125, 89 Washington Avenue, Albany, New York 12234, (518) 474-3862, email: NYSEDP12@mail.nysed.gov

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

Education Law section 101 charges the Department with the general management and supervision of 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) relates 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 limitations for senior high school athletic competition.

3. NEEDS AND BENEFITS:

The proposed amendment will provide a waiver for a student with a disability to participate in senior high school athletic competition for an additional season despite the age and four-year limitations prescribed in section 135.4 of the Commissioner's regulations. The proposed amendment will advance initiatives of inclusion by allowing students with disabilities who would otherwise not be able to participate in interscholastic athletic competition due to their age or years in school to participate in a sport for an additional season if they have not graduated as a result of their disability delaying their education. This amendment will offer these students continued socialization with teammates and continued opportunity to develop the skills and abilities associated with his or her participation in such sport.

4. COSTS:

(a) Costs to State government: None.

(b) Costs to local government: It is anticipated that the waiver provided by the proposed amendment will be exercised in limited circumstances, given the restrictions on eligibility for such waiver and the specific circumstances the proposed amendment is intended to address, and that any costs associated with the proposed amendment will be minimal and capable of being absorbed by existing staff, who currently are responsible for making similar decisions under existing regulations relating to a student's ability to participate in a sport.

(c) Costs to private regulated parties: For the same reasons as discussed in (b) above, it is anticipated that costs to private schools will be minimal and capable of being absorbed using existing staff and resources.

(d) Costs to the regulating agency for implementation and administration of this rule: There will be minimal costs imposed on the State

Education Department to implement and enforce the regulations. These costs will be absorbed by existing staff.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment will require local school districts to implement a process for granting waivers to students with disabilities to participate for an additional season in high school athletic competition if such a student meets certain criteria. Specifically, the amendment requires that (1) the student has not graduated from high school as a result of his or her disability delaying his or her education for one year or more, (2) the student previously was selected for and competed in the sport which he or she is applying for a waiver, (3) the student is otherwise qualified to compete in such sport, (4) the student has not previously been granted such a waiver, (5) the student has undergone and passed an evaluation by the school physician, and (6) the superintendent of schools or chief executive officer, as applicable, has determined that the student's participation will not adversely affect the opportunity of the other students to successfully compete in the competition.

The superintendent of schools or the chief executive officer of a private school will be required to determine whether the given student meets all such criteria and whether the student will not adversely affect the opportunity of the other students competing in the sport to successfully participate in such competition.

A decision granting or denying a waiver shall be immediately submitted to the local section of the New York State Public High School Athletic Association for review and approval. If, upon such review, the waiver is denied, an appeal may be taken to the New York State Public High School Athletic Association within two weeks from receipt of such decision. Such athletic association shall review evidence, hear oral arguments from interested parties, and shall have the power to affirm, reverse, or modify the decision. The determination of such association may be appealed to the Commissioner of Education, in accordance with Education Law section 310, within 30 days of the date of the determination.

6. PAPERWORK:

This proposed amendment will impose minimal additional paperwork requirements on local school districts and on the State.

7. DUPLICATION:

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

8. ALTERNATIVES:

The State Education Department considered applying the waiver to both non-contact and contact sports, but determined that this was not appropriate given substantial concerns for student safety. There is likely to be significant differences in physical maturity and development between a 14 year-old and a 19 or 20 year-old. Moreover, in light of selection/classification, a 12 or 13 year-old may be competing in a sport with a 19 or 20 year-old, which presents a significant difference in not only physical maturity but athletic ability and performance. These physical disparities pose a substantial risk of harm to the given student and the other students competing in the sport. Therefore, this alternative was considered, but rejected.

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.

Regulatory Flexibility Analysis

1. EFFECT OF RULE:

The proposed amendment applies to each school district within the State.

2. COMPLIANCE REQUIREMENTS:

The proposed amendment will provide a waiver for a student with a disability to participate in senior high school athletic competition for an additional season despite the age and four-year limitations prescribed in section 135.4 of the Commissioner's regulations. The proposed amendment will require local school districts to implement a process for granting waivers to students with disabilities to participate

for an additional season in such competition if such student meets certain eligibility criteria. Specifically, the amendment requires that (1) the student has not graduated from high school as a result of his or her disability delaying his or her education for one year or more, (2) the student previously was selected for and competed in the sport which he or she is applying for a waiver, (3) the student is otherwise qualified to compete in such sport, (4) the student has not previously been granted such a waiver, (5) the student has undergone and passed an evaluation by the school physician, and (6) the superintendent of schools or chief executive officer, as applicable, has determined that the student's participation will not adversely affect the opportunity of the other students to successfully compete in the competition.

The superintendent of schools or the chief executive officer of a private school will be required to determine whether the given student meets such criteria and whether the student will not adversely affect the opportunity of the other students competing in the sport to successfully participate in such competition.

A decision granting or denying a waiver shall be immediately submitted to the local section of the New York State Public High School Athletic Association for review and approval. If, upon such review, the waiver is denied, an appeal may be taken to the New York State Public High School Athletic Association within two weeks from receipt of such decision. Such athletic association shall review evidence, hear oral arguments from interested parties, and shall have the power to affirm, reverse, or modify the decision. The determination of such association may be appealed to the Commissioner of Education, in accordance with Education Law section 310, within 30 days of the date of the determination.

It is anticipated that this amendment will impose minimal reporting, recordkeeping and other compliance requirements associated with reviewing and deciding a student's application for a waiver, and that the waiver will be exercised in limited circumstances, given the restrictions on eligibility for such waiver and the specific circumstances the proposed amendment is intended to address, and any costs associated with the proposed amendment will be minimal and capable of being absorbed by existing staff, who currently are responsible for making similar decisions under existing regulations relating to a student's ability to participate in a sport.

3. PROFESSIONAL SERVICES:

The proposed amendment imposes no additional professional service requirements on school districts.

4. COMPLIANCE COSTS:

The proposed amendment does not impose any significant costs on school districts. The proposed amendment will require local school districts to implement a process for granting waivers to students with disabilities to participate for an additional season in such competition if such student meets certain eligibility criteria. The superintendent of schools or the chief executive officer of a private school will be required to determine whether the given student meets such criteria and whether the student will not adversely affect the opportunity of the other students competing in the sport to successfully participate in such competition.

It is anticipated that the waiver provided by the proposed amendment will be exercised in limited circumstances, given the restrictions on eligibility for such waiver and the specific circumstances the proposed amendment is intended to address, and that any costs associated with the proposed amendment will be minimal and capable of being absorbed by existing staff, who currently are responsible for making similar decisions under existing regulations relating to a student's ability to participate in a sport.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The proposed amendment does not impose any technological requirements on school districts. Economic feasibility is addressed under the Costs section above.

6. MINIMIZING ADVERSE IMPACT:

The proposed amendment is necessary to implement educational policy as determined by the Board of Regents by permitting, under certain specified circumstances, a waiver from the age requirement and four-year limitation for interschool athletic competition to

students with disabilities in senior high school grades 9, 10, 11, and 12 who seek to participate in interschool non-contact sport competition. Specifically, the amendment requires that (1) the student has not graduated from high school as a result of his or her disability delaying his or her education for one year or more, (2) the student previously was selected for and competed in the sport which he or she is applying for a waiver, (3) the student is otherwise qualified to compete in such sport, (4) the student has not previously been granted such a waiver, (5) the student has undergone and passed an evaluation by the school physician, and (6) the superintendent of schools or chief executive officer, as applicable, has determined that the student's participation will not adversely affect the opportunity of the other students to successfully compete in the competition.

The proposed amendment has been carefully drafted to address the specific circumstances for granting a waiver and it is anticipated that the waiver will be exercised in limited circumstances, given the restrictions on eligibility for such waiver and the specific circumstances the proposed amendment is intended to address, and that any compliance requirements and costs associated with the proposed amendment will be minimal and capable of being absorbed by existing staff, who currently are responsible for making similar decisions under existing regulations relating to a student's ability to participate in a sport.

7. SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION:

Comments on the proposed rule were solicited from school districts through the offices of the district superintendents of each supervisory district in the State, and from 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 will provide a waiver for a student with a disability to participate in senior high school athletic competition for an additional season despite the age and four-year limitations prescribed in section 135.4 of the Commissioner's regulations. The proposed amendment will require local school districts to implement a process for granting waivers to students with disabilities to participate for an additional season in such competition if such student meets certain eligibility criteria. Specifically, the amendment requires that (1) the student has not graduated from high school as a result of his or her disability delaying his or her education for one year or more, (2) the student previously was selected for and competed in the sport which he or she is applying for a waiver, (3) the student is otherwise qualified to compete in such sport, (4) the student has not previously been granted such a waiver, (5) the student has undergone and passed an evaluation by the school physician, and (6) the superintendent of schools or chief executive officer, as applicable, has determined that the student's participation will not adversely affect the opportunity of the other students to successfully compete in the competition.

The superintendent of schools or the chief executive officer of a private school will be required to determine whether the given student meets such criteria and whether the student will not adversely affect the opportunity of the other students competing in the sport to successfully participate in such competition.

A decision granting or denying a waiver shall be immediately submitted to the local section of the New York State Public High School Athletic Association for review and approval. If, upon such review, the waiver is denied, an appeal may be taken to the New York State Public High School Athletic Association within two weeks from receipt of such decision. Such athletic association shall review evidence, hear oral arguments from interested parties, and shall have the power to affirm, reverse, or modify the decision. The determination of such association may be appealed to the Commissioner of Education, in accordance with Education Law section 310, within 30 days of the date of the determination.

It is anticipated that this amendment will impose minimal reporting, recordkeeping and other compliance requirements associated with reviewing and deciding a student's application for a waiver, and that the waiver will be exercised in limited circumstances, given the restrictions on eligibility for such waiver and the specific circumstances the proposed amendment is intended to address, and any costs associated with the proposed amendment will be minimal and capable of being absorbed by existing staff, who currently are responsible for making similar decisions under existing regulations relating to a student's ability to participate in a sport.

The proposed amendment imposes no additional professional service requirements on school districts.

3. COMPLIANCE COSTS:

The proposed amendment does not impose any significant costs on school districts. The proposed amendment will require local school districts to implement a process for granting waivers to students with disabilities to participate for an additional season in such competition if such student meets certain eligibility criteria. The superintendent of schools or the chief executive officer of a private school will be required to determine whether the given student meets such criteria and whether the student will not adversely affect the opportunity of the other students competing in the sport to successfully participate in such competition.

It is anticipated that the waiver provided by the proposed amendment will be exercised in limited circumstances, given the restrictions on eligibility for such waiver and the specific circumstances the proposed amendment is intended to address, and that any costs associated with the proposed amendment will be minimal and capable of being absorbed by existing staff, who currently are responsible for making similar decisions under existing regulations relating to a student's ability to participate in a sport.

4. MINIMIZING ADVERSE IMPACT:

The proposed amendment is necessary to implement educational policy as determined by the Board of Regents by permitting, under certain specified circumstances, a waiver from the age requirement and four-year limitation for interschool athletic competition to students with disabilities in senior high school grades 9, 10, 11, and 12 who seek to participate in interschool non-contact sport competition. Specifically, the amendment requires that (1) the student has not graduated from high school as a result of his or her disability delaying his or her education for one year or more, (2) the student previously was selected for and competed in the sport which he or she is applying for a waiver, (3) the student is otherwise qualified to compete in such sport, (4) the student has not previously been granted such a waiver, (5) the student has undergone and passed an evaluation by the school physician, and (6) the superintendent of schools or chief executive officer, as applicable, has determined that the student's participation will not adversely affect the opportunity of the other students to successfully compete in the competition.

The proposed amendment has been carefully drafted to address the specific circumstances for granting a waiver and it is anticipated that the waiver will be exercised in limited circumstances, given the restrictions on eligibility for such waiver and the specific circumstances the proposed amendment is intended to address, and that any compliance requirements and costs associated with the proposed amendment will be minimal and capable of being absorbed by existing staff, who currently are responsible for making similar decisions under existing regulations relating to a student's ability to participate in a sport. The proposed amendment implements Regents policy intended to apply State-wide to all schools, and therefore it is not possible to provide an exemption to, or prescribe lesser standards for, schools in rural areas.

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 provides a waiver for a student with disability to participate for a fifth year in senior high school athletic com-

petition despite the age and four-year limitations prescribed in Section 135.4 of the Commissioner's regulations, if the student with disability meets certain criteria.

The proposed rule will not have an adverse impact on jobs or employment opportunities. Because it is evident from the nature of the rule that it will have no impact on jobs or employment opportunities, no further steps were needed to ascertain those facts and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

NOTICE OF ADOPTION

Teacher Certification Flexibility to Avoid or Mitigate Reductions in Force

I.D. No. EDU-18-10-00014-A

Filing No. 761

Filing Date: 2010-07-27

Effective Date: 2010-08-11

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

Action taken: Amendment of section 80-4.3 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207(not subdivided), 3001 and 3004(1)

Subject: Teacher certification flexibility to avoid or mitigate reductions in force.

Purpose: To allow school districts and BOCES to reassign effective teachers to another grade level to avoid reduction in work force.

Text or summary was published in the May 5, 2010 issue of the Register, I.D. No. EDU-18-10-00014-P.

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

Text of rule and any required statements and analyses may be obtained from: Christine Moore, New York State Education Department, Education Building, 89 Washington Avenue, Room 144, Albany, New York 12234, (518) 473-8296, email: cmoore@mail.nysed.gov

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Establishment of Clinically Rich Graduate Level Teacher Preparation Program

I.D. No. EDU-18-10-00016-A

Filing No. 762

Filing Date: 2010-07-27

Effective Date: 2010-08-11

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

Action taken: Amendment of sections 52.1, 52.21 and 80-5.13 of Title 8 NYCRR.

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

Subject: Establishment of clinically rich graduate level teacher preparation program.

Purpose: Establishes program registration standards for pilot program and authorizes certain non-collegiate institutions to participate.

Text or summary was published in the May 5, 2010 issue of the Register, I.D. No. EDU-18-10-00016-P.

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

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

Assessment of Public Comment

Since publication of a Notice of Proposed Rule Making in the State Register on May 5, 2010, the State Education Department received comments about the proposed amendments relating to the establishment of clinically rich teacher preparation pilot programs. The following is a summary of the comments and the responses of the Education Department.

1. COMMENT: Many oppose the Model B pilot because it differs substantially from a traditional teacher residency program.

DEPARTMENT RESPONSE: The Department supports expanding the definition of teacher residencies to develop additional pathways to attract teachers for high need shortage areas. The Model B pilot is similar to the Transitional B program that has been in existence for 10 years.

2. COMMENT: A few expressed concern over the collection and use of student achievement data.

DEPARTMENT RESPONSE: The Department is currently developing the Request for Proposal (RFP) for pilot programs and will explain more fully how student data will be collected and used in these pilot programs.

3. COMMENT: A few opposed the 30 credit content requirement as an admission standard and suggested the use of competency examinations in lieu of this requirement.

DEPARTMENT RESPONSE: Colleges have historically used rigorous examinations to meet specific course requirements. An applicant for this pilot may identify whether such an exam approach will be taken, and to what extent. The Blue Ribbon Commission will determine the appropriateness of this approach.

4. COMMENT: A few were opposed to the doctoral and terminal degrees requirement of faculty.

DEPARTMENT RESPONSE: To ensure the high quality of instruction of candidates, the Department believes that the current rigorous faculty regulations ensure the highest caliber of program instructors.

5. COMMENT: Many were concerned that non collegiate institutions could not offer the depth and breadth of preparation taught at Institutions of Higher Education (IHE).

DEPARTMENT RESPONSE: In order to ensure that selected programs offer a clinically rich teacher preparation program of the high quality, the Board of Regents will establish a Blue Ribbon Commission, comprised of highly renowned teacher educators, to evaluate all applications. The Commission will recommend those applicants that should be authorized to establish clinically rich teacher preparation programs to the Board of Regents, from collegiate and non-collegiate providers or in combination. The goal is to ensure a rigorous programmatic review and to select only the highest quality providers to assist in the preparation of teachers for high need schools. Emphasis will be on educating teachers in a holistic educational approach for the teaching profession, not in training teachers. IHEs have historically prepared teachers with this emphasis in educating teachers and the Department will require all providers to meet the registration standards for these pilot programs. For non-collegiate providers, the Regents will only award the master's degree if the institution has demonstrated that candidates have successfully completed all elements of the program authorized by the Regents. The Department encourages partnerships and recognizes the value of such collaborations between potential providers. Partnerships between collegiate and non-collegiate providers will be encouraged in the RFP.

6. COMMENT: A few were concerned with the scope of the clinical experiences and the possibly creating a two tier system benefiting the staffing of wealthy districts.

DEPARTMENT RESPONSE: The regulations require collaboration with only high need schools for their clinical experiences. This pilot program will not be a factor in creating a two tier system.

7. COMMENT: Some expressed that the regulations were hastily written and not research based.

DEPARTMENT RESPONSE: Through research in current clinically based teacher residency programs was completed prior to the thoughtfully drafting regulations.

8. COMMENT: Concern was expressed about the negative impact the pilot programs would have on programs already in existence.

DEPARTMENT RESPONSE: The pilots are intended for a very specific, small cohort of candidates committed to teaching in high need schools upon graduation. There should be no significant impact.

9. COMMENT: A few expressed concerns over lack of experience of non-collegiate entities providing such programs and of the role and timeframe of the Blue Ribbon Commission.

