

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.

Banking Department

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Payment of Interest on Commercial Bank Deposits

I.D. No. BNK-14-11-00004-P

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

Proposed Action: This is a consensus rule making to repeal Part 20 of Title 3 NYCRR.

Statutory authority: Banking Law, section 14

Subject: Payment of Interest on Commercial Bank Deposits.

Purpose: To repeal prohibition against certain banking organizations paying interest on demand accounts.

Text of proposed rule: It is proposed to repeal Part 20 of the General Regulations of the Banking Board, 3 NYCRR, as follows:

PART 20

PAYMENT OF INTEREST ON COMMERCIAL BANK DEPOSITS
[Repealed]

Text of proposed rule and any required statements and analyses may be obtained from: Sam L. Abram, Secretary of the Banking Board, New York State Banking Department, One State Street, New York, 10004-1417, (212) 709-1658, email: sam.abram@banking.state.ny.us

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

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

This action was not under consideration at the time this agency's regulatory agenda was submitted.

Consensus Rule Making Determination

No person is likely to object to the proposed repeal of Part 20. The regulation prohibits state chartered or licensed banks, trust companies, Article XII investment companies and branches and agencies of foreign banks from paying interest on demand accounts. Current federal law contains comparable prohibitions applicable to both state and federally licensed institutions. (See Federal Reserve Act Sec. 19 and Federal Reserve Regulation Q; Federal Deposit Insurance Act Section 18(g) and International Banking Act Sec. 3105).

However Section 627 of the federal Dodd-Frank Wall Street Reform and Consumer Protection Act repeals the existing federal prohibitions, effective July 21, 2011. The repeal of Part 20 will ensure continued competitive equality between state chartered or licensed institutions and institutions licensed by the federal government or other states. It will also ensure that New York depositors benefit fully from any increase in competition for demand deposits.

Job Impact Statement

Repealing Part 20, which prohibits state chartered or licensed banks, trust companies, Article XII investment companies and branches and agencies of foreign banks from paying interest on demand accounts, is not expected to have a significant adverse effect on jobs or employment activities within the banking industry.

Department of Correctional Services

NOTICE OF ADOPTION

Mental State of an Inmate at the Time of a Superintendent's (Tier III) Hearing

I.D. No. COR-03-11-00011-A

Filing No. 280

Filing Date: 2011-03-17

Effective Date: 2011-04-06

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

Action taken: Renumbering of sections 254.6(b)(1)(ii)-(viii) to 254.6(b)(1)(iii)-(ix); and addition of section 254.6(b)(1)(ii) to Title 7 NYCRR.

Statutory authority: Correction Law, section 112

Subject: Mental state of an inmate at the time of a Superintendent's (Tier III) hearing.

Purpose: To provide a designation that will indicate to the hearing officer that an inmate's mental health is at issue.

Text or summary was published in the January 19, 2011 issue of the Register, I.D. No. COR-03-11-00011-P.

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

Text of rule and any required statements and analyses may be obtained from: Maureen E. Boll, Deputy Commissioner and Counsel, New York State Department of Correctional Services, The Harriman State Campus - Building 2, 1220 Washington Avenue - Albany, NY 12226-2050, (518) 457-4951, email: Rules@docs.state.ny.us

Assessment of Public Comment

Since publication of the Notice of Proposed Rule Making, (COR-03-11-00001-P) in the *State Register* on January 19, 2011, the Department of Correctional Services (DOCS) received one comment in the form of a joint letter signed by three legal advocacy organizations that represented inmates in the lawsuit *Disability Advocates, Inc. v. New York State office of Mental Health, et al.* The comment is summarized below, followed by the department's response:

Comment: The addition of the "S" designation trigger is supported as it would result in additional opportunities for OMH clinicians to provide input during the inmate disciplinary process with the hope that this input may result in a reduction in the number and duration of confinement sanctions imposed against seriously mentally ill inmates.

Response: The amended regulation strikes the appropriate balance by seeking to obtain confidential OMH input regarding an inmate's mental condition in the course of some additional Tier III inmate disciplinary proceedings, while still promoting an effective system of adjudication for alleged serious violations of the Standards of Inmate Behavior, in the interest of promoting safe and secure environments for inmates, staff and visitors.

Education Department

EMERGENCY RULE MAKING

Appeals to Commissioner of Education Relating to New York City Charter School Location/Co-Location and Building Usage Plans

I.D. No. EDU-52-10-00012-E

Filing No. 296

Filing Date: 2011-03-22

Effective Date: 2011-03-22

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

Action taken: Amendment of Parts 275 and 276 of Title 8 NYCRR.

Statutory authority: Education Law, sections 101, 207, 305(1), (2), 310, 311 and 2853(3)(a-5); and L. 2010, ch. 101, section 15

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

Specific reasons underlying the finding of necessity: The proposed amendment is necessary to implement Chapter 101 of the Laws of 2010 by establishing procedures for expedited appeals relating to New York City charter school location/co-location and building usage plans brought pursuant to Education Law §§ 310 and 2853(3)(a-5). The statute provides for expedited Education Law § 310 appeals to the Commissioner of:

(1) determinations by the New York City School District to locate or co-locate a charter school within a public school building;

(2) implementation of and compliance with the building usage plan developed pursuant to Education Law § 2853(a-3); and

(3) revision of a building usage plan that is appealed on the grounds that the revision fails to meet the standards set forth in Education Law § 2853(3)(a-3)(2)(B), which requires the building usage plan to include a proposal for the collaborative usage of shared resources and spaces between the charter school and the non-charter schools which assures equitable access to the facilities in a similar manner and at reasonable times to non-charter school students as provided to charter school students.

Pursuant to the statute, petitions in such appeals must be dismissed, adjudicated or disposed of by the Commissioner within ten days of the receipt of the New York City School District's response. The proposed amendment merely modifies existing notice, service and filing requirements in Parts 275 and 276 of the Commissioner's Regulations to provide for such expedited appeals consistent with statutory requirements.

The proposed amendment was adopted as an emergency rule at the December 2010 Regents meeting, effective December 21, 2010. A Notice of Proposed Rule Making was published in the *State Register* on December 29, 2010.

The proposed amendment has been adopted as a permanent rule at the March 2011 Regents meeting. Pursuant to the State Administrative Procedure Act, the earliest the adopted rule can become effective is after its publication in the *State Register* on March 30, 2011. However, the emergency rule which took effect on December 21, 2010 will expire on March

21, 2011. The expiration of the emergency rule would disrupt the process for expedited appeals relating to New York City charter school location/co-location and building plans.

Therefore, a second emergency action is necessary for the preservation of the general welfare in order to ensure that the emergency rule adopted at the December 2010 Regents meeting remains continuously in effect until the effective date of its adoption as a permanent rule, in order to avoid disruption to the process for expedited appeals relating to New York City charter school location/co-location appeals and building usage plans brought pursuant to Education Law §§ 310 and 2853(3)(a-5), and decisions rendered therein.

Subject: Appeals to Commissioner of Education relating to New York City charter school location/co-location and building usage plans.

Purpose: Establish special procedures for appeals relating to New York City charter school location/co-location and building usage plans.

Substance of emergency rule: The Board of Regents has adopted an amendment of Parts 275 and 276 of the Commissioner's Regulations, as an emergency rule, effective March 22, 2011, relating to appeals concerning New York City charter school location/co-location and building usage plans brought pursuant to Education Law §§ 310 and 2853(3)(a-5). The following is a summary of the substance of the emergency rule.

Section 275.8(a) and (b) of the Commissioner's Regulations are amended to require that the memorandum of law in such appeals be served with the petition.

Section 275.9(a) is amended to require that pleadings and papers in such appeals be filed with the Department's Office of Counsel within the period specified in new section 276.11.

Section 275(a) is amended to provide that petitions in such appeal must contain the notice prescribed in section 276.11.

Section 275.13(a) is amended to provide that the time to answer in an expedited charter school location/co-location appeal shall be governed by Education Law section 2853(3)(a-5) and section 276.11.

Section 275.14(a) is amended to provide that a reply in an expedited charter school location/co-location appeal shall be served within the time prescribed by section 276.11.

Section 276.1(d) is added to provide that the provisions of section 276.1, relating to stay of proceedings, shall not apply to an expedited charter school location/co-location appeal.

Section 276.2(g) is added to provide that the provisions of section 276.2, relating to oral argument, shall not apply to an expedited charter school location/co-location appeal.