DEPARTMENT RESPONSE: The Blue Ribbon Commission will be provided adequate time and resources to thoroughly evaluate all applications for the pilot programs.

10. COMMENT: Concern was expressed with the lack of definition for the terms used in the regulations specific to the pilots.

DEPARTMENT RESPONSE: All terms specific to the pilots are defined in the regulations and will be further developed in the RFP.

11. COMMENT: There is need for more specific data on regional supply and demand in New York State.

DEPARTMENT RESPONSE: The Department is progressing with the State's initiative for developing a data collection system that will incorporate regional data on teacher supply and demand across the State.

12. COMMENT: There is a preference for Middle States accreditation over NCATE, TEAC, and RATE because Middle States is the entity that

accredits all master degree programs. Other commenters questioned the timeframe for accreditation in this pilot program.

DEPARTMENT RESPONSE: The proposed programs will be focused exclusively for preparing candidates to become effective teachers and the regulation specifies that teacher preparation programs must achieve accreditation through a nationally recognize program accreditor within seven years of program registration. Middle States, is an institutional accreditor.

13. COMMENT: A master's degree is an academic degree and should be granted solely by IHE.

DEPARTMENT RESPONSE: The Regents will assure the quality of the program through a rigorous selection process by the Blue Ribbon Commission, and the program will be held to rigorous program registration standards, including prescribed curriculum and faculty requirements and at least one year of mentored experience in the classroom. Only graduates of such programs may be awarded an M.A.T degree by the Regents. The provider's faculty must also ensure that the graduate level work required to award the degree is sufficiently rigorous.

14. COMMENT: Organizations should have an established record of improving student achievement.

DEPARTMENT RESPONSE: The establishment of the Blue Ribbon Commission ensures that all applications are held to the same standards as traditional teacher preparation programs and demonstrate a proven history of improving student achievement.

15. COMMENT: Concern was expressed that graduates of these pilots will have difficulty being admitted into doctoral programs because their master's degrees were awarded by the Board of Regents (BOR) and that there is a conflict of interest with the BOR awarding these degrees.

DEPARTMENT RESPONSE: Education Law § 208 authorizes the Board of Regents to award degrees and the Board currently uses this authority to award degrees for graduates of institutions operating under a provisional charter and institution that have closed. The Blue Ribbon Commission, has been charged with ensuring that those applying through the RFP process meet the established criteria, including extensive quality assurance processes.

16. COMMENT: Concern was expressed that there was no dialogue between New York State and stakeholders.

DEPARTMENT RESPONSE: For the purposes of these pilots, as required under the State Administrative Procedures Act, the Department has engaged the public through a 45-day public comment period. The Department has received and reviewed comments on the regulations from higher education institutions. The Commissioner has also reached out to, and met with Deans from CUNY, SUNY, and independent colleges, as well as P-12 Educators. The Department will continue to have ongoing discussions with stakeholders to explore ideas for improving education in high need schools and shortage areas throughout the State.

17. COMMENT: Concern was expressed that the four year commitment by graduates would have a negative impact on provider programs and this should include a financial incentive.

DEPARTMENT RESPONSE: We encourage providers to provide financial incentives. The commitment of graduates is based on research to ensure the retention of qualified teachers and will be contingent upon the demand for teachers in high need schools.

18. COMMENT: One commenter expressed concern that the research indicates the failure of alternately prepared teachers.

DEPARTMENT RESPONSE: The Department supports continuing research in this area.

19. COMMENT: There has been no systematic study of the impact of the existing accreditation system.

DEPARTMENT RESPONSE: The Department continues to assess teacher preparation outcomes data, such as performance on state certification examinations. The proposed clinically rich preparation programs represent a pilot, one purpose of which is to gather data on the effectiveness of this alternative model.

20. COMMENT: New York State Education Department should differentiate the major requirements for teacher candidates in the 5-9 and 7-12 teacher education programs.

DEPARTMENT RESPONSE: Section 52.21(b) of the Regulations of the Commissioner of Education specifies the program registration requirements for certification in these content areas.

21. COMMENT: It is not feasible for program faculty to be able to observe a teacher candidate twice a month.

DEPARTMENT RESPONSE: Many teacher preparation programs meet or exceed this level of supervision to ensure that candidates are supported and mentored throughout their program.

22. COMMENT: Concern was expressed that there will be massive teacher layoffs in Fall 2010.

DEPARTMENT RESPONSE: The focus of the pilot programs will be on high need schools and shortage areas. Historically these positions are hard to fill and, with current teachers looking for positions, a deeper pool of potential hires will be available for STEM and other high need subjects

in our high need schools. The proposed amendment should not have any significant impact on teacher layoffs.

23. COMMENT: Concern was expressed that an IHE's ability to prepare teachers through an alternate pathway will be diluted thus creating additional competition.

DEPARTMENT RESPONSE: The Department appreciates that, when the State was in need of preparing teachers through an expedited pathway to address teacher shortages in high need areas, IHEs met this demand by successfully preparing teachers through an alternate certification pathway. The continuing demand for teachers specifically prepared to be effective in high need areas indicates the need for innovative programs to address this specific need. The Blue Ribbon Commission will choose those providers for the pilots that, according to the standards identified in the RFP and Regulation, provide evidence of their ability to successfully meet the identified need. IHEs and non-IHE providers are able to compete for the pilot. The nature of these intense and highly focused programs is not anticipated to impact any successful IHE programs already in place.

24. COMMENT: Concern was expressed that non-collegiate providers will not be able to meet the needs of all student populations.

DEPARTMENT RESPONSE: Providers will be expected to provide evidence that they will be able to meet the needs of all student populations, and this criterion will be addressed in the RFP and the Blue Ribbon Commission will be selecting only those providers that can meet the needs of such students. Only providers that can demonstrate a proven history of improving student achievement for all students including Students with Disabilities and English language learners will be considered for the pilots.

25. COMMENT: Concern was expressed that it would be more efficient to make changes in established programs rather than develop alternative programs.

DEPARTMENT RESPONSE: The Regents' number one concern is the education of the children in New York State. The Department believes that these clinically rich pilot programs will address the student population in the State most affected by poverty by preparing highly effective teachers for high need schools. The Blue Ribbon Commission will ensure that the highest caliber of providers will be chosen to prepare teachers in these schools. Research will be conducted on the pilots in order to replicate the best practices in preparing teachers for high need areas.

26. COMMENT: An assessment of the quality and effectiveness of the pilot programs need to be assessed.

DEPARTMENT RESPONSE: The Department anticipates developing a RFP for the purpose of analyzing the impact on student achievement and teacher preparation through these pilots. Results of this research will be made public.

27. COMMENT: One commenter expressed concern that the regulations were done as an emergency rulemaking, as opposed to the usual rulemaking procedures.

DEPARTMENT RESPONSE: Emergency action was needed in order to ensure the timely implementation of the provisions of the proposed amendment to provide stakeholders with timely notice of the eligibility requirements and the program registration requirements for the pilot program so that they might complete the competitive bidding process for available funding before the 2011-2012 school year.

NOTICE OF ADOPTION

Independent Study

I.D. No. EDU-19-10-00012-A

Filing No. 764

Filing Date: 2010-07-27

Effective Date: 2010-08-11

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

Action taken: Addition of section 100.5(d)(9) to Title 8 NYCRR.

Statutory authority: Education Law, sections 101, 207, 208, 209, 305(1) and (2), 308, 309 and 3204(3)

Subject: Independent Study.

Purpose: To establish requirements for independent study offered by school districts, registered nonpublic schools and charter schools.

Text or summary was published in the May 12, 2010 issue of the Register, I.D. No. EDU-19-10-00012-P.

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

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

Assessment of Public Comment

Since publication of a Notice of Proposed Rule Making in the State Register on May 12, 2010, the State Education Department received the following comments.

1. COMMENT:

One letter was received from a charter school, expressing support for the regulations.

DEPARTMENT RESPONSE:

No response is necessary.

2. COMMENT:

One comment, while expressing support for establishing standards for student eligibility and participation in independent study programs and the rule's provision for a three unit elective credit maximum for such programs, also recommended that the standing committee established under Commissioner's Regulations section 100.5(d)(7)(iii) to address appeals on Regents examination passing scores, should serve as the school-based panel in section 100.5(d)(9).

DEPARTMENT RESPONSE:

Based on comments received on a similar rulemaking regarding make-up credit [8 NYCRR 100.5(d)(8); NYS Register/May 12, 2010 (EDU-04-10-00007-A)], the Department believes requiring schools, particularly small rural schools, to provide a more robust school based panel with more than one teacher would be an onerous requirement and put an undue burden and cost upon them. Based upon this concern, the proposed section 100.5(d)(9), relating to independent study, was drafted to provide the minimum requirements for the school-based panel in alignment with the panel required by section 100.5(d)(8) relating to make-up credit. Local schools have the flexibility to increase the size and membership of the school based panel if they so desire and their particular circumstances warrant.

3. COMMENT:

Other letters were received from public schools and a BOCES, expressing support for the regulations but requesting additional clarification regarding the following:

(i) criteria for determining student eligibility for enrolling in an independent study course;

(ii) determining appropriate courses, including online courses, for independent study;

(iii) required qualifications of teachers who oversee an independent study course;

(iv) explanation of the term "mastery" in proposed subparagraph 100.5(d)(9)(iii);

(v) explanation of how the proposed rule fits with Commissioner's Regulations section 100.5 (d) regarding alternatives to local and Regents diploma requirements; and

(vi) determining the appropriate number of Regents examinations or other assessments required for graduation, for the student's grade level.

DEPARTMENT RESPONSE:

The proposed regulation includes the fundamental criteria upon which local school districts can determine student eligibility for independent study (i.e., demonstrated readiness, likelihood of success, and progress towards graduation), and independent study courses (i.e., elective credit, State commencement learning standards, comparability to traditional classroom courses).

Other topics are addressed in other sections of the Part 100 regulations or will be addressed by guidance materials to be developed and posted on the Department's website.

4. COMMENT:

The criteria for the school-based panel's approval of a student's participation in independent study should be revised to permit a student, who has demonstrated readiness and a high likelihood of success pursuant to 100.5(d)(9)(ii)(a), to undertake independent study if the student has either (1) accumulated the expected number of units of credit for the student's grade level or (2) has passed the appropriate number of Regents examinations or other assessments required for graduation, for the student's grade level. The proposed rule presently requires the student to meet the requirements in both (1) and (2).

DEPARTMENT RESPONSE:

The proposed regulation provides an opportunity for students who have a high likelihood of success in an independent study program. The Department believes that students who have accumulated the expected number of units of credit for their grade level and have passed the appropriate number of Regents examinations or other assessments required for graduation for their grade level, are more likely to succeed in an independent study program than are students who have satisfied only one of the aforementioned criteria.

Department of Health

EMERGENCY RULE MAKING

Chemical Analyses of Blood, Urine, Breath or Saliva for Alcoholic Content

I.D. No. HLT-32-10-00001-E

Filing No. 753

Filing Date: 2010-07-22

Effective Date: 2010-07-22

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

Action taken: Amendment of Part 59 of Title 10 NYCRR.

Statutory authority: Vehicle and Traffic Law, section 1194(4)(c); and Environmental Conservation Law, section 11-1205(6)

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

Specific reasons underlying the finding of necessity: This amendment to Part 59 is being filed as an emergency action because immediate adoption is necessary to avoid a conflict between Part 59 as it currently exists and an emergency action filed by the Division of Probation and Correctional Alternatives (DPCA) to implement Chapter 496 of the Laws of 2009 (Leandra's Law). This law mandates use of ignition interlock devices for all individuals sentenced for Driving While Intoxicated (DWI) misdemeanor or felony offenses, and is expected to result in more widespread use of ignition interlock devices. Since the Department of Health will continue to set standards for and certify devices to make them eligible for use in NYS, the Department has a vested interest in ensuring success of this initiative. Leandra's Law also greatly expanded DPCA's role in ignition interlock oversight, and DPCA has incorporated certain regulatory provisions that are in existing Part 59 in its new Title 9 NYCCR Part 358, consistent with DPCA's mandate for oversight of the installation, use and servicing of ignition interlock devices. If this amendment to Part 59 does not become effective contemporaneously with DPCA's Part 358, a seamless transfer of responsibility would not take place, and regulated parties would be exposed to contradictory requirements, leading to confusion and non-compliance. It is also noteworthy that the timely transfer of responsibility between agencies ensures that statutory deadlines for implementing an important statewide public safety initiative are met.

In addition, this amendment would enable law enforcement agencies to use breath alcohol testing devices identified in the recently published March 11, 2010 list of devices approved by the federal National Highway Traffic Safety Administration. Existing Part 59 references a 2007 list and must be updated now that a new list is available. The federal and State lists of approved breath testing devices need be identical to avoid legal challenges and preclude inadmissibility of evidence, and to ensure effective enforcement of the law against driving while intoxicated.

Subject: Chemical Analyses of Blood, Urine, Breath or Saliva for Alcoholic Content.

Purpose: Update technical standards for blood and breath alcohol testing conducted by law enforcement.

Substance of emergency rule: This proposed amendment to Part 59 updates standards, reflects changes in nomenclature and technology, and provides clarification of provisions pertinent to alcohol determinations of breath, blood and other body fluids, and certification of ignition interlock devices used for enforcement of Vehicle and Traffic Law.

The Section 59.1 definition for the term techniques and methods is amended to include saliva, which itself is defined in a new subdivision (k). The definition of testing laboratory is revised to clarify the Department's requirements. A definition for calibration is added. Section 59.2 is modified to introduce current terminology, specifically blood alcohol concentration (BAC). The rule clarifies that urine may be used as a specimen, and its analysis requires controls and blanks similar to those used for analyses of blood. This amendment removes the list of persons authorized to draw blood and eliminates technical specifications not required for analytical accuracy. Section 59.2 is further modified to revise the acceptable range for the alcohol reference standard used for calibration verification of instruments for both breath and blood analysis. This section and others now provide for a 0.08 grams/100 ml (w/v) reference standard. This proposal also requires that units for alcohol determinations of blood and urine

be expressed as blood alcohol concentration (BAC), meaning percent weight per volume, rather than the outdated terminology of grams percent.

Section 59.3 is modified in several places to address saliva as a potential specimen. The proficiency testing performance criteria for renewal of a permit for the chemical analysis of blood, urine and saliva are clarified. "Competence" is replaced with "proficiency" throughout the section. In Section 59.4, outdated NYS-specific criteria for breath testing instruments are replaced with documentation that the model has been accepted by the U.S. Department of Transportation/National Highway Traffic Safety Administration (NHTSA) as an evidential breath alcohol measurement device. The proposed amendment includes the list of NHTSA-approved breath measurement instruments published in the Federal Register on March 11, 2010 to remove any possible ambiguity about the fact that devices listed therein, including the Alcotest 9510 manufactured by Draeger Safety, Inc., are fully approved by the Department of Health. The training agencies' responsibilities for instrument maintenance, including the establishment of a calibration cycle, and records retention are clarified.

The Section 59.5 two-hour time frame for specimen collection is eliminated, and the requirement for certain techniques and methods to be a component of each training agency's curriculum and to be put to use by the analyst is clarified. The requirement for observation of a subject prior to collection of a breath sample has been clarified. Minor technical changes have been made to Section 59.6.

This proposal would reduce the hours spent in initial training for a breath analyst permit as specified in Section 59.7, from 32 hours required to 24 hours, and require training agencies to develop learning objectives. The minimum time for hands-on training with breath analysis instruments is reduced from ten to six hours. Revised Section 59.7 establishes an application window of 120 calendar days preceding the permit's expiration date. The Section also clarifies that a permit expires and is void when not renewed, but that the Commissioner of Health may extend the permit expiration date for 30 calendar days, during which period the permit remains valid. The amendment makes clear that failure to renew in accordance with time frames established in the regulation results in the permit becoming void, which then requires the analyst to participate in the 24-hour initial/comprehensive training course. Section 59.7, as revised, requires training agencies to submit information on training sessions and participant lists to the Department of Health in a format designated by the Commissioner.

Section 59.9, as amended, provides for an effective period of four years for technical supervisor certification, an increase of two years. The responsibilities of a technical supervisor have been modified to reflect current practice. Notably, the duty to conduct field inspections has been eliminated, as has the responsibility to provide expert testimony, since the recognition of expertise is a role of the court. Revised Section 59.9 clarifies that a technical supervisor may delegate certain tasks, including instrument maintenance and preparation of chemicals used in testing, to a person not qualified as a supervisor, provided the work product is reviewed and found acceptable. A new sentence at the end of the section codifies longstanding Department policy that suspension or revocation of an operator's permit held by a supervisor triggers suspension or revocation of the person's certification as a technical supervisor.

Existing Sections 59.10 and 59.11 are repealed, and replaced with two new sections that provide criteria, respectively, for certification for ignition interlock devices and for testing of such devices by independent laboratories. The existing reference to a seven-county pilot study of ignition interlock devices is removed, and outdated performance standards for devices are replaced with NHTSA standards. Existing provisions for the application process, manufacturer interaction with testing laboratories, and discontinuance of certification remain in effect. New Section 59.10 requires the manufacturer to provide contact information, including identification of a person to respond to Department inquiries, and requires the manufacturer to furnish a certificate stating that the company issuing the requisite liability coverage will notify the Department at least 30 days prior to cancellation of the policy before the expiration date. Section 59.10 also makes clear the Department's requirement that the manufacturer must demonstrate, through arrangements with a testing laboratory, that the device meets the NHTSA model specifications when calibrated to a set point of 0.025% BAC; and stipulates that only devices that employ fuel cell technology or another technology with demonstrated comparable accuracy and specificity are eligible for certification.