Section 276.4(a) is amended to provide that memoranda of law in expedited charter school location/co-location appeals shall be served and filed in the manner prescribed in section 276.11.

Section 276.8(f) is added to provide that the provisions of section 276.8, relating to reopening of a prior decision, shall not apply to an expedited charter school location/co-location appeal.

Section 276.11 is added to establish procedures in expedited charter school location/co-location appeals.

Section 276.11(a) sets forth definitions of "board of education" and "day."

Section 276.11(b) sets forth the applicability of the section. The procedures set forth in the section shall apply to appeals pursuant to Education Law § 2853(3)(a-5) from:

(1) final determinations of the board of education to locate or co-locate a charter school within a public school building;

(2) the implementation of, and compliance with, the building usage plan developed pursuant to Education Law § 2853(3)(a-3); and/or

(3) revisions of such a building usage plan on the grounds that such revision fails to meet the standards set forth in Education Law § 2853(3)(a-3)(2)(B). Except as provided in section 276.11, the procedures set forth in Part 275 and Part 276 shall govern the practice in such appeals. The initiation of an appeal shall not, in and of itself, effect a stay of any proceedings on the part of respondent and a stay order shall not be available in an expedited appeal pursuant to section 276.11.

Section 276.11(c) establishes requirements relating to the petition and notice of petition in such appeals. The petition shall be served in the manner prescribed in section 275.8(a) of this Title, together with all of petitioner's affidavits, exhibits and supporting papers and petitioner's memorandum of law, if any. The petition may not include any claims challenging actions other than determinations of the City School District of the City of New York to locate or co-locate a charter school within a public school building or the implementation of, and compliance with, the building usage plan developed pursuant to Education Law § 2853(a-3), or the revision of such a building usage plan, as set forth in subdivision (a) of this section. The petition must contain the notice prescribed in section 276.11. The failure to use the Notice of Petition required by this subdivision shall result in dismissal of the expedited appeal and the Commissioner may dismiss the appeal on such ground at any stage of the proceedings.

Section 276.11(d) establishes requirements for the filing of pleadings and papers. Within 1 day after the service of any pleading or paper, the original of any pleading or paper served under section 276.11, together with the affidavit of verification and an affidavit proving the service of a copy thereof, shall be transmitted to the Office of Counsel, New York State Education Department, State Education Building, Albany, NY 12234, by personal delivery, express mail delivery, or equivalent means reasonably calculated to assure receipt of such pleading or paper within 24 hours of service. The affidavit of service shall be in substantially the form set forth in section 275.9. The fee for filing the petition shall be as provided in section 275.9(c).

Section 276.11(e) establishes requirements relating to service of subsequent pleadings and supporting papers. An answer shall be served within 10 days of service of the petition and a reply to each affirmative defense raised in the answer shall be served within two days of service of the answer. The Commissioner, in his/her sole discretion, may excuse a failure to serve an answer or reply within the time prescribed herein for good cause beyond the control of the requesting party; the reasons for such failure shall be set forth in the answer or reply. Service of all subsequent pleadings and supporting papers shall be made by personal delivery or next day delivery by express mail or a private express delivery service, in accordance with the provisions of section 275.8(b); provided that, upon consent of the receiving party, service of subsequent pleadings and supporting papers may be made by electronic mail (e-mail) communication.

Section 276.11(f) establishes requirements relating to the memorandum of law. Memoranda of law, consisting of the parties' arguments of law, may be submitted by any party to an appeal. The petitioner shall serve and file any memorandum of law with the petition, and respondent shall serve and file any memorandum of law with the answer. The petitioner shall serve and file any reply memorandum of law with the reply.

Section 276.11(g) establishes requirements relating to the dismissal of claims. Any claims included in the petition in an expedited appeal in violation of 276.11(c)(1) shall be dismissed by the Commissioner without prejudice to commencing a non-expedited appeal pursuant to Education Law § 310, Part 275 of this Title and this Part within 10 days after receipt of the decision dismissing such claims. Any claims raised in a non-expedited appeal brought pursuant to Education Law § 310, Part 275 of this Title and Part 276 which challenge actions set forth in section 276.11(b)(1) shall be dismissed with prejudice unless the petitioner has waived the right to an expedited appeal in accordance with section 276.11(h).

Section 276.11(h) establishes procedures for waiver of an expedited appeal. The petitioner may intentionally waive the right to an expedited appeal pursuant to this section and opt to commence a non-expedited appeal pursuant to Education Law § 310, Part 275 of this Title and this Part. Such waiver shall be in writing and shall explicitly state that the right to an expedited appeal pursuant to Education Law § 2853(3)(a-5) and section 276.11 of the Regulations of the Commissioner is waived.

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-52-10-00012-P, Issue of December 29, 2010. The emergency rule will expire May 20, 2011.

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

Education Law section 101 continues the existence of the Education Department, with the Board of Regents as its head, and authorizes the Regents to appoint the Commissioner as chief administrative officer of the Department, which is charged with the general management and supervision of public schools and the educational work of the State.

Education Law section 207 authorizes the Regents and Commissioner to adopt rules and regulations implementing State law regarding education.

Education Law section 305(1) designates the Commissioner as chief executive officer of the State system of education and the Regents, and authorizes the Commissioner to enforce laws relating to the educational system and to execute the Regents' educational policies. Section 305(2) authorizes the Commissioner to have general supervision over schools subject to the Education Law.

Education Law section 310 provides that an aggrieved party may appeal by petition to the Commissioner of Education in consequence of certain specified actions by school districts and school officials.

Education Law section 311 authorizes the Commissioner to regulate the practice of appeals to the Commissioner brought pursuant to Education Law section 310.

§ 15 of Chapter 101 of the Laws of 2010 amended Education Law sec-

tion 2853(3) and added five new paragraphs (a-1) through (a-5) to, among other things, establish requirements for the location or co-location of a charter school in a public school building. Education Law § 2853(3)(a-5) provides for an expedited Education Law § 310 appeal to the Commissioner of:

(1) determinations by the New York City School District to locate or co-locate a charter school within a public school building;

(2) implementation of and compliance with the building usage plan developed pursuant to Education Law § 2853(a-3), that has been approved by the board of education pursuant to Education Law § 2590-g(1)(h) after satisfying the requirements of Education Law § 2590-h(2-a); and

(3) revision of a building usage plan approved by the board of education consistent with the requirements pursuant to Education Law § 2590-g(7), that is appealed on the grounds that the revision fails to meet the standards set forth in Education Law § 2853(3)(a-3)(2)(B).

2. LEGISLATIVE OBJECTIVES:

The proposed amendment is consistent with the authority conferred by the above statutes to regulate the practice and procedures to be followed in Education Law section appeals, and is necessary to implement Chapter 101 of the Laws of 2010 by establishing procedures for appeals relating to New York City charter school location/co-location and building usage plans brought pursuant to Education Law §§ 310 and 2853(3)(a-5).

3. NEEDS AND BENEFITS:

The proposed amendment is necessary to implement Chapter 101 of the Laws of 2010 by establishing procedures for expedited appeals relating to New York City charter school location/co-location and building usage plans brought pursuant to Education Law §§ 310 and 2853(3)(a-5). Education Law § 2853(3)(a-5) requires that petitions in such appeals must be dismissed, adjudicated or disposed of by the Commissioner within ten days of the receipt of the New York City School District's response. The proposed amendment modifies existing notice, service and filing requirements in Parts 275 and 276 of the Commissioner's Regulations, relating to appeals to the Commissioner pursuant to Education Law § 310, to provide for such expedited appeals consistent with statutory requirements. The proposed amendment establishes procedures that accommodate the extremely short time frames imposed by the statute, while assuring that due process is provided through procedures which are workable and fair to both parties.

4. COSTS:

Cost to the State: None.

Costs to local government: None.

Cost to private regulated parties: None.

Cost to regulating agency for implementation and continued administration of this rule: None.

The proposed amendment will not impose any costs on the State or local governments beyond those imposed by State law. The proposed amendment modifies existing notice, service and filing requirements in Parts 275 and 276 of the Commissioner's Regulations, relating to appeals to the Commissioner pursuant to Education Law § 310, to provide for expedited appeals relating to charter school location/co-location and building usage plans consistent with statutory requirements.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment will not impose any additional program, service, duty or responsibility beyond those imposed by State statutes. The proposed amendment is necessary to implement Chapter 101 of the Laws of 2010, by establishing procedures for appeals relating to charter school location/co-location and building usage plans brought pursuant to Education Law §§ 310 and 2853(3)(a-5). The proposed amendment modifies existing notice, service and filing requirements in Parts 275 and 276 of the Commissioner's Regulations, relating to appeals to the Commissioner pursuant to Education Law § 310, to provide for expedited appeals consistent with statutory requirements.