New Section 59.11 specifies the minimal elements of a testing laboratory report and requires such report to be submitted directly to the Department. In both new sections, a reference to "circumvention" has been added with each occurrence of the word "tampering," to recognize that these are both prohibited in Vehicle and Traffic Law Section 1198.

Existing Section 59.12 is repealed. New Section 59.12 establishes requirements for continued ignition interlock certification. New Section 59.12 requires a manufacturer to notify the Department of any operational modification to a certified device, and to obtain express approval for its

continued use, as modified, under the existing certification. The definition of operational modification and the process for reporting modifications has been moved from Section 59.10 to Section 59.12. A new requirement is added that the manufacturer notify the Department of each renewal of insurance coverage, each change of issuing company, and each change in liability limits. The section requires manufacturers to supply to installation/service providers a sufficient number of labels with text that conforms to the text mandated by statute. The vast majority of the section's other requirements, including reporting and labeling requirements and manufacturer-service provider interactions, have been eliminated from Section 59.12; most have been incorporated into a new 9 NYCRR Part 358 being promulgated by the Division of Probation and Correctional Alternatives (DPCA) contemporaneously with this regulation in response to the anticipated August 2010 implementation of the ignition interlock provisions of Leandra's Law (L. 2009, Ch. 496). New Section 59.12 establishes a process for periodic renewal to ensure that information on file with the Department is current. The application form has been removed from the regulation, as it will be available electronically.

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 October 19, 2010.

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

Summary of Regulatory Impact Statement

Statutory Authority:

The New York State (NYS) Vehicle and Traffic Law, Section 1194(4)(c), and Department of Environmental Conservation Law, Section 11-1205(6), authorize the Commissioner of Health to adopt regulations concerning methods of testing breath and body fluids for alcohol content. NYS Vehicle and Traffic Law, Section 1198(6) authorizes the Commissioner of Health to promulgate regulations setting standards for use of ignition interlock devices.

Legislative Objectives:

This amendment is consistent with the legislative objective of ensuring effective enforcement of laws against driving while intoxicated (DWI). This proposal is consistent with Chapter 669 of the Laws of 2007, which authorized statewide use of ignition interlock devices, and Chapter 496 of the Laws of 2009 (Leandra's Law), which mandates that every person sentenced for any DWI offense, must have an ignition interlock device installed as a requirement for conditional discharge or probation.

Needs and Benefits:

Part 59 establishes standards for chemical tests on blood, breath, and urine for the presence of alcohol, for purposes of detecting unacceptable levels of alcohol in persons. Courts rely on Part 59 provisions daily in adjudicating alcohol-related offenses; the State's correctional alternatives program relies on effective operation of ignition interlock devices to prevent repeat offenders from driving while impaired by alcohol. The existing regulation must be updated, as it is inconsistent with existing DWI statutes, as well as current and anticipated usage of ignition interlock devices.

The specificity of Section 59.2 standards for collecting, handling and analyzing a specimen for blood alcohol analysis has prevented convictions even though the defendant was driving while intoxicated. This amendment would delete the list of persons authorized to draw blood, as the listing could present a legal conflict with similar provisions in Vehicle and Traffic Law Section 1194(4)(a) and Public Health Law Section 3703. This amendment would eliminate technical specifications for the collection of blood within a two-hour timeframe, and use of a clean and sterile syringe and anticoagulant, and require that alcohol units be expressed as blood alcohol concentration, rather than the outdated terminology of grams percent. The reference standard for calibration verification of breath and blood analysis instruments has been changed to a standard greater than or equal to 0.08 grams/100 ml, consistent with the Vehicle and Traffic Law provision that sets 0.08% weight per volume (w/v) alcohol in blood as the threshold for certain DWI sanctions. The amendment describes criteria for revocation or nonrenewal of a blood alcohol analysis permit based on unsuccessful proficiency testing (PT) performance or failure to participate in PT challenges.

Section 59.4 affords training agencies the flexibility of establishing retention times for records, as these may vary by record type and potential use in a legal proceeding; delegation of recordkeeping activities is authorized. Section 59.4, as revised, stipulates the commissioner's approval of breath measurement devices for use in NYS provided the device has been accepted by the National Highway Traffic Safety Administration (NHTSA). The revised section includes the list of NHTSA-approved breath measurement instruments published in the Federal Register on

March 11, 2010 to remove any possible ambiguity about the fact that devices listed therein, including the Alcotest 9510 manufactured by Draeger Safety Inc., are fully approved by the Department of Health. The requirement in Section 59.5 for conducting breath analysis within two hours of arrest or a positive breath alcohol screening test has been removed. The requisite for test subject observation prior to testing has been clarified, as the existing provision for continuous observation carries the risk of unintended and unnecessarily specific interpretation, thus jeopardizing successful DWI prosecution. The reference to operational checklists, which are no longer used, has been eliminated. The requirement for certain techniques and methods to be a component of each training agency's curriculum and to be put into use by analysts is clarified.

This proposal would reduce from 32 to 24 hours the time trainees must spend in initial training. The reduction from 10 to six hours in hands-on use of instruments is reasonable given the decreasing complexity of instrumentation overall, and the trend towards use of one device model within a jurisdiction. Training agencies would be required to identify learning objectives and design examinations in keeping with objectives. The outdated term equilibrators has been deleted, as breath analyzers no longer need to counter a matrix effect from use of simulator solutions. As modified, the rule requires retraining to renew a BTO permit take place via a course designed to refresh applicants' recall of formal training material, such as including mechanisms to assess proficiency and measure retained knowledge. The proposal stipulates that retraining must occur within the 120 days prior to permit expiration, to eliminate overlap within the two-year BTO cycle. This amendment would afford, at the Commissioner's discretion, a 30-day extension in permit expiration date, in an effort to avoid the potential legal dilemma of administrative permit lapses due to paperwork processing delays. Operators whose permits are voided are required to participate successfully in another initial certification course before a new BTO permit may be issued, to demonstrate that recall and competency have been maintained.

The effective period for a technical supervisor's certification has been increased from two to four years. Supervisor responsibilities have been detailed; and supervisors are permitted to delegate certain tasks, provided they review the work product to ensure the designee's performance meets expectations. A reference to field inspection of instruments by supervisors has been modified to reflect the current practice of remote calibration checks. Provision of expert testimony has also been deleted from the list of supervisor's responsibilities, since the process of qualifying subject matter experts rests with the court.

Existing Section 59.10 is repealed. New Section 59.10 retains many existing ignition interlock certification criteria, rearranged for ease of comprehension. The reference to a seven-county pilot study for ignition interlock devices has been eliminated, as Chapter 669 of the Laws of 2007 amended the Vehicle and Traffic Law to expand the study into a statewide program. New Section 59.10 requires the manufacturer to identify a person to respond to Department inquiries, and requires the manufacturer to furnish a certificate stating that the company issuing the requisite liability coverage will notify the Department at least 30 days prior to cancelling a policy before the expiration date. New Section 59.10 also makes clear that the manufacturer must demonstrate, through arrangements with a testing laboratory, that the device meets the NHTSA model specifications when calibrated to a set point of 0.025% BAC; and stipulates that only devices that employ fuel cell technology or another technology with demonstrated comparable accuracy and specificity are eligible for certification, thus ensuring deployment of state-of-the-art equipment.

Existing Section 59.11 is repealed. New Section 59.11 replaces New York State-specific criteria for certification of interlock devices with NHTSA standards, as the NYS standards, codified in 1990, are less encompassing than federal standards. Submission of testing agency credentials with each application for device approval is no longer required. New Section 59.11 details requirements for certification of the testing laboratory, the laboratory's responsibilities in the device approval process, and the minimum components of a testing laboratory report. In both new Section 59.10 and 59.11 a reference to "circumvention" has been added with each occurrence of the word "tampering," to recognize that these are distinct Vehicle and Traffic Law violations.

Existing Section 59.12 is repealed. New Section 59.12 establishes requirements for continued ignition interlock certification. New Section 59.12 requires a manufacturer to notify the Department of any operational modification to a certified device, and to obtain approval for continued use, as modified, under the existing certification. The definition of operational modification and the process for reporting modifications has been moved to Section 59.12. The amendment codifies a currently implicit requirement that manufacturers notify the Department of changes to insurance coverage. The text required for the warning label is revised to conform to the text mandated by statute. The section requires the manufacturers to supply a sufficient number of labels to installation/service providers. The vast majority of the section's other requirements,

including reporting and labeling requirements and manufacturer-service provider interactions, have been eliminated from Section 59.12; most have been incorporated into a new 9 NYCRR Part 358 being promulgated by the Division of Probation and Correctional Alternatives (DPCA) to implement the ignition interlock provisions of Leandra's Law. New Section 59.12 establishes a process for periodic renewal to ensure that information on file with the Department is current. The application form for device certification has been removed from the regulation, and will be available electronically.

COSTS:**Costs to Private Regulated Parties:**

The requirements of this regulation applicable to ignition interlock manufacturers and installation/service providers impose no new costs on these private regulated parties. The newly codified requirement that manufacturers notify the Department of changes to insurance coverage may be accomplished electronically, at no cost to the manufacturer. The renewal of certification form/attestation may be electronically submitted.

Costs to State Government:

Affected State agencies other than the Department of Health, i.e., the State Police, the Division of Criminal Justice Services (DCJS), and DPCA, would incur minimal additional costs as a result of adoption of this amendment, as the amendment relaxes, clarifies or codifies practices already implemented. The State Police and DCJS, as training agencies, may realize cost savings from the proposed reduced duration of the breath analyst certification course, from 32 to 24 hours.

Costs to Local Government:

The Nassau County, Suffolk County and New York City Police Departments, which are local-government training agencies, would incur either no to minimal additional costs as a result of this amendment's adoption, as the amendment relaxes, clarifies or codifies processes already in place. These training agencies may realize cost savings from the proposed reduced duration of the breath analyst certification course, from 32 to 24 hours, which represents one full day that officers need not be absent from the work pool.

Prosecutorial units of local government may experience cost savings resulting from this amendment's deletion of specific requirements for specimen collection that, historically, have been challenged successfully by defense attorneys.

Costs to the Department of Health:

Adoption of this regulation would impose minimal additional costs on the Department. Implementation of a renewal process for the six manufacturers that currently hold ignition interlock certifications will use existing resources and result in minimal additional work load. Regulated parties will be provided with the text of the final adopted rule by electronic mail.

Local Government Mandates:

This regulation does not impose any new mandate on any county, city, town, village, school district, fire district or other special district.

Paperwork:

The proposal to extend, from two to four years, the effective period of breath analyzer supervisor permits will reduce paperwork, as will deletion of the requirement for quarterly reporting to multiple agencies of ignition interlock use data. This amendment's emphasis on learning goals rather than course structure would allow for paperwork reduction, as recertification courses would be adaptable to online distance learning modules. Manufacturers are encouraged to utilize electronic means of communication for required notifications and certificate renewals.

Duplication:

Part 59 as amended would be consistent with, but not duplicate, federal standards for approval of breath alcohol evidentiary devices as promulgated by the NHTSA.

Alternatives:

At the present time, there are no acceptable alternatives to pursuing adoption of the amendment as written. The major stakeholders have reached agreement that inability to move forward with the changes as proposed would likely impede DWI enforcement and prosecutorial activities in NYS. The clarifications and updates in this amendment are required to keep the regulation current with law enforcement practices and changes to laws governing ignition interlock programs and evidence-gathering protocols related to DWI prosecutions, as well as technological advances in the devices themselves.

Federal Standards:

The proposed rule does not exceed any minimum standards of the federal government; it references sources for information on federally approved devices, and is consistent with federal standards for ignition interlock and breathalyzer device approval.

Compliance Schedule:

Regulated parties should be able to comply with these regulations effective upon filing with the Secretary of State.

Regulatory Flexibility Analysis

No Regulatory Flexibility Analysis is required pursuant to Section 202-b(3)(b) of the State Administrative Procedure Act. The proposed amend-

ment does not impose any adverse economic impact on small businesses or local governments, and does not impose reporting, recordkeeping or other compliance requirements on small businesses or local governments.

Rural Area Flexibility Analysis

No Rural Area Flexibility Analysis is required pursuant to Section 202-bb(4)(a) of the State Administrative Procedure Act. The proposed amendment does not impose any adverse impact on facilities in rural areas, and does not impose any reporting, recordkeeping or other compliance requirements on regulated parties in rural areas.

Job Impact Statement

A Job Impact Statement is not required because it is apparent, from the nature and purpose of the proposed rule, that it will not have a substantial adverse impact on jobs and employment opportunities.

Department of Labor

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Public Employees Occupational Safety and Health Standards**I.D. No.** LAB-32-10-00008-P

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

Proposed Action: This is a consensus rule making to amend section 800.3 of Title 12 NYCRR.

Statutory authority: Labor Law, section 27-a(4)(a)

Subject: Public Employees Occupational Safety and Health Standards.

Purpose: To incorporate by reference updates to OSHA standards into the State Public Employee Occupational Safety and Health Standards.

Text of proposed rule: Regulation 12 NYCRR § 800.3 is amended to add the following subdivision:

(dv) *Updating OSHA Standards Based on National Consensus Standards; General, Incorporation by Reference; Assigned Protection Factors; Final Rule, 72 Federal Register, 71061-71070, December 14, 2007.*

Text of proposed rule and any required statements and analyses may be obtained from: Michael Paglialonga, New York State Department of Labor, State Office Campus, Building 12, Room 509, Albany, NY 12240, (518) 457-1938, email: michael.paglialonga@labor.ny.gov

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

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

Consensus Rule Making Determination

This amendment is necessary because Section 27-a(4)(a) of the Labor Law directs the Commissioner to adopt by rule, for the protection of the safety and health of public employees, all safety and health standards promulgated under the U.S. Occupational Safety and Health Act of 1970, and to promulgate and repeal such rules and regulations as may be necessary to conform to the standards established pursuant to that Act. This insures that public employees will be afforded the same safeguards in their workplaces as are granted to employees in the private sector.

Job Impact Statement

As the proposed action does not affect jobs and employment opportunities but simply affords workplace safety and health guidelines to improve job performance and safety, a job impact statement is not submitted.

Commission on Public Integrity

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Limitations on the Offering and Receipt of Gifts**I.D. No.** CPI-32-10-00005-P

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

Proposed Action: Addition of Part 934 to Title 19 NYCRR.

Statutory authority: Executive Law, section 94(16)(a); Legislative Law, sections 1-c and 1-m; Public Officers Law, section 73(5)

Subject: Limitations on the offering and receipt of gifts.

Purpose: To provide rules on the limitations on the offering and receipt of gifts.

Substance of proposed rule (Full text is posted at the following State website: www.integrity.org): The Public Employees Ethics Reform Act of 2007 amended, inter alia, Legislative Law § 1-c(j), the provision of law most directly applicable to gifts, by replacing the \$75.00 limitation with “nominal value” and providing for exclusions to the limitations on gifts. Legislative Law § 1-m prohibits gifts to public officials, unless it is not reasonable to infer that the gift was intended to influence the public official. The proposed rules, which are required by Executive Law § 94(16)(a), provide guidance to those lobbyists and clients of lobbyists subject to the jurisdiction of the Commission on Public Integrity concerning the offering, giving, or receipt of gifts.

Text of proposed rule and any required statements and analyses may be obtained from: Kathleen H. Burgess, New York State Commission on Public Integrity, 540 Broadway, Albany, New York 12207, (518) 408-3976, email: kburgess@nyintegrity.org

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 94(16)(a) of the Executive Law directs the New York State Commission on Public Integrity to promulgate rules concerning limitations on the offering and receipt of gifts by persons subject to its jurisdiction. Legislative Law § 1-c(j) defines “gift” and sets forth exclusions from the definition of gift. Legislative Law § 1-m prohibits an individual or entity required to be listed on a statement of registration from offering or giving gifts of more than nominal value to public officials.

2. Legislative objectives: The Public Employee Ethics Reform Act of 2007 (“the Act”), Chapter 14 of the Laws of 2007, was intended to “ensure that New York State officials adhere to the highest ethical standards, in an effort to restore public trust and confidence in government.” The Act established the Commission on Public Integrity (“Commission”) through the merger of the former New York State Ethics Commission and the former New York Temporary State Commission on Lobbying.

The Act amended the Legislative Law in several significant ways. First, the \$75.00 limit on the value of a gift, which was set forth in Legislative Law § 1-m, was eliminated and the definition of “gift” in Legislative Law § 1-c(j) was amended to include “anything of more than nominal value.” Second, while Legislative Law § 1-m still prohibits gifts to public officials by lobbyists, clients or other individual or entity required to be listed on registration statement, this section now provides that a gift could be permissible if “under circumstances it is not reasonable to infer that the gift was intended to influence such public official.” Third, the exclusions to the definition of “gift” have been amended to include, in several instances, criteria that must be met in order for the exclusion to be applicable. For examples, for a plaque, certificate or other ceremonial item to be excluded from the definition of “gift,” the item must be publicly presented, or intended to be publicly presented; in recognition of public service; and similar to the types of items that are customarily bestowed.

Public Officers Law § 73(5)(b) is new. This section references Legislative Law §§ 1-c(j) and 1-m, and prohibits a Statewide elected official, State officer or employee, individual whose name has been submitted by the Governor to the Senate for confirmation to become a State officer or employee, or member of the Legislature or Legislative employee from accepting any gift from a lobbyist or client or other individual or entity required to be listed on registration statement, under circumstances where it is reasonable to infer that the gift was intended to influence such public official.

Public Officers Law § 73(5)(c) is also new. This section also references Legislative Law §§ 1-c(j) and 1-m and essentially prohibits a Statewide elected official, State officer or employee, individual whose name has been submitted by the Governor to the Senate for confirmation to become a State officer or employee, or member of the Legislature or Legislative employee from allowing a third party, which such public official designates or recommends, to accept a gift, as defined in Legislative Law § 1-c, on his or her behalf, from a lobbyist or client or other individual or entity required to be listed on a registration statement, under circumstances where it is reasonable to infer that the gift was intended to influence such public official.

The proposed rules, which are required by Executive Law § 94(16)(a), provide guidance to lobbyists and clients, who are subject to the jurisdiction of the Commission, concerning the offering and giving of gifts to any

public official. By setting forth conditions under which gifts may be offered or given, these rules establish parameters of acceptable conduct for covered individuals.

3. Needs and benefits: The proposed rule-making is necessary to fulfill the Commission’s statutory mandate. The Act amended Executive Law § 96(16)(a) to require the Commission to promulgate regulations concerning gifts. This is a new requirement. In addition, these regulations are necessary because, heretofore, there were opinions by both the former New York State Ethics Commission and the New York Temporary State Commission on Lobbying pertaining to gifts. These opinions are affected by the Act’s amendments to the Legislative Law and the Public Officers Law. In light of the Commission’s expanded jurisdiction to include State officers and employees, and lobbyists and clients, these rules attempt to consolidate and harmonize the Commission’s interpretation of the Public Officers Law and the Legislative Law in light of these changes by the Act.

The Act amended, inter alia, Legislative Law §§ 1-c(j) and 1-m, which are the provisions of law directly applicable to gifts to public officials by lobbyists and clients. Prior to the Act, Legislative Law § 1-c(j) defined a gift as “anything of value given to a public official,” subject to seven exclusions including: complimentary attendance at charitable or political events, or widely-attended events; plaques, certificates and other ceremonial items; honorary degrees from colleges or universities; promotional items, gifts from family members; contributions reportable under the Election Law; and travel reimbursement. This section had to be read in tandem with Legislative Law § 1-m, which prohibited lobbyists and clients from offering or giving a gift to any public official that had a value greater than \$75.00.

The former New York Temporary State Commission on Lobbying issued eleven opinions interpreting Legislative Law § 1-c(j) and 1-m that pertained to lobbyists and clients offering and giving gifts to public officials. The former New York State Ethics Commission issued Advisory Opinion No. 94-16, which sets forth parameters, consistent with Public Officers Law §§ 73 and 74, to guide State officers and employees concerning the receipt of gifts from other individuals and entities, including lobbyists.

The Act amended the Legislative Law in several regards. First, the \$75.00 limit on the value of a gift, which was set forth in Legislative Law § 1-m, was eliminated and the definition of “gift” in Legislative Law § 1-c(j) was amended to include “anything of more than nominal value.” Second, Legislative Law § 1-m provides that a gift to a public official from a lobbyist or client could be permissible if “under circumstances it is not reasonable to infer that the gift was intended to influence such public official.” Third, the exclusions to the definition of “gift” have been amended to include, in several instances, criteria that must be met in order for the exclusion to be applicable.

In light of the amendments to the Legislative Law and the Public Officers Law, the Commission decided to reexamine Advisory Opinion No. 94-16 and issued Advisory Opinion No. 08-01. The Commission determined that an advisory opinion was the appropriate means to address these provisions of law that were modified by the Act and set forth guidance to those individuals under the Commission’s jurisdiction. For example, the Act eliminated the \$75.00 limit on gifts that a lobbyist or client can offer or give and replaced it with “nominal value.” The \$75.00 limit was a bright line to distinguish whether an item given to a public official was a gift. Since this limitation was eliminated, the Commission determined that guidelines were necessary to assist affected persons ascertain whether an item was of “nominal value,” and therefore not a gift, since the Act does not define “nominal value.” The Commission set forth guidelines in Advisory Opinion No. 08-01 to, among other issues, define “nominal value.” These guidelines are the basis for the proposed regulations.

Legislative Law § 1-c(j) sets forth the framework for determining whether an item is a gift. A “gift” is anything of more than nominal value given to a public official. A gift may be in the form of money, service, loan, travel, lodging, meals, refreshments, entertainment, discount, forbearance, promise, or in any other form. This section then sets forth 11 exclusions to the definition of gift. Therefore, a lobbyist or client may offer or give to a public official such an item because it is not considered a “gift” to the public official.

In Advisory Opinion No. 08-01, the Commission concluded that those items will be exceptions to the definition of gift when offered by a lobbyist or client to a public official. The Commission set forth standards that are applicable in determining whether anything of more than value offered or given to a public official would be excluded from the definition of gift. The Commission codified these standards in this proposal.

Public Officers Law § 73(5) was amended by adding subdivisions (b) and (c), which references Legislative Law § 1-c(j) and 1-m. Public Officers Law § 73(5)(b) prohibits a Statewide elected official, State officer or employee, individual whose name has been submitted by the Governor to the Senate for confirmation to become a State officer or employee, or member of the Legislature or Legislative employee from accepting any

gift, as defined in Legislative Law § 1-c(j), from a lobbyist or client of a lobbyist, unless it can be reasonably inferred that the gift was not intended to influence such individuals in the performance of their official duties. The Commission concluded that exclusions to the definition of “gift” delineated in Legislative Law § 1-c(j) when offered by lobbyists or clients to public officials will be considered permissible gifts when offered by “disqualified sources,” which includes lobbyists, to State officers and employees.

Public Officers Law § 73(5)(c) prohibits a Statewide elected official, State officer or employee, individual whose name has been submitted by the Governor to the Senate for confirmation to become a State officer or employee, or member of the Legislature or Legislative employee from allowing a third party, which such public official designates or recommends, to accept a gift, as defined in Legislative Law § 1-c, on his or her behalf, from a lobbyist or client or other required to be listed on a registration statement, where it is reasonable to infer that the gift was intended to influence the public official. The principle underlying this statute is consistent with the Ethics Commission’s conclusion in Advisory Opinion No. 94-16: an impermissible gift to a State officer or employee may not be given by the donor to a third party, including a family member of the State officer or employee, or any other person or entity, including a charitable organization designated or recommended by the State officer or employee. The Commission reaffirmed this principle and concluded that a gift that could not be given to a State officer or employee by a disqualified source may not be directed by the State officer or employee to a third party, including (a) the State officer or employee’s spouse, parent, sibling, child, relative or friend, and (b) to any other person or entity designated by the State officer or employee, including a charitable entity, on behalf of such officer or employee. An otherwise impermissible gift is not permissible because it is given to a third party at the public official’s direction. This principle is codified in this proposal.

Public Officers Law § 74, sets forth the Code of Ethics, which applies to officers and employees of State agencies as well as members of the Legislature and legislative employees, including per diem and unpaid members of boards and authorities, and employees of closely affiliated corporations. This section explicitly prohibits individuals from soliciting, accepting or receiving a gift of any value if to do so would constitute a substantial conflict with the proper discharge of his or her duties in the public interest or if it would cause the State officer or employee, members of the Legislature and legislative employees, including per diem and unpaid members of boards and authorities, or employees of closely affiliated corporations to violate any of the standards of § 74(3).

The State and the public will benefit because the proposed rules will establish uniformity concerning the limitation on offering of gifts by lobbyists and clients to public officials, and will serve to promote public trust and confidence in government.

4. Costs:

- a. costs to regulated parties for implementation and compliance: None.
- b. costs to the agency, state and local government: None.

c. cost information is based on the fact that the proposed rule-making involves primarily reporting and due diligence requirements and the elimination of confusing and outdated references currently contained in the regulation. There are no costs associated with these changes.

5. Local government mandate: None.

6. Paperwork: None.

7. Duplication: None.

8. Alternatives: The Commission considered alternatives in determining the definition of “nominal value.” The Commission surveyed other state’s ethics laws that have employed “nominal value” in their gift laws. Some states define “nominal” by either a dollar amount. For example, South Carolina’s statute states that nominal value is not to exceed ten dollars, while the West Virginia Ethics Commission concluded that “nominal gift means a gift with a monetary value of twenty-five dollars (\$25.00) or less.” Other states define “nominal” by examples of what would constitute “nominal.” The State of Washington, for example, permits “unsolicited advertising or promotional items of nominal value, such as pens and note pads,” while Alabama allows “promotional items commonly distributed to the general public and food or beverages of a nominal value.”

The Commission also looked to how “nominal” is commonly defined. Webster’s Dictionary defines it as “trifling, insignificant.” Webster’s Online Thesaurus describes “nominal” as “so small or unimportant as to warrant little or no attention.” Black’s Law Dictionary indicates “nominal” is “often with the implication that the thing named is so small, slight, or the like, in comparison to what might properly be expected, as scarcely to be entitled to the name: e.g., a nominal price [citation omitted].”

The Commission noted that the legislative purpose intended by eliminating the \$75 limitation for gifts was to obviate the improper influence, or the appearance of improper influence, that may be brought to bear on State officers and employees and public officials who are offered gifts

from individuals or businesses with an interest in the State employee’s or public official’s duties. Therefore, the Commission adopted a narrow construction of the term “nominal value.” “Nominal value” is considered such a small amount that acceptance of an item of nominal value could not be reasonably interpreted or construed as attempting to influence a State employee or public official. Therefore, items of insignificant value, as, for example, a regular cup of coffee or a soft drink, are considered nominal. Nominal value would not include a meal nor would it include an alcoholic beverage.

The Commission reconsidered the definition of a “widely attended event” and the standards for determining whether attendance at such is related to the official duties and responsibilities of the invited public official from those set forth in Advisory Opinion No. 08-01. The Commission’s initially defined a “widely attended event” as one that is “open to members from throughout a given industry or profession or if those in attendance represent a range of persons interested in a given matter.” This definition would permit, for example, an association of professionals from a single industry to invite public officials to a meeting of its membership, and it could be considered a “widely attended event.” While the association may have a large number of members in attendance at the event, the membership may not be representative of a range of interests.

In order for complimentary food, beverage or attendance to be excluded from the definition of a gift, the Commission determined that it is necessary that a widely attended event have a large number of persons in attendance and include persons who represent differing interests. As discussed further below, the proposed definition states that a “widely attended event” is to be “open to a large number of persons from a given industry or profession, including invitees who represent a broad and diverse range of interests in a given subject matter. The event must provide the opportunity for an exchange of ideas and opinions among those in attendance.”

The proposed amendments are primarily based upon concepts set forth in a United States Office of Government Ethics memorandum (DO-07-047, December 5, 2007) providing guidance to federal officials regarding the circumstances under which they may permissibly accept complimentary attendance at a widely attended gathering. The federal provisions are substantially the same as those proposed in these regulations.

The first modification to the definition of a “widely attended event” provides that an event must include “...invitees who represent a broad and diverse range of interests” The consideration of diversity of interests is intended to address concerns that such events can be viewed as solely promoting an organization’s products, goals or agenda.

The second modification to the definition is the addition of the requirement that the event must provide the opportunity for an exchange of ideas and opinions among attendees. One of the justifications for allowing a gift exception for widely attended events has been the opportunity for public officials to exchange ideas and opinions with a variety of individuals in an informal setting. The amendment is intended to insure that in order to qualify for the gift exception the event must provide such an opportunity.

There are four modifications to the standards for determining whether the acceptance of complimentary attendance at a widely attended event is a permissible gift. These proposed changes are intended to provide additional guidance to governmental entities to assist in the determination of whether attendance at an event is related to a State officer or employee’s duties and responsibilities and to provide a documentary record of such a determination.

The first proposed amendment provides that if complementary attendance to an event is offered by a source other than the sponsor, the offer would be an impermissible gift if under the circumstances it would be reasonable to infer that the offer was intended to influence or reward the public official.

The second proposed amendment provides that the governmental entity must consider the relevance of attendance at the event to the duties and responsibilities of the invitee.

The third proposed amendment restates the requirement that the event provide an opportunity for the exchange of ideas and opinions.

The fourth proposed amendment adds a new requirement that the governmental entity, in each instance, make a written finding that the public official’s attendance at the event has been approved in accordance with factors set forth in the regulations. These written findings would be available for subsequent review by the Commission and others.

The Commission approved the draft proposed regulations at a public meeting on December 2, 2008. Staff subsequently posted the draft proposed regulations on the Commission’s website and noted that the draft proposed regulations, pursuant to the State Administrative Procedure Act were being reviewed by the Governor’s Office of Regulatory Reform prior to commencing a formal notice and comment period. Interested individuals were invited to submit informal comments to the Commission for consideration. On January 9, 2009, Commission staff sent a notice to all ethics officers and lobbyists advising them of the gift restrictions with

respect to receptions and other widely attended events, suggesting that they view the Commission's draft proposed regulations for guidance, as well as contacting Commission staff for advice. At the February 28, 2009 Commission meeting, the Commission amended the definition of "widely attended event" in the draft proposed regulations. These modifications were also posted on the Commission's website.

9. Federal standards: The proposed rule-making pertains to the limitations on the receipt of gifts by persons subject to its jurisdiction and does not exceed any federal minimum standard with regard to a similar subject area.

10. Compliance schedule: No additional time would be required to achieve compliance with this rule. Compliance with the rule would take place upon adoption.

Regulatory Flexibility Analysis

A regulatory flexibility analysis for small businesses and local governments is not submitted with this notice because the proposed rule-making will not impose any adverse economic impact on small businesses or local governments, nor will it require or impose any reporting, record-keeping or other affirmative acts on the part of these entities for compliance purposes. The New York State Commission on Public Integrity makes these findings based on the fact that the regulations pertaining to the limitations on the receipt of gifts affect only lobbyists and their clients. Small businesses and local governments are not affected in any way.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because the proposed rule-making will not impose any adverse economic impact on rural areas, nor will compliance require or impose any reporting, record-keeping or other affirmative acts on the part of rural areas. The New York State Commission on Public Integrity makes these findings based on the fact that the regulations pertaining to the limitations on the receipt of gifts affect only lobbyists and their clients. Rural areas are not affected in any way.

Job Impact Statement

A Job Impact Statement is not submitted with this Notice because the proposed rule-making will have no impact on jobs or employment opportunities. The New York State Commission on Public Integrity makes this finding based on the fact that the proposed rule-making applies to limitations on the receipt of gifts by lobbyists and their clients only. It does not apply, nor relate to small businesses, economic development or employment opportunities.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Limitations on the Receipt of Gifts

I.D. No. CPI-32-10-00006-P

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

Proposed Action: Addition of Part 933 to Title 19 NYCRR.

Statutory authority: Executive Law, section 94(16)(a); Public Officers Law, section 73(5)

Subject: Limitations on the receipt of gifts.

Purpose: To provide rules on the limitations on the receipt of gifts.

Substance of proposed rule (Full text is posted at the following State website: www.nyintegrity.org): The Public Employees Ethics Reform Act of 2007 amended, inter alia, Public Officers Law § 73(5)(a), the provision of law most directly applicable to gifts, by replacing the \$75.00 limitation with "nominal value." Public Officers Law § 73(5)(a) was further amended by adding subdivisions (b) and (c), which, in turn, reference Legislative Law §§ 1-c(j) and 1-m. These sections provide for exceptions to the limitations on gifts. The proposed rules, which are required by Executive Law § 94(16)(a), provide guidance to those State officers and employees subject to the jurisdiction of the Commission on Public Integrity concerning the offering, giving, or receipt of gifts.

Text of proposed rule and any required statements and analyses may be obtained from: Kathleen H. Burgess, Associate Counsel, New York State Commission on Public Integrity, 540 Broadway, Albany, New York 12207, (518) 408-3976, email: kburgess@nyintegrity.org

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 94(16)(a) of the Executive Law directs the New York State Commission on Public Integrity to promulgate rules

concerning limitations on the receipt of gifts by persons subject to its jurisdiction. Public Officers Law § 73(5) defines gift. Legislative Law §§ 1-c(j) and 1-m are referenced in Public Officers Law § 73(5), and provide for limitations on the receipt of gifts.

2. Legislative objectives: The Public Employee Ethics Reform Act of 2007 ("the Act"), Chapter 14 of the Laws of 2007, was intended to "ensure that New York State officials adhere to the highest ethical standards, in an effort to restore public trust and confidence in government." The Act established the Commission on Public Integrity ("Commission") through the merger of the former New York State Ethics Commission and the former New York Temporary State Commission on Lobbying.

The Act further amended Public Officers Law § 73(5)(a), the provision of law most directly applicable to gifts. Prior to the Act, State officers and employees were permitted to accept a gift valued up to \$75.00, provided it was given under circumstances in which it could reasonably be inferred that the gift was not intended to influence the State officer or employee in the performance of his or her official duties or was a reward for official action. The Act replaced the \$75.00 limitation with "nominal value."