6. PAPERWORK:

The proposed amendment imposes no additional reporting, forms or other paperwork requirements. The proposed amendment modifies existing notice, service and filing requirements in Parts 275 and 276 of the Commissioner's Regulations, relating to appeals to the Commissioner pursuant to Education Law § 310, to provide for expedited appeals relating to New York City charter school location/co-location and building usage plans consistent with statutory requirements.

7. DUPLICATION:

The proposed amendment does not duplicate, overlap or conflict with State and Federal rules or requirements, and is necessary to implement Chapter 101 of the Laws of 2010, by establishing procedures for appeals relating to New York City charter school location/co-location and building usage plans brought pursuant to Education Law §§ 310 and 2853(3)(a-5).

8. ALTERNATIVES:

There were no significant alternatives. The proposed amendment is necessary to implement Chapter 101 of the Laws of 2010, by establishing

procedures for appeals relating to New York City charter school location/co-location and building usage plans brought pursuant to Education Law §§ 310 and 2853(3)(a-5).

9. FEDERAL STANDARDS:

The proposed amendment is necessary to implement Chapter 101 of the Laws of 2010, by establishing procedures relating to New York City charter school location/co-location and building usage plans brought pursuant to Education Law §§ 310 and 2853(3)(a-5). There are no applicable standards of the Federal government for the same or similar subject areas.

10. COMPLIANCE SCHEDULE:

It is anticipated that regulated parties will be able to achieve compliance with the provisions of the proposed amendment by its effective date.

Regulatory Flexibility Analysis

Small Businesses:

The proposed amendment relates to appeals to the Commissioner of Education pursuant to Education Law §§ 310 and 2853(3)(a-5) relating to New York City charter school location/co-location and building usage plans. Education Law § 2853(3)(a-5) requires that petitions in such appeals must be dismissed, adjudicated or disposed of by the Commissioner within ten days of the receipt of the New York City School District's response. The proposed amendment modifies existing notice, service and filing requirements in Parts 275 and 276 of the Commissioner's Regulations, relating to appeals to the Commissioner pursuant to Education Law § 310, to provide for such expedited appeals consistent with statutory requirements. The proposed amendment does not impose any adverse economic impact, reporting, record keeping or other compliance requirements on small businesses. Because it is evident from the nature of the proposed amendment that it does not affect small businesses, no further measures were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses is not required and one has not been prepared.

Local Governments:

EFFECT OF RULE:

The proposed amendment applies to the City School District of the City of New York.

COMPLIANCE REQUIREMENTS:

The proposed amendment does not impose any additional compliance requirements beyond those imposed by State law. The proposed amendment is necessary to implement Chapter 101 of the Laws of 2010, by establishing procedures for appeals relating to New York City charter school location/co-location and building usage plans brought pursuant to Education Law §§ 310 and 2853(3)(a-5). Education Law § 2853(3)(a-5) requires that petitions in such appeals must be dismissed, adjudicated or disposed of by the Commissioner within ten days of the receipt of the New York City School District's response. The proposed amendment modifies existing notice, service and filing requirements in Parts 275 and 276 of the Commissioner's Regulations, relating to appeals to the Commissioner pursuant to Education Law § 310, to provide for expedited appeals consistent with statutory requirements.

PROFESSIONAL SERVICES:

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

COMPLIANCE COSTS:

The proposed amendment does not impose any additional costs beyond those imposed by State law. The proposed amendment merely modifies existing notice, service and filing requirements in Parts 275 and 276 of the Commissioner's Regulations, relating to appeals to the Commissioner pursuant to Education Law § 310, to provide for expedited appeals consistent with statutory requirements.

ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

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

MINIMIZING ADVERSE IMPACT:

The proposed amendment does not impose any additional compliance requirements or compliance costs beyond those imposed by State law. The proposed amendment is necessary to implement Chapter 101 of the Laws of 2010, by establishing procedures for appeals of New York City charter school location/co-location and building usage plans brought pursuant to Education Law §§ 310 and 2853(3)(a-5). Education Law § 2853(3)(a-5) requires that petitions in such appeals must be dismissed, adjudicated or disposed of by the Commissioner within ten days of the receipt of the New York City School District's response. The proposed amendment modifies existing notice, service and filing requirements in Parts 275 and 276 of the Commissioner's Regulations, relating to appeals to the Commissioner pursuant to Education Law § 310, to provide for expedited appeals consistent with statutory requirements.

LOCAL GOVERNMENT PARTICIPATION:

A copy of the proposed amendment was provided to the New York City Department of Education for review and comment.

Rural Area Flexibility Analysis

The proposed amendment relates to appeals to the Commissioner of Education pursuant to Education Law §§ 310 and 2853(3)(a-5) relating to

New York City charter school location/co-location and building usage plans. Education Law § 2853(3)(a-5) requires that petitions in such appeals must be dismissed, adjudicated or disposed of by the Commissioner within ten days of the receipt of the New York City School District's response. The proposed amendment modifies existing notice, service and filing requirements in Parts 275 and 276 of the Commissioner's Regulations, relating to appeals to the Commissioner pursuant to Education Law § 310, to provide for such expedited appeals consistent with statutory requirements. The proposed amendment is applicable to the City School District of the City of New York and will not have an adverse impact on rural areas or impose reporting, recordkeeping or other compliance requirements on public or private entities in rural areas. Because it is evident from the nature of the proposed amendment that it does not affect rural areas or public or private entities in rural areas, no further measures were needed to ascertain that fact and none were taken. Accordingly, a rural area flexibility analysis is not required and one has not been prepared.

Job Impact Statement

The proposed amendment relates to appeals to the Commissioner of Education pursuant to Education Law §§ 310 and 2853(3)(a-5) relating to New York City charter school location/co-location and building usage plans. Education Law § 2853(3)(a-5) requires that petitions in such appeals must be dismissed, adjudicated or disposed of by the Commissioner within ten days of the receipt of the New York City School District's response. The proposed amendment modifies existing notice, service and filing requirements in Parts 275 and 276 of the Commissioner's Regulations, relating to appeals to the Commissioner pursuant to Education Law § 310, to provide for such expedited appeals consistent with statutory requirements. The proposed amendment will not have an adverse impact on jobs or employment opportunities. Because it is evident from the nature of the amendment that it will have 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.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Continuing Education for Certified Public Accountants and Public Accountants

I.D. No. EDU-14-11-00005-P

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

Proposed Action: Amendment of section 70.9 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207(not subdivided), 6501(not subdivided), 6502(not subdivided), 6504(not subdivided), 6507(not subdivided), 6508(not subdivided) and 7409(not subdivided)

Subject: Continuing education for Certified Public Accountants and Public Accountants.

Purpose: Requires the completion of continuing education requirements in ethics for CPA's and PA's be calculated on a calendar year basis.

Text of proposed rule: 1. Paragraph (5) of subdivision (b) of section 70.9 of the Regulations of the Commissioner of Education is amended, effective July 15, 2011, as follows:

(5) During each triennial registration period *ending on or before December 31, 2011*, a registered licensee who is subject to the continuing education requirement shall be required to complete at least four contact hours in professional ethics. *For each registration ending on or after January 1, 2012*, a registered licensee who is subject to the continuing education requirement shall be required to complete at least four contact hours in professional ethics during the prior three calendar year period. For registered licensees who complete the calendar year contact hour requirement in the manner described in subparagraph (i) of paragraph (1) of this subdivision, the four contact hours of professional ethics may be counted toward the annual contact hour requirement in the calendar year that they are taken. For registered licensees who complete the calendar year contact hour requirement in the manner described in subparagraph (ii) of paragraph (1) of this subdivision, the four contact hours of professional ethics may be counted toward the annual contact hour requirement in the year that they were completed if the hours in professional ethics were taken in the recognized subject area of the concentration.

Text of proposed 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) 474-3862, email: legal@mail.nysed.gov

Data, views or arguments may be submitted to: Frank Munoz, Deputy Commissioner, Office of the Professions, State Education Department, 89 Washington Avenue, 2M, Albany, NY 12234, (518) 474-1941, email: opdepcom@mail.nysed.gov

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

This action was not under consideration at the time this agency's regulatory agenda was submitted.

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 6504 of the Education Law authorizes the Board of Regents to supervise the admission to and regulation of the practice of the professions.

Subdivision (1) of section 6506 of the Education Law authorizes the Board of Regents to promulgate rules relating to the supervision of the practice of the professions.

Paragraph (a) of subdivision (2) of section 6507 of the Education Law authorizes the Commissioner of Education to promulgate regulations in administering the admission to and practice of the professions.

Paragraph (a) of subdivision (1) of section 7409 of the Education Law requires licensed certified public accountants and public accountants to complete continuing education as a condition for registration to practice in New York State.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment carries out the intent of the aforementioned statutes that the Commissioner of Education shall promulgate regulations establishing standards for mandatory continuing education in the profession of public accountancy.

3. NEEDS AND BENEFITS:

The current ethics continuing education requirement is aligned with the licensees' month of birth thereby creating thirty-six separate reporting periods over the three year registration period. The proposed amendment is needed to align the ethics continuing education requirement with the calendar year reporting requirement contained in § 7409 of the Education Law, as amended by chapter 651 of the Laws of 2008.

4. COSTS:

(a) Cost to State government: There are no additional costs.

(b) Cost to local government: There are no costs to local government.

(c) Cost to private regulated parties: There are no additional costs to private regulated parties.

(d) Costs to the regulatory agency: As stated above in "Costs to State Government," the proposed amendment will not impose any additional costs on SED.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment relates to the mandatory continuing education requirements for currently registered certified public accountants and public accountants. The amendment does not impose any programs, service, duty, or responsibility upon local governments.

6. PAPERWORK:

The amendment will not impose any other paperwork requirement.

7. DUPLICATION:

The proposed amendment does not duplicate any other existing State or Federal requirements, except as discussed below in the Federal Standards section.

8. ALTERNATIVES:

There are no viable alternatives to the proposed amendment and none were considered.

9. FEDERAL STANDARDS:

There are no Federal standards established in law for the subject matter of the proposed amendment.

10. COMPLIANCE SCHEDULE:

Regulated parties will be required to comply with the regulation as of January 1, 2012. The additional period of time is necessary to enable regulated parties to transition to the requirements of the regulation.

Regulatory Flexibility Analysis

The purpose of the proposed amendment to the Regulations of the Commissioner of Education is to modify the mandatory ethics continuing education reporting period that applies to currently registered certified public accountants and public accountants from a reporting period tied to an individual's registration period to one that is aligned with the calendar year.

The amendment does not regulate small businesses or local governments. It does not impose any reporting, recordkeeping, or other compliance requirements on small business or local governments, or have any adverse economic effect on them. Because it is evident from the nature of the proposed amendment that it does not adversely affect small businesses or local governments, no affirmative steps were needed to ascertain

that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses and local governments is not required and one has not been prepared.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed amendment will affect an estimated 3,005 certified public accountants and public accountants that are located in a rural county in New York State.

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

The proposed amendment will align the timing of the existing ethics continuing education requirement with the calendar year reporting requirement contained in § 7409 of Education Law, as amended by chapter 651 of the Laws of 2008, for all other public accountancy continuing education. The proposed amendment will not require regulated parties, including those that are located in rural areas of the State, to hire professional services to comply.

3. COSTS:

The amendment will not impose any additional costs on licensees, including those that are located in rural areas of the State.

4. MINIMIZING ADVERSE IMPACT:

The rule makes no exception for licensees who live or work in rural areas as there is not adverse impact on such licensees. The Department has determined that uniform standards and procedures for continuing education are necessary to ensure quality professional practice in all parts of the State. Because of the nature of the proposed amendment, alternative approaches for rural areas were not considered.

5. RURAL AREA PARTICIPATION:

The State Education Department solicited comments from the State Board for Public Accountancy, the New York State Society of Certified Public Accountants and the American Institute of Certified Public Accountants, all of which include members located in all areas of New York State, including rural areas of the State.

Job Impact Statement

The proposed amendment will align the timing of the existing ethics continuing education requirement with the calendar year reporting requirement contained in § 7409 of Education Law, as amended by chapter 651 of the Laws of 2008, for all other public accountancy continuing education. Because it is evident from the nature of the rule that it will have no impact on the number of jobs and number employment opportunities in public accounting or any other field, 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.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Continuing Education of Land Surveyors and Engineers

I.D. No. EDU-14-11-00006-P

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

Proposed Action: Amendment of sections 68.11 and 68.12 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207(not subdivided), 6504(not subdivided), 6507(2)(a), 7211(4) and 7212(4)

Subject: Continuing Education of Land Surveyors and Engineers.

Purpose: Requires mandatory continuing education in ethics for Engineers and Land Surveyors.

Text of proposed rule: 1. Subparagraph (i) of paragraph (1) of subdivision (c) of section 68.11 of the Regulations of the Commissioner of Education is amended, effective July 15, 2011, as follows:

(i) During each triennial registration period, meaning a registration period of three years' duration, an applicant for registration shall complete at least 36 hours of continuing education acceptable to the department, as defined in paragraph (3) of this subdivision, provided that at least 18 hours of such continuing education shall be in courses of learning, [and] no more than 18 hours of such continuing education shall be in other educational activities as prescribed in paragraph (3) of this subdivision, and at least one hour of such continuing education shall be in professional ethics. Any licensed professional engineer whose first registration date following January 1, 2004 occurs less than three years from that date, but on or after January 1, 2005, shall complete continuing education hours on a prorated basis at the rate of one hour of acceptable continuing education per month for the period beginning January 1, 2004 up to the first registration date thereafter. Such continuing education shall be completed during

the period beginning January 1, 2004 and ending before the first day of the new registration period or at the option of the licensee during any time in the previous registration period.

2. Clause (b) of subparagraph (ii) of paragraph (3) of subdivision (c) of section 68.11 of the Regulations of the Commissioner of Education is amended, effective July 15, 2011, as follows:

(b) Other educational activities. Acceptable continuing education shall be the following other educational activities, provided that no more than 18 hours of continuing education in a registration period shall consist of such other educational activities:

- (1) . . .
- (2) . . .
- (3) . . .
- (4) . . .

(5) completing a self-study program, meaning structured study, provided by a sponsor approved pursuant to subdivision (i) of this section, that is based on audio, audio-visual, written, on-line, and other media, and does not include live instruction, transmitted in person or otherwise, during which the student may communicate and interact with the instructor and other students; [and]

(6) completing an educational tour, meaning a structured tour of an instructional nature provided by a sponsor approved pursuant to subdivision (i) of this section; and

(7) serving on any committee or task force that addresses technical and/or regulatory issues relating to the professional practice of engineering, provided that such committee or task force has been established by a governmental entity, professional association, or other entity determined by the department, with assistance from the State Board for Engineering and Land Surveying, to be acceptable. Continuing education hours that may be credited for this activity shall be one hour of credit for every two hours of service while engaged in activities directly related to professional practice. To be acceptable for continuing education credit, such service must be certified in writing by an authorized individual within the committee or task force and approved by the department. No more than nine hours of such continuing education may be included during each registration period.

3. Subparagraph (i) of paragraph (1) of subdivision (c) of section 68.12 of the Regulations of the Commissioner of Education is amended, effective July 15, 2011, as follows:

(i) During each triennial registration period, meaning a registration period of three years' duration, an applicant for registration shall complete at least 24 hours of continuing education acceptable to the department, as defined in paragraph (2) of this subdivision, provided that at least 16 hours of such continuing education shall be in courses of learning, [and] no more than eight hours of such continuing education shall be in other educational activities as prescribed in paragraph (2) of this subdivision, including but not limited to self-study programs, and at least one hour of such continuing education shall be in professional ethics. Any licensed land surveyor whose first registration date following January 1, 2004 occurs less than three years from that date, but on or after January 1, 2005, shall complete continuing education hours on a prorated basis at the rate of one hour of acceptable continuing education per month, up to a maximum of 24 continuing education hours, for the period beginning January 1, 2004 up to the first registration date thereafter. Such continuing education shall be completed during the period beginning January 1, 2004 and ending before the first day of the new registration period or at the option of the licensee during any time in the previous registration period.

4. Clause (b) of subparagraph (ii) of paragraph (2) of subdivision (c) of section 68.12 of the Regulations of the Commissioner of Education is amended, effective July 15, 2011, as follows:

(b) Other educational activities. Acceptable continuing education shall be the following other educational activities, provided that no more than eight hours of continuing education in a registration period shall consist of such other educational activities, including but not limited to self-study programs:

- (1) . . .
- (2) . . .
- (3) . . .
- (4) . . .