Public Officers Law § 73(5)(b) is new. This section prohibits a Statewide elected official, State officer or employee, individual whose name has been submitted by the Governor to the Senate for confirmation to become a State officer or employee, or member of the Legislature or Legislative employee from accepting any gift from an individual or entity required to be listed on a statement of registration pursuant to Legislative Law § 1-m under circumstances where it is reasonable to infer that the gift was intended to influence such public official. Legislative Law § 1-c(j), which is referenced in Public Officers Law § 73(5)(b), sets forth the circumstances in which it is permissible for such public official to accept a gift from a lobbyist or the client of a lobbyist.

Public Officers Law § 73(5)(c) is also new. This section essentially prohibits a Statewide elected official, State officer or employee, individual whose name has been submitted by the Governor to the Senate for confirmation to become a State officer or employee, or member of the Legislature or Legislative employee from allowing a third party, which such public official designates or recommends, to accept a gift, as defined in Legislative Law § 1-c, on his or her behalf from a lobbyist or client, under circumstances where it is reasonable to infer that the gift was intended to influence the public official.

The proposed rules, which are required by Executive Law § 94(16)(a), provide guidance to those State officers and employees who are subject to the provisions of Public Officers Law § 73 concerning the offering, giving, or receipt of gifts. By setting forth conditions under which gifts may be offered and accepted, these rules establish parameters of acceptable conduct for covered individuals.

3. Needs and benefits: The proposed rule-making is necessary to fulfill the statutory mandate of the Commission. The Act amended Executive Law § 94(16)(a) to require the Commission to promulgate regulations concerning gifts. This is a new requirement. In addition, these regulations are necessary because, heretofore, there were opinions by both the former New York State Ethics Commission and the New York Temporary State Commission on Lobbying pertaining to gifts. These opinions are affected by the Act's amendments to the Legislative Law and the Public Officers Law. In light of the Commission's expanded jurisdiction to include State officers and employees, and lobbyists and clients, these rules attempt to consolidate and harmonize the Commission's interpretation of the Public Officers Law and the Legislative Law in light of these changes by the Act.

Prior to the Act, the former New York State Ethics Commission issued Advisory Opinion No. 94-16, which set forth parameters, consistent with Public Officers Law §§ 73(5) and 74, to guide State officers and employees concerning the soliciting, offering or accepting of gifts. The Commission determined to reexamine Advisory Opinion No. 94-16 in light of the changes to these sections of the Public Officer Law by the Act. To this end, on March 25, 2008, the Commission issued Advisory Opinion No. 08-01, in order to provide guidance to State officers and employees concerning the amendments to Public Officers Law § 73(5) by the Act.

In Advisory Opinion No. 08-01, the Commission concluded that the principles enunciated by the New York State Ethics Commission in Advisory Opinion No. 94-16 defining permissible gifts remain sound and still apply to State officers and employees. The Commission reaffirmed those principles and addressed those areas that were modified by the Act in order to provide guidance to affected persons. For example, the Act eliminated the \$75.00 limit on gifts that a State officer or employee may accept and replaced it with "nominal value." The \$75.00 limit was a bright line to distinguish whether an item given to a State officer or employee was a permissible or impermissible gift. Since this limitation was eliminated, the Commission determined that guidelines were necessary to assist affected persons ascertain whether a gift was of "nominal value," and therefore permissible, since the Act does not define "nominal value." The Commission set forth guidelines in Advisory Opinion No. 08-01 to, among other things, define "nominal value." These guidelines are the basis for the proposed regulations.

Public Officers Law § 73(5) sets forth the framework for determining whether a gift to a State officer or employee is permissible. The gift provision applies to statewide elected officials, State officers and employees, individuals whose names have been submitted by the Governor to the Senate for confirmation to be a State officer, members of the Legislature and legislative employees. Section 73(5)(a) provides that State officers and employees may not accept gifts of more than nominal value under circumstances in which it may reasonably be inferred that the gift was intended to influence the State officer or employee in the performance of his or her official duties, or was intended as a reward for any official action. A “gift” may be in the form of money, service, loan, travel, lodging, meals, refreshments, entertainment, discount, forbearance, promise, or in any other form.

Prior to the Act, it was impermissible for State officers and employees to accept gifts from “disqualified sources” valued at \$75 or more. A “disqualified source” is an individual or non-governmental entity engaged in certain transactions with a State agency, i.e. is regulated by the agency, regularly negotiates with the agency, has contracts or seeks to contract with the agency, lobbies the agency, is in litigation with the agency, or has applied for funds from the agency. Gifts from a disqualified source with a value of less than \$75 were not considered per se impermissible, but were subject to further analysis under Public Officers Law § 74.

In Advisory Opinion No. 08-01, the Commission reaffirmed the general rule that State officers and employees should not, directly or indirectly, solicit a gift of nominal value from a disqualified source, nor should a disqualified source, directly or indirectly, offer or give a gift of nominal value to a State officer or employee. The Commission codified this general rule in this proposal.

Public Officers Law § 73(5) was further amended by adding subdivisions (b) and (c), which reference Legislative Law §§ 1-c and 1-m. Public Officer Law § 73(5)(b) prohibits State officers and employees from accepting any gift from a lobbyist or client of a lobbyist, unless under the circumstances it is not reasonable to infer that the gift was intended to influence the State officer or employee. Legislative Law § 1-c(j) defines a “gift” as anything of more than nominal value given to a public official in any form including, but not limited to, money, service, loan, travel, lodging, meals, refreshments, entertainment, discount, forbearance or promise, having a monetary value. Legislative Law 1-c(j) explicitly excludes certain activities and items from the definition of gift, including, but not limited to complimentary attendance at charitable or political functions or widely attended events, awards or plaques, honorary degrees and gifts from family members. The Commission concluded that exceptions to the definition of “gift” delineated in Legislative Law § 1-c(j) when offered by lobbyists or clients to public officials will be considered permissible gifts when offered by disqualified sources to State officers and employees.

Public Officers Law § 73(5)(c) is also new. This section essentially prohibits a State officer or employee from allowing a third party, which the State officer or employee designates or recommends, to accept a gift, as defined in Legislative Law § 1-c, on his or her behalf from a lobbyist or client, where it is reasonable to infer that the gift was intended to influence the State officer or employee. The principle underlying this statute is consistent with the Ethics Commission’s conclusion in Advisory Opinion No. 94-16: an impermissible gift to a State officer or employee may not be given by the donor to a third party, including a family member of the State officer or employee, or any other person or entity, including a charitable organization designated or recommended by the State officer or employee. The Commission reaffirmed this principle and concluded that a gift that could not be given to a State officer or employee by a disqualified source may not be directed by the State officer or employee to a third party, including (a) the State officer or employee’s spouse, parent, sibling, child, relative or friend, and (b) to any other person or entity designated by the State officer or employee, including a charitable entity, on behalf of such officer or employee. An otherwise impermissible gift is not permissible because it is given to a third party at the State employee’s direction. This principle is codified in this proposal.

Public Officers Law § 74, sets forth the Code of Ethics, which applies to officers and employees of State agencies as well as members of the Legislature and legislative employees, including per diem and unpaid members of boards and authorities, and employees of closely affiliated corporations. This section explicitly prohibits individuals from soliciting, accepting or receiving a gift of any value if to do so would constitute a substantial conflict with the proper discharge of his or her duties in the public interest or if it would cause the State officer or employee to violate any of the standards of § 74(3).

Commission staff circulated a draft version of the proposed regulations to the Ethics Officers of the State agencies, Commissions and Bureaus that are under the Commission’s jurisdiction on November 6, 2008 in order to solicit their comments. Many of these comments were incorporated into the proposed rules. For example, the definition of “educational program,” which was initially defined as a program that offered continuing education credits, now includes a program presented by a State officer

or employee as part of his or her official duties. The definition of “professional program” specifically excludes programs sponsored by persons or entities that seek to do business with the State and are comprised of presentations that describe products that are sold by the individual or entity and would be used by the State officers or employees who are attending the presentation.

The proposed rulemaking is necessary to fulfill the Commission’s statutory mandate to promulgate rules of the receipt of gifts. The State and the public will benefit because the proposed rules will establish uniformity concerning the limitation on gifts for all State officers and employees and will serve to promote public trust and confidence in government.

4. Costs:

a. costs to regulated parties for implementation and compliance: None.

b. costs to the agency, state and local government: None.

c. cost information is based on the fact that the proposed rule-making involves primarily reporting and due diligence requirements and the elimination of confusing and outdated references currently contained in the regulation. There are no costs associated with these changes.

5. Local government mandate: None.

6. Paperwork: None.

7. Duplication: None.

8. Alternatives: The Commission considered alternatives in determining the definition of “nominal value.” The Commission surveyed other state’s ethics laws that have employed “nominal value” in their gift laws. Some states define “nominal” by either a dollar amount. For example, South Carolina’s statute states that nominal value is not to exceed ten dollars, while the West Virginia Ethics Commission concluded that “nominal gift means a gift with a monetary value of twenty-five dollars (\$25.00) or less.” Other states define “nominal” by examples of what would constitute “nominal.” The State of Washington, for example, permits “unsolicited advertising or promotional items of nominal value, such as pens and note pads,” while Alabama allows “promotional items commonly distributed to the general public and food or beverages of a nominal value.”

The Commission also looked to how “nominal” is commonly defined. Webster’s Dictionary defines it as “trifling, insignificant.” Webster’s Online Thesaurus describes “nominal” as “so small or unimportant as to warrant little or no attention.” Black’s Law Dictionary indicates “nominal” is “often with the implication that the thing named is so small, slight, or the like, in comparison to what might properly be expected, as scarcely to be entitled to the name: e.g., a nominal price [citation omitted].”

The Commission noted that the legislative purpose intended by eliminating the \$75 limitation for gifts was to obviate the improper influence, or the appearance of improper influence, that may be brought to bear on State officers and employees and public officials who are offered gifts from individuals or businesses with an interest in the State employee’s or public official’s duties. Therefore, the Commission adopted a narrow construction of the term “nominal value.” “Nominal value” is considered such a small amount that acceptance of an item of nominal value could not be reasonably interpreted or construed as attempting to influence a State employee or public official. Therefore, items of insignificant value, as, for example, a regular cup of coffee or a soft drink, are considered nominal. Nominal value would not include a meal nor would it include an alcoholic beverage.

The Commission reconsidered the definition of a “widely attended event” and the standards for determining whether attendance at such is related to the official duties and responsibilities of the invited public official from those set forth in Advisory Opinion No. 08-01. The Commission initially defined a “widely attended event” as one that is “open to members from throughout a given industry or profession or if those in attendance represent a range of persons interested in a given matter.” This definition would permit, for example, an association of professionals from a single industry to invite public officials to a meeting of its membership, and it could be considered a “widely attended event.” While the association may have a large number of members in attendance at the event, the membership may not be representative of a range of interests.

In order for complimentary food, beverage or attendance to be considered a permissible gift, the Commission determined that it is necessary that a widely attended event have a large number of persons in attendance and include persons who represent differing interests. As discussed further below, the proposed definition states that a “widely attended event” is to be “open to a large number of persons from a given industry or profession, including invitees who represent a broad and diverse range of interests in a given subject matter. The event must provide the opportunity for an exchange of ideas and opinions among those in attendance.”

The proposed amendments are primarily based upon concepts set forth in a United States Office of Government Ethics memorandum (DO-07-047, December 5, 2007) providing guidance to federal officials regarding the circumstances under which they may permissibly accept complimentary attendance at a widely attended gathering. The federal provisions are substantially the same as those proposed in these regulations.

The first modification to the definition of a “widely attended event” provides that an event must include “...invitees who represent a broad and diverse range of interests” The consideration of diversity of interests is intended to address concerns that such events can be viewed as solely promoting an organization’s products, goals or agenda.

The second modification to the definition is the addition of the requirement that the event must provide the opportunity for an exchange of ideas and opinions among attendees. One of the justifications for allowing a gift exception for widely attended events has been the opportunity for public officials to exchange ideas and opinions with a variety of individuals in an informal setting. The amendment is intended to insure that in order to qualify for the gift exception the event must provide such an opportunity.

There are four modifications to the standards for determining whether the acceptance of complimentary attendance at a widely attended event is a permissible gift. These proposed changes are intended to provide additional guidance to governmental entities to assist in the determination of whether attendance at an event is related to a State officer or employee’s duties and responsibilities and to provide a documentary record of such a determination.

The first proposed amendment provides that if complementary attendance to an event is offered by a source other than the sponsor, the offer would be an impermissible gift if under the circumstances it would be reasonable to infer that the offer was intended to influence or reward the public official.

The second proposed amendment provides that the governmental entity must consider the relevance of attendance at the event to the duties and responsibilities of the invitee.

The third proposed amendment restates the requirement that the event provide an opportunity for the exchange of ideas and opinions.

The fourth proposed amendment adds a new requirement that the governmental entity, in each instance, make a written finding that the public official’s attendance at the event has been approved in accordance with factors set forth in the regulations. These written findings would be available for subsequent review by the Commission and others.

Finally, in considering Advisory Opinion No. 08-01, the Commission reviewed the permissible gifts that the Ethics Commission set forth in Advisory Opinion No. 94-16. In that opinion, the Ethics Commission determined that gifts given to State officers and employees for customary or special occasions as well invitations to a State agency head to attend an event in his or her official capacity were permissible gifts. The Commission included these two categories of permissible gifts in Advisory Opinion No. 08-01, and these are included in the proposed rulemaking.

The Commission approved the draft proposed regulations at a public meeting on December 2, 2008. Staff subsequently posted the draft proposed regulations on the Commission’s website and noted that the draft proposed regulations, pursuant to the State Administrative Procedure Act were being reviewed by the Governor’s Office of Regulatory Reform prior to commencing a formal notice and comment period. Interested individuals were invited to submit informal comments to the Commission for consideration. On January 9, 2009, Commission staff sent a notice to all ethics officers and lobbyists advising them of the gift restrictions with respect to receptions and other widely attended events, suggesting that they view the Commission’s draft proposed regulations for guidance, as well as contacting Commission staff for advice. At the February 28, 2009 Commission meeting, the Commission amended the definition of “widely attended event” in the draft proposed regulations. These modifications were also posted on the Commission’s website.

9. Federal standards: The proposed rule-making pertains to the limitations on the receipt of gifts by persons subject to its jurisdiction and does not exceed any federal minimum standard with regard to a similar subject area.

10. Compliance schedule: No additional time would be required to achieve compliance with this rule. Compliance with this rule would take effect upon adoption.

Regulatory Flexibility Analysis

A regulatory flexibility analysis for small businesses and local governments is not submitted with this notice because the proposed rule-making will not impose any adverse economic impact on small businesses or local governments, nor will it require or impose any reporting, record-keeping or other affirmative acts on the part of these entities for compliance purposes. The New York State Commission on Public Integrity makes these findings based on the fact that the regulations pertaining to the limitations on the receipt of gifts affect only State officers and employees. Small businesses and local governments are not affected in any way.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this Notice because the proposed rule-making will not impose any adverse economic impact on rural areas, nor will compliance require or impose any reporting, record-keeping or other affirmative acts on the part of rural areas. The

New York State Commission on Public Integrity makes these findings based on the fact that the regulations pertaining to the limitations on the receipt of gifts affect only State officers and employees. Rural areas are not affected in any way.

Job Impact Statement

A Job Impact Statement is not submitted with this Notice because the proposed rule-making will have no impact on jobs or employment opportunities. The New York State Commission on Public Integrity makes this finding based on the fact that the proposed rule-making applies to limitations on the receipt of gifts by State officers and employees only. It does not apply, nor relate to small businesses, economic development or employment opportunities.

Public Service Commission

NOTICE OF ADOPTION

Provision of Steam Service Under a Certificate of Public Convenience and Necessity

I.D. No. PSC-43-07-00025-A

Filing Date: 2010-07-23

Effective Date: 2010-07-23

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

Action taken: On 7/15/10, the PSC adopted an order directing that AG-Energy, L.P.’s lightened regulation of the steam service provided to the Office of Mental Health continue until express permission to do otherwise is obtained from the Commission.

Statutory authority: Public Service Law, section 83

Subject: Provision of steam service under a Certificate of Public Convenience and Necessity.

Purpose: To address AG-Energy, L.P.’s lightened regulation of the steam service provided to the Office of Mental Health.

Substance of final rule: The Commission, on July 15, 2010, adopted an order directing that AG-Energy, L.P.’s lightened regulation of the steam service provided to the Office of Mental Health continue until express permission to do otherwise is obtained from the Commission, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(07-S-1074SA1)

NOTICE OF ADOPTION

Transfer of Real Property with an Original Cost Under \$100,000 in the City of Glens Falls

I.D. No. PSC-23-08-00011-A

Filing Date: 2010-07-21

Effective Date: 2010-07-21

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

Action taken: On 7/15/10, the PSC adopted an order confirming Niagara Mohawk Power Corporation’s transfer of a parcel of property in Glens Falls, New York.

Statutory authority: Public Service Law, section 70

Subject: Transfer of real property with an original cost under \$100,000 in the City of Glens Falls.

Purpose: To approve the transfer of real property.

Substance of final rule: The Commission, on July 15, 2010, adopted an order confirming Niagara Mohawk Power Corporation's transfer of a parcel of property in Glens Falls, New York, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(08-M-0407SA1)

NOTICE OF ADOPTION

Water Rates and Charges

I.D. No. PSC-30-09-00016-A

Filing Date: 2010-07-22

Effective Date: 2010-07-22

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

Action taken: On 7/15/10, the PSC adopted an order denying National Aqueous Corporation's request to establish a one-time surcharge of \$588.81 to make water system improvements.