(5) completing a self-study program, meaning structured study, provided by a sponsor approved pursuant to subdivision (i) of this section, that is based on audio, audio-visual, written, on-line, and other media, and does not include live instruction, transmitted in person or otherwise, during which the student may communicate and interact with the instructor and other students; [and]

(6) completing an educational tour, meaning a structured tour of an instructional nature provided by a sponsor approved pursuant to subdivision (i) of this section; and

(7) serving on any committee or task force that addresses technical and/or regulatory issues relating to the professional practice of

land surveying, provided that such committee or task force has been established by a governmental entity, professional association, or other entity determined by the department, with assistance from the State Board for Engineering and Land Surveying, to be acceptable. Continuing education hours that may be credited for this activity shall be one hour of credit for every two hours of service while engaged in activities directly related to professional practice. To be acceptable for continuing education credit, such service must be certified in writing by an authorized individual within the committee or task force and approved by the department. No more than nine hours of such continuing education may be included during each registration period.

Text of proposed 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) 474-3862, email: legal@mail.nysed.gov

Data, views or arguments may be submitted to: Frank Munoz, Deputy Commissioner, Office of the Professions, State Education Department, 89 Washington Avenue, 2M, Albany, NY 12234, (518) 474-1941, email: opdepcom@mail.nysed.gov

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

This action was not under consideration at the time this agency's regulatory agenda was submitted.

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 6504 of the Education Law authorizes the Board of Regents to supervise the admission to and regulation of the practice of the professions.

Paragraph (a) of subdivision (2) of section 6507 of the Education Law authorizes the Commissioner of Education to promulgate regulations in administering the admission to and the practice of the professions.

Subdivision (4) of section 7211 of the Education Law authorizes the Commissioner of Education to prescribe in regulations standards for mandatory continuing education for professional engineers.

Subdivision (4) of section 7212 of the Education Law authorizes the Commissioner of Education to prescribe in regulations standards for mandatory continuing education for land surveyors.

2. LEGISLATIVE OBJECTIVES:

The proposed amendments carry out the intent of the aforementioned statutes by establishing standards for acceptable continuing education requirements in the professions of land surveying and engineering as authorized by statute.

3. NEEDS AND BENEFITS:

The proposed amendments relate to the mandatory continuing education requirements for those individuals who are engaged in the practices of engineering and land surveying.

The proposed amendments to sections 68.11(c)(1)(i) and 68.12(c)(1)(i) of the Regulations of the Commissioner would require mandatory continuing education in ethics. Within each three-year registration period, licensees would be expected to earn at least one continuing education credit by participating in an approved continuing education course or "other educational activity" that focuses substantially on ethics relating to professional practice. The public engages design professionals because they trust that the practitioner will provide competent and independent professional services in an ethical manner. There is currently a renewed focus nationally on the core values of these professions, and this amendment will benefit the public by increasing the design professionals' knowledge of ethical standards for the professions.

The proposed amendments to sections 68.11(c)(3)(ii)(b) and 68.12(c)(2)(ii)(b) of the Regulations of the Commissioner would add an additional activity through which a licensee may meet the mandatory continuing education requirements. Individuals would be permitted to earn up to nine continuing education hours over a three-year registration period for professional service on a committee or task force that addresses technical and/or regulatory issues relating to the professional practice of engineering, provided that such committee or task force has been established by a governmental entity, professional association, or other entity determined by the department, with assistance from the State Board for Engineering and Land Surveying, to be acceptable. One hour of credit would be granted for every two hours of time spent in formal collaborative sessions of such committees, while engaged in activities directly related to professional practice, such as developing and interpreting industry standards and related technical information for code officials. To be acceptable for continuing education credit, such service would have to be certified in writing by an authorized individual within the organization. Such continuing education credits would be categorized as "other educational activities," which include all types of permitted continuing education

other than courses of learning and cannot total more than 18 continuing education hours in any registration period. This change would more closely align the New York State requirements for mandatory continuing education with current national standards established by the National Council of Examiners for Engineering and Surveying.

4. COSTS:

(a) Costs to State government: The amendment will not impose any additional cost on State government. The State Education Department will continue to review documentation relating to the continuing education requirements. Existing staff and resources of the State Education Department will be used for these tasks.

(b) Costs to local government: None.

(c) Costs to private regulated parties: None. The proposed amendments will not impose any additional costs on the applicants for licensure in engineering and/or land surveying or licensees in these fields.

(d) Cost to the regulatory agency: As stated above in Costs to State Government, the proposed amendment does not impose costs on the State Education Department.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendments do not impose any program, service, duty or responsibility upon local governments.

6. PAPERWORK:

The proposed amendments do not impose any additional paperwork requirements on regulated parties.

7. DUPLICATION:

The proposed amendments do not duplicate other existing State or Federal requirements.

8. ALTERNATIVES:

There are no viable alternatives to the proposed amendments, and none were considered.

9. FEDERAL STANDARDS:

There are no Federal standards in the subject matter of the proposed amendments.

10. COMPLIANCE SCHEDULE:

The proposed amendments must be complied with on their effective date. No additional period of time is necessary to enable regulated parties to comply.

Regulatory Flexibility Analysis

The proposed amendments set forth continuing education requirements applicable to individuals who are engaged in the practice of engineering or land surveying. The proposed amendments do not regulate small businesses or local governments. They establish requirements applicable to individuals who are licensed professionals.

Because it is evident from the nature of the proposed amendments they do not affect small businesses or local governments, no further steps were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis is not required and one has not been prepared.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed regulation will apply to 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. All 24,968 licensed professional engineers and all 1,482 licensed land surveyors who are registered to practice in New York would be subject to the requirements of the proposed regulation. Of these, 3,240 professional engineers and 609 land surveyors reported that their permanent address of record is in a rural county.

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

The Regulations of the Commissioner of Education would be amended to add another activity to those that a licensee may undertake to meet mandatory continuing education requirements in engineering and land surveying. This amendment permits the licensee to participate on certain committees or task forces that addresses technical and/or regulatory issues in New York State that influence the professional practice of engineering and land surveying. The Commissioner's Regulations would also be amended to require individuals licensed in engineering and land surveying to participate in at least one hour of continuing education study in professional ethics during each triennial registration period.

The proposed regulations do not impose a need for professional services and does not establish additional reporting or recordkeeping requirements.

3. COSTS:

The proposed regulations do not impose additional costs on applicants or licensees in professional engineering or land surveying, including those located in rural areas of New York State.

4. MINIMIZING ADVERSE IMPACT:

The proposed amendments set forth continuing education requirements in the professions of engineering and land surveying. The amendments

would provide additional flexibility in the types of activities in which such professionals may engage in order to satisfy their continuing education requirements. Because the proposed amendments establish requirements designed to ensure the competent practice of engineering and land surveying in New York State, the Department has determined that these requirements should apply to all licensed professional engineers and land surveyors, regardless of their geographic location. Because of the nature of the proposed regulations, alternative approaches for rural areas were not considered.

5. RURAL AREA PARTICIPATION:

Comments on the proposed amendment were solicited from statewide organizations representing all parties having an interest in the practice of engineering and land surveying. Included in this group were the State Board for Engineering and Land Surveying and professional associations representing the engineering and land surveying professions. These groups have members who live or work in rural areas.

Job Impact Statement

The proposed amendments set forth continuing education requirements applicable to individuals who are engaged in the practice of engineering and land surveying. It establishes continuing education standards in accordance with statutory directives, specifying acceptable continuing education that would meet the statutorily prescribed mandatory continuing education requirements. The proposed amendments will have no effect on the number of jobs and employment opportunities in land surveying, engineering or any other field.

Because it is evident from the nature of the proposed amendments that they will have no impact on jobs and 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.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Local High School Equivalency Diplomas Based Upon Experimental Programs

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

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

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

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

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

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

Text of proposed rule: Section 100.8 of the Regulations of the Commissioner of Education is amended, effective June 8, 2011, as follows:

100.8 Local high school equivalency diploma.

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

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

Data, views or arguments may be submitted to: Kevin G. Smith, Deputy Commissioner, Office of Adult Career and Continuing Education Services, Room 1606, One Commerce Plaza, Albany, NY 12234, (518) 474-2714

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

This action was not under consideration at the time this agency's regulatory agenda was submitted.

Regulatory Impact Statement

I. STATUTORY AUTHORITY:

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

Education Law section 207 empowers the Board of Regents and the

Commissioner to adopt rules and regulations to carry out laws of the State regarding education and the functions and duties conferred on the Department by law.

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

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

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

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

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

2. LEGISLATIVE OBJECTIVES:

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

3. NEEDS AND BENEFITS:

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

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

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

4. COSTS:

- (a) Costs to State government: None.
- (b) Costs to local government: None.
- (c) Costs to private regulated parties: None.

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

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

5. LOCAL GOVERNMENT MANDATES:

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

6. PAPERWORK:

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

7. DUPLICATION:

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

8. ALTERNATIVES:

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

9. FEDERAL STANDARDS:

There are no related federal standards in this area.

10. COMPLIANCE SCHEDULE:

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

Regulatory Flexibility Analysis

Small Businesses:

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

Local Governments:

1. EFFECT OF RULE:

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

2. COMPLIANCE REQUIREMENTS:

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

3. PROFESSIONAL SERVICES:

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

4. COMPLIANCE COSTS:

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

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

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

6. MINIMIZING ADVERSE IMPACT:

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

7. LOCAL GOVERNMENT PARTICIPATION:

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

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed amendment applies to all school districts and boards of cooperative educational services (BOCES) that are specified by the Commissioner to award a local high school equivalency diploma based upon experimental programs approved by the Commissioner, including those located in the 44 rural counties with less than 200,000 inhabitants and the

71 towns in urban counties with a population density of 150 per square mile or less. The proposed amendment will ensure that all current National External Degree Program (NEDP) students in the approximately 20 program sites across the State are provided with an opportunity to complete their programs and earn a local high school equivalency diploma. Of these 20 sites, 12 are in rural areas.

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

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

3. COMPLIANCE COSTS:

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

4. MINIMIZING ADVERSE IMPACT:

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

5. RURAL AREA PARTICIPATION:

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

Job Impact Statement

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

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

Public School and School District Accountability - Annual Measurable Objectives (AMO)

I.D. No. EDU-14-11-00008-P

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

Proposed Action: Amendment of section 100.2(p)(14) of Title 8 NYCRR.

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

Subject: Public school and school district accountability - annual measurable objectives (AMO).

Purpose: To reset AMO for grades 3-8 English language arts (ELA) and mathematics beginning in the 2010-2011 school year.

Text of proposed rule: Paragraph (14) of subdivision (p) of section 100.2 of the Regulations of the Commissioner of Education is amended, effective July 15, 2011, as follows:

(14) Public school, school district and charter school accountability performance criteria. Each district and school accountability group, as defined in subparagraph (1)(i) of this subdivision shall be subject to the performance criteria specified below:

- (i) . . .
- (ii) . . .
- (iii) Elementary-middle level English language arts. Annual measurable objectives, based on a performance index, set by the commissioner in 2005-2006 and, beginning in 2008-2009, increasing annually in equal increments *through 2009-2010 and then reset at 122 in 2010-2011*

and increasing annually in equal increments so as to reach 200 in 2013-2014.

(iv) . . .

(v) . . .

(vi) Elementary-middle level mathematics. Annual measurable objectives, based on a performance index, set by the commissioner in 2005-2006 and, beginning in 2008-2009, increasing annually in equal increments *through 2009-2010 and then reset at 137 in 2010-2011 and increasing annually in equal increments so as to reach 200 in 2013-2014.*

(vii) . . .

(viii) . . .

(ix) . . .

Text of proposed rule and any required statements and analyses may be obtained from: Chris Moore, State Education Department, Office of Counsel, State Education Building, Room 148, 89 Washington Ave., Albany, NY 12234, (518) 473-4921, email: legal@mail.nysed.gov

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

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

This action was not under consideration at the time this agency's regulatory agenda was submitted.

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

Education Law section 101 continues the existence of the Education Department, with the Board of Regents as its head, and authorizes the Regents to appoint the Commissioner of Education as the Department's Chief Administrative Officer, which is charged with the general management and supervision of all public schools and the educational work of the State.

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

Education Law section 210 authorizes the Regents to register domestic and foreign institutions in terms of State 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 the State.

Education Law section 215 authorizes the Commissioner to require schools and school districts to submit reports containing such information as the Commissioner shall prescribe.

Education Law section 305(1) and (2) provide the Commissioner, as chief executive officer of the State's education system, with general supervision over all schools and institutions subject to the Education Law, or any statute relating to education, and responsibility for executing all educational policies of the Regents. Section 305(20) provides the Commissioner shall have such further powers and duties as charged by the Regents.

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

Education Law section 3713(1) and (2) authorize the State and school districts to accept federal law making appropriations for educational purposes and authorize the Commissioner to cooperate with federal agencies to implement such law.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment is consistent with the authority conferred by the above statutes, and is necessary to establish criteria and procedures to ensure State and local educational agency (LEA) compliance with the provisions of the federal No Child Left Behind Act of 2001 (NCLB), Public Law section 107-110, relating to academic standards and school and school district accountability. The State and LEAs are required to comply with the NCLB as a condition to their receipt of federal funds under Title I of the Elementary and Secondary Education Act of 1965, as amended (ESEA).

The proposed amendment conforms the Commissioner's Regulations with recent amendments to the State's accountability plan that reset New York's annual measurable objective (AMO) for grades 3-8 English language arts (ELA) and mathematics beginning in the 2010-11 school year, as prescribed in New York's approved accountability workbook. The AMOs are used in determining whether adequate yearly progress is being met for purposes of ensuring school and school district accountability.

3. NEEDS AND BENEFITS:

The purpose of the proposed amendment is to conform the Commissioner's Regulations to New York State's approved amended accountability plan, as approved by the United States Department of Education

(USDE). Adoption of the proposed amendment is necessary in order for New York to smoothly transition to the higher achievement standards for grades 3-8 in ELA and mathematics that have been established beginning with the 2009-2010 school year assessment results.

NCLB section 1111(b)(2) requires each state that receives funds to demonstrate, as part of its State Plan, that the state has developed and is implementing a single, statewide accountability system to ensure that all LEAs, public elementary schools and public high schools make adequate yearly progress (AYP). Each state must implement a set of yearly student academic assessments in specified subject areas that will be used as the primary means of determining the yearly performance of the state and each LEA and school in the state is enabling all children to meet the state's academic standards. The State and LEAs are required to comply with the NCLB as a condition to their receipt of federal funds under Title I of the Elementary and Secondary Education Act of 1965, as amended (ESEA).

On February 14, 2011, the Assistant Secretary of the Office of Elementary and Secondary Education of the USDE, informed Commissioner Steiner that USDE had approved New York's request to amend its State accountability plan under Title I of the ESEA, as amended by the NCLB, to reset New York's AMO for grades 3-8 ELA and mathematics beginning in the 2010-11 school year, as prescribed in New York's approved accountability workbook. As a result, New York was approved to reset the AMO to a Performance Index of 122 for ELA and a Performance Index of 137 for mathematics for 2010-11, and increasing annually in equal increments so as to reach 200 in 2013-14. The AMOs are used in determining whether adequate yearly progress is being met for purposes of ensuring school and school district accountability.

4. COSTS:

Cost to the State: None.

Costs to local government: None.

Cost to private regulated parties: None.

Cost to regulating agency for implementation and continued administration of this rule: None.

The proposed amendment does not impose any costs on the State, local governments or private regulated parties beyond those imposed by State and Federal statutes. The proposed amendment conforms the Commissioner's Regulations with recent amendments to New York's State accountability plan, as approved by the USDE, that reset New York's annual measurable objective (AMO) for grades 3-8 English language arts (ELA) and mathematics beginning in the 2010-11 school year, as prescribed in New York's approved accountability workbook. The AMOs are used in determining whether adequate yearly progress is being met for purposes of ensuring school and school district accountability under the federal No Child Left Behind Act (NCLB), Public Law section 107-110. The State and local educational agencies (LEAs) are required to comply with the NCLB as a condition to their receipt of federal funds under Title I of the Elementary and Secondary Education Act of 1965 (ESEA), as amended.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment will not impose any additional program, service, duty or responsibility beyond those imposed by State and federal statutes. The proposed amendment is necessary to conform the Commissioner's Regulations to New York State's amended accountability plan, as approved by the USDE, that reset New York's AMO for grades 3-8 ELA and mathematics beginning in the 2010-11 school year, as prescribed in New York's approved accountability workbook. As a result, New York was approved to reset the AMO to a Performance Index of 122 for ELA and a Performance Index of 137 for mathematics for 2010-11, and increasing annually in equal increments so as to reach 200 in 2013-14. The AMOs are used in determining whether adequate yearly progress is being met for purposes of ensuring school and school district accountability.