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

Subject: Water rates and charges.

Purpose: To deny National Aqueous Corporation's request to establish a one-time surcharge.

Substance of final rule: The Commission, on July 15, 2010, adopted an order denying National Aqueous Corporation's request to establish a one-time surcharge of \$588.81 to make water system improvements and directed the company to file a consecutively numbered supplement to be allowed to go into effect on short notice on July 31, 2010 cancelling its pending Escrow Account for Capital Improvements Statement No. 1, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(09-W-0543SA1)

NOTICE OF ADOPTION

Petition for the Submetering of Electricity

I.D. No. PSC-05-10-00012-A

Filing Date: 2010-07-21

Effective Date: 2010-07-21

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

Action taken: On 7/15/10, the PSC adopted an order approving the petition of West 147th Street Associates, LLC to submeter electricity at 220 West 148th Street (PS90 Condominium), New York, New York.

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

Subject: Petition for the submetering of electricity.

Purpose: To approve the petition of West 147th Street Associates, LLC to submeter electricity at 220 West 148th Street, New York, NY.

Substance of final rule: The Commission, on July 15, 2010, adopted an order approving the petition of West 147th Street Associates, LLC to submeter electricity at 220 West 148th Street (PS90 Condominium), New York, New York located in the territory of Consolidated Edison Company of New York, Inc., subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(09-E-0694SA1)

NOTICE OF ADOPTION

Amendments to PSC 1—Water, Effective May 1, 2010 and Postponed to August 1, 2010

I.D. No. PSC-07-10-00012-A

Filing Date: 2010-07-22

Effective Date: 2010-07-22

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

Action taken: On 7/15/10, the PSC adopted an order approving Bethel Water Company, Inc.'s amendments to PSC 1—Water, effective May 1, 2010 and postponed to August 1, 2010, to increase its tariff rates to produce additional annual revenues of \$3,514, or 10.48%.

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

Subject: Amendments to PSC 1—Water, effective May 1, 2010 and postponed to August 1, 2010.

Purpose: To approve an increase in tariff rates to produce additional annual revenues of \$3,514, or 10.48%.

Substance of final rule: The Commission, on July 15, 2010, adopted an order approving Bethel Water Company, Inc.'s amendments to PSC 1—Water, effective May 1, 2010 and postponed to August 1, 2010, to increase its tariff rates to produce additional annual revenues of \$3,514, or 10.48%, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(10-W-0045SA1)

NOTICE OF ADOPTION

Water Rates and Charges

I.D. No. PSC-18-10-00012-A

Filing Date: 2010-07-22

Effective Date: 2010-07-22

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

Action taken: On 7/15/10, the PSC adopted an order directing Emerald Green Lake Louise Marie Water Company, Inc. to cancel Rate Escalator Statement No. 1 no later than July 28, 2010, and to file Rate Escalator Statement No. 2.

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

Subject: Water rates and charges.

Purpose: To direct the cancellation of Rate Escalator Statement No. 1 no later than July 28, 2010, and to file tariff revisions.

Substance of final rule: The Commission, on July 15, 2010, adopted an order directing Emerald Green Lake Louise Marie Water Company, Inc. to cancel Rate Escalator Statement No. 1 no later than July 28, 2010, and to file Rate Escalator Statement No. 2, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(09-W-0537SA2)

NOTICE OF ADOPTION

Approve the Transfer of Ownership Interests in Electric and Steam Generation Facilities

I.D. No. PSC-20-10-00012-A

Filing Date: 2010-07-23

Effective Date: 2010-07-23

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

Action taken: On 7/15/10, the PSC adopted an order approving the petition of Alliance and Eagle Creek for the transfer of ownership interests in electric and steam generation facilities.

Statutory authority: Public Service Law, section 69

Subject: Approve the transfer of ownership interests in electric and steam generation facilities.

Purpose: To approve the transfer of ownership interests in electric and steam generation facilities.

Substance of final rule: The Commission, on June 17, 2010, adopted an order approving the petition of Alliance Energy Renewables LLC, AER NY-Gen LLC (AER), AG-Energy, L.P. (AGE), and Alliance Energy, New York LLC (collectively, Alliance), and Eagle Creek Hydro Power LLC, Eagle Creek Water Resources LLC, Eagle Creek Land Resources LLC, Eagle Creek Ogdensburg (LP) LLC, and Eagle Creek Ogdensburg (GP) LLC, (collectively, Eagle Creek)(all collectively, Petitioners) for the transfer of ownership interests in electric and steam generation facilities from Alliance to Eagle Creek, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(10-M-0182SA1)

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

St. Lawrence’s and Corning’s Small Commercial Energy Efficiency Portfolio Standard Program Proposals

I.D. No. PSC-32-10-00010-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 proposals from St.

Lawrence Gas Company, Inc.’s (St. Lawrence) and Corning Natural Gas Corp. (Corning) for utility-administered small commercial Energy Efficiency Portfolio Standard programs.

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

Subject: St. Lawrence’s and Corning’s small commercial Energy Efficiency Portfolio Standard program proposals.

Purpose: To consider St. Lawrence’s and Corning’s small commercial Energy Efficiency Portfolio Standard program proposals.

Substance of proposed rule: The Commission is considering whether to adopt, modify, or reject, in whole or in part, proposals set forth in separate petitions by St. Lawrence Gas Company, Inc. (St. Lawrence) and Corning Natural Gas Corporation (Corning). St. Lawrence submitted its original proposal entitled “St. Lawrence Gas Commercial Energy Efficiency Program Proposal” on July 20, 2010 and updated the proposal on July 21, 2010. Corning submitted its proposal entitled “Proposal for Commercial and Industrial Energy Efficiency Portfolio Standard (EEPS) Program” on July 26, 2010. Both companies propose implementation of their own Energy Efficiency Portfolio Standard small commercial heating, ventilation and air conditioning rebate program. In evaluating the proposals from Corning and St. Lawrence, the Commission could make decisions that impact other utilities’ EEPS programs.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.state.ny.us/f96dir.htm>. For questions, contact: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann_ayer@dps.state.ny.us

Data, views or arguments may be submitted to: Jaclyn A. Brillling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: Secretary@dps.state.ny.us

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

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

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

(07-M-0548SP25)

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

Utility-Administered Energy Efficiency Portfolio Standard Programs

I.D. No. PSC-32-10-00011-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 Central Hudson Gas and Elec. Corp.’s petition seeking rehearing of the June 24, 2010 Order in Cases 07-M-0548 and whether the relief sought therein should also apply to other Energy Efficiency Portfolio Standard programs.

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

Subject: Utility-Administered Energy Efficiency Portfolio Standard programs.

Purpose: To encourage cost effective energy conservation in New York.

Substance of proposed rule: The Public Service Commission is considering whether to adopt, in whole or in part, to reject, or to take other action regarding the petition submitted by Central Hudson Gas and Electric Corporation (Central Hudson) on July 23, 2010 seeking rehearing of the Commission’s June 24, 2010 Order Approving Three New Energy Efficiency Portfolio Standard (EEPS) Programs and Enhancing Funding and Making Other Modifications for Other EEPS Programs (Order). The Commission is also considering whether its resolution of the issues posed by Central Hudson’s petition should be applied to other utility-administered EEPS programs.

The Order approved Central Hudson’s proposed Home Energy Reporting program, a program that attempts to influence energy usage through communications with utility customers comparing their usage with that of other, similarly situated customers and providing information about steps they can take to reduce their energy consumption. The Commission previously approved a similar program for Niagara Mohawk Power Corporation. The Order also directed the Central Hudson to implement the program in a manner consistent with a June 11, 2009 letter from Office of Energy Efficiency and the Environment Director Floyd Barwig to the

EEPS Evaluation Advisory Group. That letter contained guidelines for the handling and non-disclosure of customer usage data by program administrators and program evaluators. Central Hudson's petition seeks relief from the requirement that the Home Energy Reporting program comply with the guidelines contained in the letter.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.state.ny.us/f96dir.htm>. For questions, contact: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann_ayer@dps.state.ny.us

Data, views or arguments may be submitted to: Jaclyn A. Brillling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: Secretary@dps.state.ny.us

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

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

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

(07-M-0548SP26)

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

Petition for the Submetering of Electricity

I.D. No. PSC-32-10-00012-P

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

Proposed Action: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by HANAC Astoria Housing Redevelopment Associates, LP to submeter electricity at 27-40 Hoyt Avenue, South Queens, New York.

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

Subject: Petition for the submetering of electricity.

Purpose: Consider the request of HANAC Astoria Housing Redevelopment Associates, LP to submeter electricity at 27-40 Hoyt Ave., So. Queens, NY.

Substance of proposed rule: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by HANAC Astoria Housing Redevelopment Associates, LP to submeter electricity at 27-40 Hoyt Avenue, South Queens, New York, located in the territory of Consolidated Edison Company of New York, Inc.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.state.ny.us/f96dir.htm>. For questions, contact: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann_ayer@dps.state.ny.us

Data, views or arguments may be submitted to: Jaclyn A. Brillling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: Secretary@dps.state.ny.us

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

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

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

(10-E-0338SP1)

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

Water Rates, Charges, Rules and Regulations

I.D. No. PSC-32-10-00013-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 an

investigation by Staff of the Department of Public Service of a complaint of Greentree Vacation Homes Homeowners Association against Greentree Water Company, Inc. concerning rates within the company's tariff.

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

Subject: Water rates, charges, rules and regulations.

Purpose: To investigate a consumer complaint with respect to the rates, charges, rules and regulations of Greentree Water Company, Inc.

Substance of proposed rule: On July 14, 2010, a petition was received from 25 or more customers of Greentree Water Company, Inc. (Greentree or company) seeking relief from the rates and charges within the company's tariff. As a result, Department of Public Service Staff initiated an investigation of the customer's complaints regarding the company's rates, charges, rules and regulations. The company provides metered water service to 92 residential customers and three non-residential customers, including a recreational facility, pool, and bathhouse operated by the Greentree Vacation Homes Homeowners Association, located in the Town of Thompson, Sullivan County. Fire protection service is not provided. The Commission may grant, deny or modify, in whole or in part, the relief requested by the petitioners, and 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.state.ny.us/f96dir.htm>. For questions, contact: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, NY 12223-1350, (518) 486-2655, email: leann_ayer@dps.state.ny.us

Data, views or arguments may be submitted to: Jaclyn A. Brillling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530, email: Secretary@dps.state.ny.us

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

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

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

(10-W-0346SP1)

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

Whether a Proposed Agreement for the Provision of Water Service by Saratoga Water Services, Inc. is in the Public Interest

I.D. No. PSC-32-10-00014-P

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

Proposed Action: The Public Service Commission is considering whether to approve, deny, or modify, in whole or in part, the petition of Saratoga Water Services, Inc. for a waiver of the company's tariff and approval of the terms of a service agreement.

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

Subject: Whether a proposed agreement for the provision of water service by Saratoga Water Services, Inc. is in the public interest.

Purpose: Whether the Commission should issue an order approving the proposed provision of water service.

Substance of proposed rule: The Commission is considering a Petition in which Saratoga Water Services, Inc. (Saratoga) seeks issuance of an Order (a) approving the terms and conditions of a certain "Agreement For The Provision of Water Service", dated April 8, 2008 (Agreement) between Saratoga and Malta Mobile Acres, Inc. as being in the public interest; (b) determining that the provision of water service by Saratoga in accordance with the terms set forth in the Agreement is in the public interest; (c) waiving Saratoga's tariff provisions to the extent they are inconsistent with the Agreement, and (d) waiving the applicability of the provisions of 16 N.Y.C.R.R. Parts 501 and 502 to the extent they are inconsistent with the Agreement. The Commission may grant, deny or modify, in whole or in part, the filings submitted, and 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.state.ny.us/f96dir.htm>. For questions, contact: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann_ayer@dps.state.ny.us

Data, views or arguments may be submitted to: Jaclyn A. Brillling, Secre-

tary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: Secretary@dps.state.ny.us
Public comment will be received until: 45 days after publication of this notice.

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

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
 (09-W-0541SP1)

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

Disposition of Legal Issues Raised in the Petition Regarding Submetering of Electricity at 63 Tiffany Place, Brooklyn, NY

I.D. No. PSC-32-10-00015-P

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

Proposed Action: The Commission is considering whether to grant, deny or modify, in whole or in part, request for stay of submetering, investigation, vacatur or modification of Order and remediation of alleged unlawful charges and practices at 63 Tiffany Place, Brooklyn.

Statutory authority: Public Service Law, sections 2(1), (2), (3), (4), (12), (13), 5(1), 22, 23(1), 30, 32(1) - (6), 35(1) - (2), 36(1) - (3), 37(1) - (2), 38(1) - (3), 39(1) - (3), 41(1) - (3), 42(1) - (2), 43(1) - (3), 44(1), (3), (5), 46, 47(1) - (2), 51, 53, 64, 65(1), (5), 66(1), (2), (27), 67(1), (3) and (4)

Subject: Disposition of legal issues raised in the petition regarding submetering of electricity at 63 Tiffany Place, Brooklyn, NY.

Purpose: Disposition of legal issues raised in the petition regarding submetering of electricity at 63 Tiffany Place, Brooklyn, NY.

Substance of proposed rule: The Public Service Commission is considering whether to grant, deny or modify, in whole or in part, a petition filed July 21, 2009 on behalf of Tiffany Mews Tenant Committee by the Public Utility Law project of New York, Inc. (PULP) seeking stay of submetering, investigation, vacatur or modification of the Commission Order granting a petition to submeter electricity issued in Case 91-E-0241 on September 27, 1991 and remediation of alleged unlawful charges, terms and conditions relating to electric submetering at 63 Tiffany Place, Brooklyn, New York. Upon review of PULP's July 21, 2009 petition (PULP Petition), the non-consumer complaint legal issues were transferred by the Secretary to the Commission to Case 91-E-0241 so that the Commission may address the legal issues, while the consumer complaint issues raised in these matters will remain with the Department of Public Service, Office of Consumer Services (OCS) and will continue to be addressed through the OCS process. The Public Service Commission will consider the following legal issues: 1) whether the Commission's Order in Case 91-E-0241 authorized Related Tiffany, L.P. (Related) to resell electricity to tenants; 2) whether Related and Tiffany Mews Limited Partnership (Tiffany Mews) were required to file a tariff or contract with the Commission for electric service; 3) whether Related or its predecessor should have disclosed to the Commission that the building would be electrically heated; 4) Whether Related or its predecessor failed to notify the Commission as to the reliability and accuracy of the submetering equipment to be used and whether the Commission failed to make a determination as to whether the submeters are approved; 5) whether the Commission's Order approving submetering allows for complaint resolution process that is contrary to HEFPA; 6) whether Related changed the complaint resolution process without Commission approval; 7) whether Related's lease provision deeming electricity "additional rent" and the practice of evicting tenants for non-payment is inconsistent with HEFPA; and, 8) whether Related unlawfully imposed time-of-use pricing on tenants without their consent. The Commission may apply any policy decision in this case to other cases involving submetering.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.state.ny.us/f96dir.htm>. For questions, contact: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann_ayer@dps.state.ny.us

Data, views or arguments may be submitted to: Jaclyn A. Brillinger, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: Secretary@dps.state.ny.us

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

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

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
 (91-E-0241SP2)

Racing and Wagering Board

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

Minimum Age of Persons Allowed to bet on Horse Racing

I.D. No. RWB-32-10-00002-P

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

Proposed Action: This is a consensus rule making to amend section 4009.8 of Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 101(1), 301(1), 520(1) and (3)

Subject: The minimum age of persons allowed to bet on horse racing.

Purpose: To make the minimum betting age of 21 found in Section 4009.8 of 9 NYCRR consistent with statutory betting age of 18.

Text of proposed rule: Section 4009.8 of 9 NYCRR is amended to read as follows:

4009.8 Minors may not purchase

No person known to be under the age of 18 [21] years shall be permitted to purchase a pari-mutuel ticket.

Text of proposed rule and any required statements and analyses may be obtained from: John Googas, New York State Racing & Wagering Board, One Broadway Center, Suite 600, Schenectady, New York 12305-2553, (518) 395-5400, email: info@racing.state.ny.us

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

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

Consensus Rule Making Determination

No person is likely to object to the rule as written because this amendment would make Board Rule 4009.8 consistent with Section 104 of the Racing, Pari-Mutuel Wagering and Breeding Law (RPWBL), and other pari-mutuel wagering rules, all of which sets 18 as the minimum age for betting at pari-mutuel thoroughbred tracks.

Board Rule 4009.8 states "No person known to be under the age of 21 shall be permitted to purchase a pari-mutuel ticket." This rule has been unchanged since September 5, 1974 when it was originally incorporated into the current rules. Previously, it was Rule 10.8 of Title 19. The statutory authority for that rule was Chapter 310 of the Laws of 1934, as amended.

RPWBL Section 104 states in applicable part: "No association or corporation which is licensed or franchised by the board shall permit any person who is actually and apparently under eighteen years of age to bet on a horse race conducted by it nor shall such person be permitted to bet at an establishment of a regional corporation conducting off-track betting."