6. PAPERWORK:

The proposed amendment does not impose any additional reporting, forms, recordkeeping or other paperwork requirements. The proposed amendment is necessary to conform the Commissioner's Regulations to New York State's amended accountability plan, as approved by the USDE.

7. DUPLICATION:

The proposed amendment does not duplicate, overlap or conflict with State and federal rules or requirements, and is necessary to conform the Commissioner's Regulations to New York State's amended accountability plan, as approved by the USDE.

8. ALTERNATIVES:

There were no significant alternatives and none were considered. The proposed amendment has been carefully drafted to meet specific federal and State requirements relating to academic standards and school and school district accountability.

NCLB section 1111(b)(2) requires each state that receives funds to demonstrate, as part of its State Plan, that the state has developed and is implementing a single, statewide accountability system to ensure that all LEAs, public elementary schools and public high schools make adequate yearly progress (AYP). Each state must implement a set of yearly student

academic assessments in specified subject areas that will be used as the primary means of determining the yearly performance of the state and each LEA and school in the state is enabling all children to meet the state's academic standards. The State and LEAs are required to comply with the NCLB as a condition to their receipt of federal funds under Title I of the Elementary and Secondary Education Act of 1965, as amended (ESEA).

The proposed amendment is necessary to conform the Commissioner's Regulations with recent amendments to New York's State accountability plan, as approved by the USDE, that reset New York's AMO for grades 3-8 ELA and mathematics beginning in the 2010-11 school year. As a result, New York was approved to reset the AMO to a Performance Index of 122 for ELA and a Performance Index of 137 for mathematics for 2010-11, and increasing annually in equal increments so as to reach 200 in 2013-14. The AMOs are used in determining whether adequate yearly progress is being met for purposes of ensuring school and school district accountability.

9. FEDERAL STANDARDS:

The proposed amendment does not exceed any minimum standards of the federal government for the same or similar subject areas. The proposed amendment is necessary to conform the Commissioner's Regulations to New York State's amended accountability plan, as approved by the USDE.

10. COMPLIANCE SCHEDULE:

The proposed amendment is necessary to conform the Commissioner's Regulations with recent amendments to New York's State accountability plan, as approved by the USDE, that reset New York's annual measurable objective (AMO) for grades 3-8 English language arts (ELA) and mathematics beginning in the 2010-11 school year, as prescribed in New York's approved accountability workbook. The State and LEAs are required to comply with the NCLB as a condition to their receipt of federal funds under Title I of the Elementary and Secondary Education Act of 1965, as amended (ESEA).

It is anticipated that regulated parties may achieve compliance with the proposed amendment by its effective date.

Regulatory Flexibility Analysis

Small businesses:

The proposed amendment is necessary to conform the Commissioner's Regulations with recent amendments to New York's State accountability plan, as approved by the United States Department of Education (USDE), that reset New York's annual measurable objective (AMO) for grades 3-8 English language arts (ELA) and mathematics beginning in the 2010-11 school year, as prescribed in New York's approved accountability workbook. The AMOs are used in determining whether adequate yearly progress is being met for purposes of ensuring school and school district accountability.

The proposed amendment applies to public schools that have been registered pursuant to section 100.2(p) of Commissioner's Regulations. The proposed amendment does not impose any adverse economic impact, reporting, record keeping or any other compliance requirements on small businesses. Because it is evident from the nature of the proposed amendment that it does not affect small businesses, no further measures were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses is not required and one has not been prepared.

Local government:

1. EFFECT OF RULE:

The proposed amendment generally applies to public schools, school districts and charter schools that receive funding as local educational agencies (LEAs) pursuant to the federal Elementary and Secondary Education Act of 1965 (ESEA), as amended.

2. COMPLIANCE REQUIREMENTS:

The State and LEAs are required to comply with the NCLB as a condition to their receipt of federal funds under Title I of the ESEA. NCLB section 1111(b)(2) requires each state that receives funds to demonstrate, as part of its State Plan, that the state has developed and is implementing a single, statewide accountability system to ensure that all LEAs, public elementary schools and public high schools make adequate yearly progress (AYP). Each state must implement a set of yearly student academic assessments in specified subject areas that will be used as the primary means of determining the yearly performance of the state and each LEA and school in the state is enabling all children to meet the state's academic standards.

The proposed amendment is necessary to conform the Commissioner's Regulations with recent amendments to New York's State accountability plan, as approved by the USDE, that reset New York's AMO for grades 3-8 ELA and mathematics beginning in the 2010-11 school year. As a result, New York was approved to reset the AMO to a Performance Index of 122 for ELA and a Performance Index of 137 for mathematics for 2010-11, and increasing annually in equal increments so as to reach 200 in 2013-14. The AMOs are used in determining whether adequate yearly progress is being met for purposes of ensuring school and school district accountability.

3. PROFESSIONAL SERVICES:

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

4. COMPLIANCE COSTS:

The proposed amendment does not impose any costs on local governments beyond those imposed by State and federal statutes. The proposed amendment conforms the Commissioner's Regulations with recent amendments to New York's State accountability plan, as approved by the USDE, that reset New York's annual measurable objective (AMO) for grades 3-8 English language arts (ELA) and mathematics beginning in the 2010-11 school year, as prescribed in New York's approved accountability workbook. The AMOs are used in determining whether adequate yearly progress is being met for purposes of ensuring school and school district accountability under the federal No Child Left Behind Act (NCLB), Public Law section 107-110. The State and local educational agencies (LEAs) are required to comply with the NCLB as a condition to their receipt of federal funds under Title I of the Elementary and Secondary Education Act of 1965 (ESEA), as amended.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

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

6. MINIMIZING ADVERSE IMPACT:

The proposed amendment does not impose any additional costs or compliance requirements beyond those required under State and federal law. The proposed amendment has been carefully drafted to meet specific federal and State requirements relating to academic standards and school and school district accountability.

The State and LEAs are required to comply with the NCLB as a condition to their receipt of federal funds under Title I of the ESEA. NCLB section 1111(b)(2) requires each state that receives funds to demonstrate, as part of its State Plan, that the state has developed and is implementing a single, statewide accountability system to ensure that all LEAs, public elementary schools and public high schools make adequate yearly progress (AYP). Each state must implement a set of yearly student academic assessments in specified subject areas that will be used as the primary means of determining the yearly performance of the state and each LEA and school in the state is enabling all children to meet the state's academic standards.

The proposed amendment is necessary to conform the Commissioner's Regulations with recent amendments to New York's State accountability plan, as approved by the USDE, that reset New York's AMO for grades 3-8 ELA and mathematics beginning in the 2010-11 school year. As a result, New York was approved to reset the AMO to a Performance Index of 122 for ELA and a Performance Index of 137 for mathematics for 2010-11, and increasing annually in equal increments so as to reach 200 in 2013-14. The AMOs are used in determining whether adequate yearly progress is being met for purposes of ensuring school and school district accountability.

Adoption of the proposed amendment is necessary to smoothly transition to higher achievement standards for grades 3-8 ELA and mathematics that have been established beginning with the 2009-2010 school year assessment results.

7. LOCAL GOVERNMENT PARTICIPATION:

Comments on the proposed amendment were solicited from school districts through the offices of the district superintendents of each supervisory district in the State, and from the chief school officers of the five big city school districts. In addition, copies of the proposed amendment were provided to charter schools.

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

The proposed amendment applies to public schools, school districts and charter schools that receive funding as local educational agencies (LEAs) pursuant to the federal Elementary and Secondary Education Act of 1965 (ESEA), as amended, including those located in the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square mile or less.

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

The proposed amendment does not impose any reporting, recordkeeping or other compliance requirement on entities in rural areas beyond those imposed by State and federal law. The State and LEAs are required to comply with the NCLB as a condition to their receipt of federal funds under Title I of the ESEA. NCLB section 1111(b)(2) requires each state that receives funds to demonstrate, as part of its State Plan, that the state has developed and is implementing a single, statewide accountability system to ensure that all LEAs, public elementary schools and public high schools make adequate yearly progress (AYP). Each state must implement a set of yearly student academic assessments in specified subject areas that will be used as the primary means of determining the yearly performance

of the state and each LEA and school in the state is enabling all children to meet the state's academic standards.