Furthermore, Board Rule 4009.8 is also inconsistent with other rules that establish 18 as the minimum age for pari-mutuel wagering. Board Rules 4001.10 (betting at thoroughbred racetracks), 4122.6 (betting at harness tracks), 5204.10 (betting at OTB branch offices) and 5300.4(a)(1) [betting through account wagering] all set age 18 as the minimum age to bet.

Similarly, the minimum age to participate in charitable gaming and bingo is 18 (General Municipal Law sections 195-a and 486, respectively). The minimum age to purchase a New York State Lottery ticket is 18. (21 NYCRR Section 2801.27.)

In light of the need for consistency with statute and the minimum betting ages established for harness racing, off-track betting, charitable gaming, bingo and lottery, no person is likely to object to the rule as written.

Job Impact Statement

A job impact statement is not required because this amendment is ministerial in nature and seeks to correct an inconsistency between Board Rule 4008.9 and Section 104 of the Racing, Pari-Mutuel Wagering and Breeding Law. This rulemaking will not have a substantial adverse impact on jobs and employment opportunities because there will be no change

from present practice since 18 is the minimum age used at the thoroughbred tracks.

Currently, off-track betting corporations and racing associations that offer pari-mutuel wagering on thoroughbred horses follow the provisions of Section 104 of the Racing Law, which allows persons 18 and older to bet. Rule 4009.8 limits betting to persons 21 or older and is not being enforced in light of Section 104. This rule amendment is intended to eliminate confusion and make the rules consistent with law.

As is apparent from the nature and purpose of the rulemaking, this change will not adversely impact jobs, nor is it expected to create jobs.

Department of State

EMERGENCY RULE MAKING

Installation of Carbon Monoxide Alarms in Residential Buildings

I.D. No. DOS-32-10-00016-E

Filing No. 768

Filing Date: 2010-07-27

Effective Date: 2010-07-27

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

Action taken: Amendment of sections 1220.1 and 1225.1 of Title 19 NYCRR.

Statutory authority: Executive Law, sections 377(1), 378(1) and (5-a)

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

Specific reasons underlying the finding of necessity: Adoption of this rule on an emergency basis is required to preserve public safety by requiring the installation of carbon monoxide alarms in all one- and two-family dwellings, townhouse dwellings, dwelling accommodations in buildings owned as condominiums or cooperatives, and multiple dwellings, without regard to the date of construction or sale of such buildings, as required by Amanda's Law (Chapter 367 of the Laws of 2009), which will reduce the number of deaths and injuries caused by carbon monoxide poisoning and, in the words of the sponsor of the bill that became Amanda's Law, "create safer homes for New Yorkers."

Subject: Installation of carbon monoxide alarms in residential buildings.

Purpose: To implement Executive Law section 378(5-a), as amended by Chapter 367 of the Laws of 2009.

Substance of emergency rule: Provisions relating to the installation of carbon monoxide alarms in residential buildings are currently found in section RR313.4 of the Residential Code of New York State (the publication referred to and incorporated by reference in 19 NYCRR Part 1220) and section F611 of the Fire Code of New York State (the publication referred to and incorporated by reference in 19 NYCRR Part 1225). The current provisions require the installation of carbon monoxide alarms in one- and two-family dwellings, townhouses and dwelling accommodations in condominiums and cooperatives constructed or offered for sale after July 30, 2002 and in multiple dwellings constructed or offered for sale after August 9, 2005. This rule implements Amanda's Law (Chapter 367 of the Laws of 2009) by amending section RR313.4 of the Residential Code of New York State and section F611 of the Fire Code of New York State to require the installation of carbon monoxide alarms in all one- and two-family dwellings, townhouses, dwelling accommodations in condominiums and cooperatives, and multiple dwellings, without regard to the date of construction or sale.

The rule adds definitions of terms relevant to the carbon monoxide alarm provisions.

The requirements for newly building constructed after January 1, 2009 are summarized as follows:

(1) in one- and two-family dwellings, townhouses, dwelling units in condominiums and cooperatives constructed on or after January 1, 2008, a carbon monoxide alarm must be installed within each dwelling unit or sleeping unit, on each story where a sleeping area or a carbon monoxide source is located;

(2) in Group I-1 occupancies constructed on or after January 1, 2008, a carbon monoxide alarm must be installed on each story having a sleeping area and on each story where a carbon monoxide source is located;

(3) in Group R occupancies, nursery schools, bed and breakfasts, and multiple dwellings constructed on or after January 1, 2008 and not covered by (1) or (2), a carbon monoxide alarm must be installed in each dwelling unit or sleeping unit where a carbon monoxide source is located (and, in the case of a multiple-story dwelling unit or sleeping unit, on each story where a sleeping area or a carbon monoxide source is located), and in each dwelling unit or sleeping unit on the same story as a carbon monoxide source;

(4) all carbon monoxide alarms must be hard-wired to the building wiring and, where more than one alarm is required, the alarms must be interconnected; and

(5) carbon monoxide alarms shall be maintained in an operative condition at all times, shall be replaced or repaired where defective, and shall be replaced when they cease to operate as intended.

The requirements for buildings constructed prior to January 1, 2008 are summarized as follows:

(1) in one- and two-family dwellings, townhouses, dwelling units in condominiums and cooperatives constructed prior to January 1, 2008, a carbon monoxide alarm must be installed within each dwelling unit or sleeping unit, on the lowest story having a sleeping area;

(2) in Group I-1 occupancies constructed prior to January 1, 2008, a carbon monoxide alarm must be installed on each story having a sleeping area;

(3) in Group R occupancies, nursery schools, bed and breakfasts, and multiple dwellings constructed prior to January 1, 2008 and not covered by (1) or (2), a carbon monoxide alarm must be installed in each dwelling unit or sleeping unit where a carbon monoxide source is located (in the case of a multiple-story dwelling unit or sleeping unit, the alarm must be installed on the lowest story having a sleeping area), and in each dwelling unit or sleeping unit on the same story as a carbon monoxide source;

(4) battery operated, cord-type and direct-plug alarms may be used, and the alarms are not required to be interconnected; and

(5) Carbon monoxide alarms shall be maintained in an operative condition at all times, shall be replaced or repaired where defective, and shall be replaced when they cease to operate as intended.

In the case of a building of any age that has no commercial or on-site power source, the alarms must be battery operated and need not be interconnected.

Carbon monoxide alarms are not required if no carbon monoxide source is located in or attached to the building.

All carbon monoxide alarms must be listed and labeled as complying with UL 2034 or CAN/CSA 6.19, and must be installed in accordance with the manufacturer's installation instructions.

Carbon monoxide alarms shall not be removed or disabled, except for service or repair purposes.

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 October 24, 2010.

Text of rule and any required statements and analyses may be obtained from: Raymond J. Andrews, Department of State, 99 Washington Ave., Albany, NY 12231-0001, (518) 474-4073, email: Raymond.Andrews@dos.state.ny.us

Summary of Regulatory Impact Statement

1. STATUTORY AUTHORITY.

Executive Law section 377 section 377(1) authorizes the State Fire Prevention and Building Code Council to amend the provisions of the New York State Uniform Fire Prevention and Building Code ("Uniform Code") from time to time. Executive Law section 378(1) directs that the Uniform Code shall address standards for safety and sanitary conditions. Executive Law section 378(5-a), as amended by Chapter 367 of the Laws of 2009, provides that the Uniform Code must require one- and two-family dwellings, dwelling accommodations in a building owned as a condominium or cooperative, and multiple dwellings to be equipped with carbon monoxide alarms.

2. LEGISLATIVE OBJECTIVES.

Memoranda accompanying the bills that most recently amended subdivision (5 a) of Executive Law section 378 included the following justifications:

“This legislation is aimed at preventing more unnecessary deaths due to carbon monoxide poisoning. . . . As with smoke detector/fire alarms many years ago, carbon monoxide alarms have earned the respect of the fire service as a valuable tool in the saving of lives. Everyone recognizes that carbon monoxide kills if not responded to immediately. The most serious quality of CO is that, unlike smoke, it is virtually undetectable, even when someone is awake and alert. Chapter 257 of the laws of 2002 required carbon monoxide alarms be installed in one and two family dwellings and in condominiums and cooperatives that are constructed or sold in order to prevent the loss of life. . . . This bill requires multiple dwelling units of three or more families to install carbon monoxide alarms as well.”

“Current law requires residential dwellings that are constructed or offered for sale after July 30, 2002 to be updated with a carbon monoxide detector. This legislation would remove the construction and sale provisions, leaving it a new requirement that all homes regardless of construction or sale date be outfitted with a carbon monoxide detector. On January 17th, 2009 Amanda Hansen, a 16 year old from West Seneca, New York, died from carbon monoxide poisoning from a defective boiler while at a sleepover at her friend’s house. This legislation would create safer homes for New Yorkers and also prevent future tragedies from occurring.”

The Legislative objective sought to be achieved by this rule is a reduction in the number of deaths and injuries caused by CO poisoning.

3. NEEDS AND BENEFITS.

CO is an invisible, odorless gas that is generated by the incomplete combustion of carbonaceous fuels such as fuel oil, natural gas, kerosene and wood. CO poisoning results from displacement of oxygen in the blood supply by carboxyhaemoglobin, reducing oxygen supply to the brain. In non fire situations, elevated CO levels may be caused by improperly installed or maintained fuel fired appliances, motor vehicles operated in enclosed garages, or appliances intended for outdoor use being used indoors during power failures. As CO is not detectable by the senses, its presence and concentration can only be determined by instruments.

The rule provides that CO alarms shall be listed and labeled as complying with UL 2034 or CAN/CSA 6.19, the consensus standards for single and multiple station CO alarms in the United States and Canada. Listing of alarm devices ensures their safety and compliance with performance standards. The sensitivity standard in UL 2034 and CAN/CSA 6.19 is based on an alarm response to specified concentrations of CO (in parts per million) within specified time frames. These are based on limiting carboxyhaemoglobin saturation to 10 percent, which earlier studies indicated would have no significant effects on human subjects.

A number of different sources were reviewed to develop an estimate of the annual number of fatalities attributable to unintentional, non fire, building source CO poisoning. The sources reviewed contain estimates ranging between 200 and 1200, nationally. The sources include the U.S. Consumer Product Safety Commission (CPSC), California Air Resources Board, the Journal of the American Medical Association, the Morbidity and Mortality Weekly Report (published by the U.S. Centers for Disease Control) and studies by Dr. David Penney (Wayne State University School of Medicine). Extrapolating these data to New York State, excluding New York City, leads the Code Council to expect between 8 and 48 annual fatalities. Using specific coding in the Vital Statistics Death File prepared by its Bureau of Injury Prevention, the New York State Department of Health (DOH) estimates 14 fatalities annually.

In situations where CO poisoning does not result in death, it may cause significant injuries and long term health consequences. In an observation in Archives of Neurology (Vol. 57, No. 8, August 2000), Sohn et al noted the incidence of Parkinsonism and intellectual impairment in a married couple who experienced CO poisoning simultaneously. While it was noted that both individuals showed complete recovery after thirteen months, the observation is suggestive of additional potential consequences. It should also be noted that CPSC has estimated an average of 10,000 injuries or hospital emergency room visits annually from CO poisoning. Based solely on

population, New York State (excluding New York City) could experience approximately 400 injuries annually.

In an article in the American Journal of Forensic Medicine and Pathology (Vol. 10, No. 1, 1989), I. R. Hill notes that fine discriminatory functions begin to be impaired at 5 percent saturations, with significant decrements being noted at the 10 percent saturation level. Hill also notes that headaches occur at 20 to 30 percent saturation, and that nausea, dizziness and muscular weakness occur at 30 to 40 percent. Thus, CO poisoning will affect the judgment and capability of persons to evacuate or take other appropriate actions well before concentrations reach fatal levels.

4. COSTS.

The Uniform Code’s current requirements regarding the installation of CO alarms in newly constructed buildings have been in effect since January 1, 2008 (the effective date of the most recent major revision of the Uniform Code). Those requirements are continued without substantial change by this rule. Therefore, this rule imposes no new requirement on regulated parties who construct new buildings.

Under this rule, owners of residential buildings constructed prior to January 1, 2008 will also be required to install one or more CO alarms in the places specified in this rule. The requirements for buildings constructed prior to January 1, 2008 are summarized as follows:

(1) in one- and two-family dwellings, townhouses, dwelling units in condominiums and cooperatives constructed prior to January 1, 2008, a CO alarm must be installed within each dwelling unit or sleeping unit, on the lowest story having a sleeping area;

(2) in Group I-1 occupancies constructed prior to January 1, 2008, a CO alarm must be installed on each story having a sleeping area;

(3) in Group R occupancies, nursery schools, bed and breakfasts, and multiple dwellings constructed prior to January 1, 2008 and not covered by (1) or (2), a CO alarm must be installed in each dwelling unit or sleeping unit where a CO source is located (in the case of a multiple-story dwelling unit or sleeping unit, the alarm must be installed on the lowest story having a sleeping area), and in each dwelling unit or sleeping unit on the same story as a CO source;

(4) battery operated, cord-type and direct-plug alarms may be used, and the alarms are not required to be interconnected; and

(5) CO alarms shall be maintained in an operative condition at all times, shall be replaced or repaired where defective, and shall be replaced when they cease to operate as intended.

The initial capital costs of complying with the rule will include the cost of purchasing and installing the CO alarm(s). Cord or plug connected and battery operated CO alarms are available in home centers and over the internet for \$20 to \$50. Direct wired devices with interconnection capability cost up to \$80. Installation costs in new construction are estimated to be not more than \$50 per device. The annual costs of complying with this rule will include the cost of maintaining each alarm in operative condition, such maintenance to include cleaning the alarm and replacing of the alarm’s battery (typically once a year). In addition, most manufacturers recommend that their alarms be checked using the alarm’s “test” button on a periodic basis (typically once a week) and replaced on a periodic basis (typically once every five years).

There are no costs to the Department of State for the implementation of this rule. The Department is not required to develop any additional regulations or develop any programs to implement this rule.

There are no costs to the State of New York or to local governments for the implementation of the provisions to be added by this rule, except as follows:

First, if the State or any local government owns a one- and two-family dwelling, townhouse, dwelling unit in a condominium or cooperative, or multiple dwelling that is not now equipped with CO alarms, the State or such local government, as the case may be, will be required to install one or more CO alarms in the building.

Second, the authorities responsible for administering and enforcing the Uniform Code (typically, cities, towns, villages and, in some cases, counties) will have additional items to verify in the process of reviewing building permit applications, conducting construction inspections, and (where applicable) conducting periodic fire safety and property

maintenance inspections. However, the need to verify the installation of required CO alarms will not have a significant impact on the permitting process or inspection process.

5. PAPERWORK.

This rule imposes no new reporting requirements. No new forms or other paperwork will be required as a result of this rule.

6. LOCAL GOVERNMENT MANDATES.

This rule will not impose any new program, service, duty or responsibility upon any county, city, town, village, school district, fire district or other special district, except as follows:

First, any county, city, town, village, school district, fire district or other special district that owns a one- and two-family dwelling, townhouse, dwelling unit in a condominium or cooperative, or multiple dwelling that is not now equipped with CO alarms will be required to install one or more CO alarms in the building.

Second, cities, towns, villages and counties that administer and enforce the Uniform Code will be responsible for administering and enforcing the requirements of the rule along with all other provisions of the Uniform Code.

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

7. DUPLICATION.

The rule does not duplicate any existing Federal or State requirement.

8. ALTERNATIVES.

Consideration was given to adopting a rule requiring all CO alarms, including those to be installed in buildings constructed prior to January 1, 2008, to be hard wired and interconnected. This alternative was rejected as it would have unnecessarily increased the cost of bringing pre-2008 buildings into compliance with the new statutory mandate as set forth in subdivision (5 a) of section 378 of the Executive Law.

9. FEDERAL STANDARDS.

There are no standards of the Federal Government which address the subject matter of the rule. The U.S. Consumer Product Safety Commission does recommend installation of CO alarms.

10. COMPLIANCE SCHEDULE.

Regulated persons who own buildings constructed prior to 2008 will be able to comply with this rule by purchasing and installing readily available, battery operated CO alarms.

Requirements for installing CO alarms in newly constructed buildings have been in place since January 1, 2008 and are not changed by this rule. Regulated persons constructing new buildings will continue to be able to comply with this rule by installing hard-wired CO alarms as part of the construction process.

Regulatory Flexibility Analysis

1. EFFECT OF RULE:

The State Uniform Fire Prevention and Building Code (Uniform Code) currently requires that all residential buildings (one- and two-family dwellings, townhouses, dwelling accommodations in condominiums and cooperatives, and multiple dwellings) constructed after January 1, 2008, and certain residential buildings constructed prior to January 1, 2008, be equipped with one or more carbon monoxide alarms. This rule will amend the Uniform Code to require that all one- and two-family dwellings, all townhouses, all dwelling units in condominiums and cooperatives and all multiple dwellings, without regard to the date of construction or sale, be equipped with one or more carbon monoxide alarms. Therefore, this rule will affect any small business or local government that owns a residential building in which carbon monoxide alarms were not previously.

Since this rule adds provisions to the Uniform Code, each local government that is responsible for administering and enforcing the Uniform Code will be affected by this rule. The Department of State estimates that approximately 1,604 local governments (mostly cities, towns and villages, as well as several counties) are responsible for administering and enforcing the Uniform Code.

2. COMPLIANCE REQUIREMENTS:

No reporting or recordkeeping requirements are imposed upon regulated parties by the rule.

Since this rule amends the Uniform Code, local governments that administer and enforce the Uniform Code will be required to check for compliance with this rule when reviewing applications for building permits, when performing construction inspections, and when performing periodic fire safety and property maintenance inspections.

In addition, small businesses and local governments the own or construct one- and two-family dwellings, townhouses, dwelling units in condominiums and cooperatives, or multiple dwellings will be required to install, use and maintain carbon monoxide alarms in accordance with the rule's provisions. The requirements applicable to newly constructed buildings differ from the requirements applicable to existing buildings, and will be discussed separately.

Newly Constructed Buildings. The Uniform Code's current requirements regarding the installation of carbon monoxide alarms in newly constructed buildings have been in effect since January 1, 2008 (the effective date of the most recent major revision of the Uniform Code). Those requirements are continued without substantial change by this rule. Therefore, this rule imposes no new requirement on regulated parties who construct new buildings. The current requirements for newly constructed buildings (which are continued by this rule) are summarized as follows:

(1) in one- and two-family dwellings, townhouses, dwelling units in condominiums and cooperatives constructed on or after January 1, 2008, a carbon monoxide alarm must be installed within each dwelling unit or sleeping unit, on each story where a sleeping area or a carbon monoxide source is located;

(2) in Group I-1 occupancies constructed on or after January 1, 2008, a carbon monoxide alarm must be installed on each story having a sleeping area and on each story where a carbon monoxide source is located;

(3) in Group R occupancies, nursery schools, bed and breakfasts, and multiple dwellings constructed on or after January 1, 2008 and not covered by (1) or (2), a carbon monoxide alarm must be installed in each dwelling unit or sleeping unit where a carbon monoxide source is located (and, in the case of a multiple-story dwelling unit or sleeping unit, on each story where a sleeping area or a carbon monoxide source is located), and in each dwelling unit or sleeping unit on the same story as a carbon monoxide source;

(4) all carbon monoxide alarms must be hard-wired to the building wiring and, where more than one alarm is required, the alarms must be interconnected; and

(5) carbon monoxide alarms shall be maintained in an operative condition at all times, shall be replaced or repaired where defective, and shall be replaced when they cease to operate as intended.

Existing Buildings. Under this rule, owners of one- and two-family dwellings, townhouses, dwelling units in condominiums and cooperatives, and multiple dwellings constructed prior to January 1, 2008 will also be required to install one or more carbon monoxide alarms in the places specified in this rule. However, the current version of the Uniform Code requires the installation of carbon monoxide alarms in three major groups of pre-2008 buildings: (1) one- and two-family dwellings and townhouses which are more than three stories in height and which were constructed or offered for sale after June 30, 2002, (2) dwelling accommodations in condominiums and cooperatives constructed or offered for sale after June 30, 2002, and (3) multiple dwellings constructed or offered for sale after August 9, 2005. The requirements currently applicable to these three groups of pre-2008 buildings have been in effect since January 1, 2008. Those requirements are continued without substantial change by this rule. Therefore, this rule imposes no new requirement on buildings in these three groups.

The principal impact of this rule will be on regulated parties who own a residential building in which carbon monoxide alarms were not previously required, viz., (1) one- and two-family dwellings and townhouses which are not more than three stories in height and which were constructed prior to January 1, 2008, (2) one- and two-family dwellings and townhouses which are more than three stories in height, which were constructed prior to June 30, 2002 and which have not been offered for sale since June 30, 2002, (3) dwelling accommoda-

tions in condominiums and cooperatives which were constructed prior to June 30, 2002 and which have not been offered for sale since June 30, 2002, and (4) multiple dwellings which were constructed prior to August 9, 2005 and which were not offered for sale at any time since August 9, 2005. The requirements to be imposed by this rule on the buildings in the groups described in this paragraph will be identical to the existing requirements now imposed by the Uniform Code on the buildings in the groups described in the preceding paragraph. Those requirements are summarized as follows:

(1) in one- and two-family dwellings, townhouses, dwelling units in condominiums and cooperatives constructed prior to January 1, 2008, a carbon monoxide alarm must be installed within each dwelling unit or sleeping unit, on the lowest story having a sleeping area;

(2) in Group I-1 occupancies constructed prior to January 1, 2008, a carbon monoxide alarm must be installed on each story having a sleeping area;

(3) in Group R occupancies, nursery schools, bed and breakfasts, and multiple dwellings constructed prior to January 1, 2008 and not covered by (1) or (2), a carbon monoxide alarm must be installed in each dwelling unit or sleeping unit where a carbon monoxide source is located (in the case of a multiple-story dwelling unit or sleeping unit, the alarm must be installed on the lowest story having a sleeping area), and in each dwelling unit or sleeping unit on the same story as a carbon monoxide source;

(4) battery operated, cord-type and direct-plug alarms may be used, and the alarms are not required to be interconnected; and

(5) carbon monoxide alarms shall be maintained in an operative condition at all times, shall be replaced or repaired where defective, and shall be replaced when they cease to operate as intended.

3. PROFESSIONAL SERVICES:

No professional services will be required to comply with the rule.

4. COMPLIANCE COSTS:

The initial capital costs of complying with the rule will include the cost of purchasing and installing the carbon monoxide alarm(s). Cord or plug connected and battery operated carbon monoxide alarms are available in home centers and over the internet for \$20 to \$50. Direct wired devices with interconnection capability cost up to \$80. Installation costs in new construction are estimated to be not more than \$50 per device. Such costs are not likely to vary for small businesses or local governments of different types and differing sizes.

The annual costs of complying with this rule will include the cost of maintaining each alarm in operative condition, such maintenance to include cleaning the alarm and replacing of the alarm's battery (typically once a year). In addition, most manufacturers recommend that their alarms be checked using the alarm's "test" button on a periodic basis (typically once a week) and replaced on a periodic basis (typically once every five years).

5. 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.

6. MINIMIZING ADVERSE IMPACT:

The current requirements for the installation of carbon monoxide alarms in buildings constructed on or after January 1, 2008 (the effective date of the most recent overall revision of the Uniform Code) have been in effect since January 1, 2008 and are continued without substantial change by this rule. Thus, the principal impact of this rule will be on regulated parties (including small businesses or local governments) who own buildings constructed prior to January 1, 2008 and who will now be required to install carbon monoxide alarms in such buildings. The rule minimizes any potential adverse economic impact on such regulated parties by allowing for the installation of battery operated, cord-type or direct plug carbon monoxide alarms in buildings constructed prior to January 1, 2008, and by not requiring the alarms installed in such buildings to be interconnected.

The applicable statute (Executive Law section 378(5-a)) requires that this rule apply to all one- and two-family dwellings, townhouses, dwelling units in condominiums or cooperatives, and multiple

dwellings. The statute does not authorize the establishment of differing compliance requirements or timetables with respect to dwellings owned or operated by small businesses or local governments.

Providing exemptions from coverage by the rule was not considered because such exemptions are not authorized by Executive Law section 378(5-a) and would endanger public safety.

7. SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION:

The Department of State notified interested parties throughout the State of the proposed adoption of this rule by means of notices posted on the Department's website and notices published in Building New York, a monthly electronic news bulletin covering topics related to the Uniform Code and the construction industry which is prepared by the Department of State and which is currently distributed to approximately 7,000 subscribers, including local governments, design professionals and others involved in all aspects of the construction industry.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBERS OF RURAL AREAS.

This rule implements the provisions of subdivision (5-a) of section 378 of the Executive Law, as amended by Chapter 367 of the Laws of 2009, by adding provisions to the State Uniform Fire Prevention and Building Code (the Uniform Code) requiring that carbon monoxide (CO) alarms be installed in all one- and two-family dwellings, townhouses, dwelling units in condominiums and cooperatives, and multiple dwellings. Since the Uniform Code applies in all areas of the State (other than New York City), this rule will apply in all rural areas of the State.

2. REPORTING, RECORDKEEPING AND OTHER COMPLIANCE REQUIREMENTS.

The rule will not impose any reporting or recordkeeping requirements.

The rule will impose the following compliance requirement: owners of one- and two-family dwellings, townhouses, dwelling units in condominiums and cooperatives, and multiple dwellings will be required to install one or more carbon monoxide alarms in the places or places specified in this rule. The requirements applicable to newly constructed buildings differ from the requirements applicable to existing buildings, and will be discussed separately.

Newly Constructed Buildings. The Uniform Code's current requirements regarding the installation of carbon monoxide alarms in newly constructed buildings have been in effect since January 1, 2008 (the effective date of the most recent major revision of the Uniform Code). Those requirements are continued without substantial change by this rule. Therefore, this rule imposes no new requirement on regulated parties who construct new buildings. The current requirements for newly constructed buildings (which are continued by this rule) are summarized as follows:

(1) in one- and two-family dwellings, townhouses, dwelling units in condominiums and cooperatives constructed on or after January 1, 2008, a carbon monoxide alarm must be installed within each dwelling unit or sleeping unit, on each story where a sleeping area or a carbon monoxide source is located;

(2) in Group I-1 occupancies constructed on or after January 1, 2008, a carbon monoxide alarm must be installed on each story having a sleeping area and on each story where a carbon monoxide source is located;

(3) in Group R occupancies, nursery schools, bed and breakfasts, and multiple dwellings constructed on or after January 1, 2008 and not covered by (1) or (2), a carbon monoxide alarm must be installed in each dwelling unit or sleeping unit where a carbon monoxide source is located (and, in the case of a multiple-story dwelling unit or sleeping unit, on each story where a sleeping area or a carbon monoxide source is located), and in each dwelling unit or sleeping unit on the same story as a carbon monoxide source;

(4) all carbon monoxide alarms must be hard-wired to the building wiring and, where more than one alarm is required, the alarms must be interconnected; and

(5) carbon monoxide alarms shall be maintained in an operative condition at all times, shall be replaced or repaired where defective, and shall be replaced when they cease to operate as intended.

Existing Buildings. Under this rule, owners of one- and two-family dwellings, townhouses, dwelling units in condominiums and cooperatives, and multiple dwellings constructed prior to January 1, 2008 will also be required to install one or more carbon monoxide alarms in the places specified in this rule. However, the current version of the Uniform Code requires the installation of carbon monoxide alarms in three major groups of pre-2008 buildings: (1) one- and two-family dwellings and townhouses which are more than three stories in height and which were constructed or offered for sale after June 30, 2002, (2) dwelling accommodations in condominiums and cooperatives constructed or offered for sale after June 30, 2002, and (3) multiple dwellings constructed or offered for sale after August 9, 2005. The requirements currently applicable to these three groups of pre-2008 buildings have been in effect since January 1, 2008. Those requirements are continued without substantial change by this rule. Therefore, this rule imposes no new requirement on buildings in these three groups.

The principal impact of this rule will be on regulated parties who own a residential building in which carbon monoxide alarms were not previously required, viz., (1) one- and two-family dwellings and townhouses which are not more than three stories in height and which were constructed prior to January 1, 2008, (2) one- and two-family dwellings and townhouses which are more than three stories in height, which were constructed prior to June 30, 2002 and which have not been offered for sale since June 30, 2002, (3) dwelling accommodations in condominiums and cooperatives which were constructed prior to June 30, 2002 and which have not been offered for sale since June 30, 2002, and (4) multiple dwellings which were constructed prior to August 9, 2005 and which were not offered for sale at any time since August 9, 2005. The requirements to be imposed by this rule on the buildings in the groups described in this paragraph will be identical to the existing requirements now imposed by the Uniform Code on the buildings in the groups described in the preceding paragraph. Those requirements are summarized as follows:

(1) in one- and two-family dwellings, townhouses, dwelling units in condominiums and cooperatives constructed prior to January 1, 2008, a carbon monoxide alarm must be installed within each dwelling unit or sleeping unit, on the lowest story having a sleeping area;

(2) in Group I-1 occupancies constructed prior to January 1, 2008, a carbon monoxide alarm must be installed on each story having a sleeping area;

(3) in Group R occupancies, nursery schools, bed and breakfasts, and multiple dwellings constructed prior to January 1, 2008 and not covered by (1) or (2), a carbon monoxide alarm must be installed in each dwelling unit or sleeping unit where a carbon monoxide source is located (in the case of a multiple-story dwelling unit or sleeping unit, the alarm must be installed on the lowest story having a sleeping area), and in each dwelling unit or sleeping unit on the same story as a carbon monoxide source;

(4) battery operated, cord-type and direct-plug alarms may be used, and the alarms are not required to be interconnected; and

(5) carbon monoxide alarms shall be maintained in an operative condition at all times, shall be replaced or repaired where defective, and shall be replaced when they cease to operate as intended.

3. COMPLIANCE COSTS.

The initial capital costs of complying with the rule will include the cost of purchasing and installing the carbon monoxide alarm(s). Cord or plug connected and battery operated carbon monoxide alarms are available in home centers and over the internet for \$20 to \$50. Direct wired devices with interconnection capability cost up to \$80. Installation costs in new construction are estimated to be not more than \$50 per device. Such costs are not likely to vary for different types of public and private entities in rural areas.

The annual costs of complying with this rule will include the cost of maintaining each alarm in operative condition, such maintenance to include cleaning the alarm and replacing of the alarm's battery (typically once a year). In addition, most manufacturers recommend that their alarms be checked using the alarm's "test" button on a periodic basis (typically once a week) and replaced on a periodic basis (typically once every five years).

4. MINIMIZING ADVERSE IMPACT.

The current requirements for the installation of carbon monoxide alarms in buildings constructed on or after January 1, 2008 (the effective date of the most recent overall revision of the Uniform Code) have been in effect since January 1, 2008 and are continued without substantial change by this rule. Thus, the principal impact of this rule will be on regulated parties who own buildings constructed prior to January 1, 2008 and who will now be required to install carbon monoxide alarms in such building. The rule minimizes any potential adverse economic impact on such regulated parties by allowing for the installation of battery operated, cord-type or direct plug carbon monoxide alarms in buildings constructed prior to January 1, 2008, and by not requiring the alarms installed in such buildings to be interconnected.

The rule also permits the use of battery operated alarms in buildings without a commercial or on-site power source.

Executive Law section 378(5-a) makes no distinction between one- and two-family dwellings, townhouses, dwelling units in condominiums and cooperatives, and multiple dwellings located in rural areas and those located in non-rural areas. However, the impact of this rule in rural areas will be no greater than the impact of this rule in non-rural areas, and the ability of individuals or public or private entities located in rural areas to comply with the requirements of this rule should be no less than the ability of individuals or public or private entities located in non-rural areas.

Executive Law section 378(5-a) requires that this rule apply to all one- and two-family dwellings, townhouses, dwelling units in condominiums and cooperatives, and multiple dwellings. The statute does not authorize the establishment of differing compliance requirements or timetables in rural areas.

Providing exemptions from coverage by the rule was not considered because such exemptions are not authorized by Executive Law section 378(5-a) and would endanger public safety.

5. RURAL AREA PARTICIPATION.

The Department of State notified interested parties throughout the State of the proposed adoption of this rule by means of notices posted on the Department's website and notices published in Building New York, a monthly electronic news bulletin covering topics related to the Uniform Code and the construction industry which is prepared by the Department of State and which is currently distributed to approximately 7,000 subscribers, including local governments, design professionals and others involved in all aspects of the construction industry.

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" (as that term is defined in section 201-a of the State Administrative Procedures Act) in New York.

This rule amends the State Uniform Fire Prevention and Building Code (the Uniform Code) to require that all one- and two-family dwellings, townhouses, dwelling accommodations in condominiums and cooperatives, and multiple dwellings be equipped with carbon monoxide alarms. This amendment is required to satisfy the requirements of subdivision (5-a) of section 378 of the Executive Law, as amended by Chapter 367 of the Laws of 2009.

The Uniform Code has contained provisions requiring installation of carbon monoxide alarms in certain situations since at least 2002. The current requirements relating to installation of alarms in newly constructed buildings have been in effect since January 1, 2008, and are continued without substantial change by this rule. For newly constructed buildings, the carbon monoxide alarms will continue to be installed as part of the construction process.

Under the current version of the Uniform Code and under prior versions of the Uniform Code, an existing building that was not required to have carbon monoxide alarms installed at the time of construction would be required to have carbon monoxide alarms installed at the time the building was offered for sale. Under this rule, existing residential buildings will be required to have carbon monoxide alarms installed, even if they are not being offered for sale. However, potential adverse economic impact on regulated parties is minimized

by the provisions of the rule that allow the use of battery operated, cord-type or direct plug carbon monoxide alarms in buildings constructed prior to January 1, 2008, and by provisions that permit the use of battery operated carbon monoxide alarms in buildings without a commercial or on-site power source.

Once installed, the carbon monoxide alarms must be used and maintained in accordance with manufacturer's instructions.

Existing provisions in the Uniform Code require the installation of carbon monoxide alarms in newly constructed residential buildings. Those requirements are continued without substantial change by this rule. Therefore, this rule adds no new requirements relating to newly constructed buildings, and this rule should have no substantial adverse impact on jobs and employment opportunities related to the construction of new residential buildings.

The costs of purchasing, installing and maintaining the alarms is insignificant in comparison to the cost of purchasing, owning, and operating an existing residential building. Therefore, this rule should have no substantial adverse impact on sales, purchases, ownership or operation of existing residential buildings and, consequently, this rule should have no substantial adverse impact on jobs and employment opportunities related to the sale, purchase, ownership or operation of existing residential buildings.