The proposed amendment is necessary to conform the Commissioner's Regulations with recent amendments to New York's State accountability plan, as approved by the USDE, that reset New York's AMO for grades 3-8 ELA and mathematics beginning in the 2010-11 school year. As a result, New York was approved to reset the AMO to a Performance Index of 122 for ELA and a Performance Index of 137 for mathematics for 2010-11, and increasing annually in equal increments so as to reach 200 in 2013-14. The AMOs are used in determining whether adequate yearly progress is being met for purposes of ensuring school and school district accountability.

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

3. COSTS:

The proposed amendment does not impose any costs on entities in rural areas beyond those imposed by State and federal statutes. The proposed amendment conforms the Commissioner's Regulations with recent amendments to New York's State accountability plan, as approved by the USDE, that reset New York's annual measurable objective (AMO) for grades 3-8 English language arts (ELA) and mathematics beginning in the 2010-11 school year, as prescribed in New York's approved accountability workbook. The AMOs are used in determining whether adequate yearly progress is being met for purposes of ensuring school and school district accountability under the federal No Child Left Behind Act (NCLB), Public Law section 107-110. The State and local educational agencies (LEAs) are required to comply with the NCLB as a condition to their receipt of federal funds under Title I of the Elementary and Secondary Education Act of 1965 (ESEA), as amended.

4. MINIMIZING ADVERSE IMPACT:

The proposed amendment does not impose any additional costs or compliance requirements beyond those required under State and federal law. The proposed amendment has been carefully drafted to meet specific federal and State requirements relating to academic standards and school and school district accountability. Because these requirements are uniformly applicable State-wide to all public schools that have been registered pursuant to section 100.2(p) of the Commissioner's Regulations, it was not possible to prescribe lesser requirements for rural areas or to exempt them from such requirements.

The State and LEAs are required to comply with the NCLB as a condition to their receipt of federal funds under Title I of the ESEA. NCLB section 1111(b)(2) requires each state that receives funds to demonstrate, as part of its State Plan, that the state has developed and is implementing a single, statewide accountability system to ensure that all LEAs, public elementary schools and public high schools make adequate yearly progress (AYP). Each state must implement a set of yearly student academic assessments in specified subject areas that will be used as the primary means of determining the yearly performance of the state and each LEA and school in the state is enabling all children to meet the state's academic standards.

The proposed amendment is necessary to conform the Commissioner's Regulations with recent amendments to New York's State accountability plan, as approved by the USDE, that reset New York's AMO for grades 3-8 ELA and mathematics beginning in the 2010-11 school year. As a result, New York was approved to reset the AMO to a Performance Index of 122 for ELA and a Performance Index of 137 for mathematics for 2010-11, and increasing annually in equal increments so as to reach 200 in 2013-14. The AMOs are used in determining whether adequate yearly progress is being met for purposes of ensuring school and school district accountability.

Adoption of the proposed amendment is necessary in order for New York to smoothly transition to the higher achievement standards for grades 3-8 in ELA and mathematics that have been established beginning with the 2009-2010 school year assessment results.

5. RURAL AREA PARTICIPATION:

Comments on the proposed amendment were solicited from the Department's Rural Advisory Committee, whose membership includes schools located in rural areas. In addition, copies of the proposed rule were provided to charter schools.

Job Impact Statement

The proposed amendment is necessary to conform the Commissioner's Regulations with recent amendments to New York's State accountability plan, as approved by the United States Department of Education (USDE), that reset New York's annual measurable objective (AMO) for grades 3-8 English language arts (ELA) and mathematics beginning in the 2010-11 school year, as prescribed in New York's approved accountability workbook. The AMOs are used in determining whether adequate yearly progress is being met for purposes of ensuring school and school district accountability under the federal No Child Left Behind Act (NCLB), Public Law section 107-110. The State and local educational agencies (LEAs)

are required to comply with the NCLB as a condition to their receipt of federal funds under Title I of the Elementary and Secondary Education Act of 1965 (ESEA), as amended.

The proposed amendment applies to public schools, school districts and charter schools that receive funding as LEAs pursuant to the ESEA, as amended. The proposed amendment 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.

Department of Environmental Conservation

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Transportation of Uncertified Bait Fish by Anglers, Sale of Bait Fish, Use of Bait Fish, and Fish Health Inspection Requirements

I.D. No. ENV-14-11-00011-P

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

Proposed Action: Amendment of Parts 10, 19, 35 and 188 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 3-0301, 11-0303, 11-0305 and 11-0325

Subject: Transportation of uncertified bait fish by anglers, sale of bait fish, use of bait fish, and fish health inspection requirements.

Purpose: Provide some allowances for the transportation of uncertified bait fish by anglers, and adjust baitfish "green" list.

Text of proposed rule: A new subparagraph 10.1(f)(iii) is added to Title 6 NYCRR Part 10 to read as follows:

(iii) *bait fish taken for personal use from within the following overland transportation corridors may be transported overland within the designated overland transportation corridors only. Such baitfish must be used in the same water body from which the bait fish were taken.*

(a) *Upper Niagara River/Lake Erie Overland Transportation Corridor shall the portion of the water body as defined in 10.1(f)(ii) west of and including a line starting at I-90 at the Pennsylvania border, then continuing east to its intersection with I-290, then continuing north along I-290 to its intersection with State Route 62, then continuing west to its intersection with I-190, then north to its intersection with the Lower Niagara River.*

(b) *Lower Niagara River/Lake Ontario/St. Lawrence River Overland Transportation Corridor shall include the portion of the water body as defined in 10.1(f)(i) starting at the intersection of I-190 and the Lower Niagara River, then continuing eastward to its intersection with State Route 104, then continuing eastward to its intersection with State Route 3, then continuing east on State Route 3 to its intersection with State Route 104, then continuing eastward on State Route 104 to its intersection with State Route 11, then continuing north on State Route 11 to its intersection with State Route 56, then continuing north along State Route 56 to its intersection with State Route 37, then continuing east along State Route 37 to its intersection with Racquette Point Road, then continuing north on Racquette Point Road to its intersection with Ransom Road, and then continuing west on Ransom Road and terminating at the St. Lawrence River.*

(c) *Hudson River Overland Transportation Corridor shall include the portion of the water body as defined in 10.1(f)(7)(x) starting at the eastern shore of the Hudson River at the Federal Dam in Troy, continuing east on W Glenn Avenue in Troy to its intersection with State Route 4, then continuing south on State Route 4 to its intersection with State Routes 9 & 20, then continuing easterly to its intersection with State Route 9, then continuing east on State Route 82, then continuing east on State Route 82 to its intersection with the Taconic State Parkway, then continuing south on the Taconic State Parkway to its intersection with the Sprain Brook Parkway, then continuing south on the Sprain Brook Parkway to its intersection with I-287, then continuing west on I-287 across the Tappan Zee Bridge to I-87 North, then continuing north on I-87 to its intersection with State Route 7, and then continuing east on State Route 7 to its*

intersection with I-787, and then continuing north on I-787 to its intersection with Tibbets Avenue, and then continuing east on Tibbets Avenue to its intersection with Delaware Avenue, then proceeding in a straight line to the west edge of the Troy Dam.

New paragraph 19.2(a)(16) is added and reads as follows:

(16) *Eastern silvery minnow (Hybognathus regius)*

A new paragraph 35.3(a)(5) is added to read as follows:

(5) *Overland Transportation Corridors shall mean those as defined in Part 10.1(f)*

Subparagraph 35.3(f)(1)(i) is amended to read as follows:

(i) *the name of the water body in which the bait fish [may] must be used; and*

Subparagraph 35.3(f)(1)(ii) is amended to read as follows:

(ii) *a warning to the purchaser that the fish may not be transported by car or other motorized vehicle except as specified in (iii) of this paragraph.*

New subparagraph 35.3(f)(1)(iii) is added as follows:

(iii) *receipts issued by sellers permitted pursuant to subdivision (c)(2) of this Part must specify the overland transportation corridor identified in their permit, and contain the warning that the bait fish may only be transported overland within that overland transportation corridor.*

Paragraph 188.2(a) is amended to read as follows:

(a) All fish species. (1) A fish health certification report shall certify that the fish being placed into the waters of the State are free of:

(i) Viral Hemorrhagic Septicemia (VHS);

(ii) Spring Viremia of Carp Virus (Infectious carp dropsy);

(2) Until January 1, 2009, a fish health certification report shall also certify the presence or absence of the following pathogens:]

[(i)] (iii) *Aeromonas salmonicida (Furunculosis);*

[(ii)] (iv) *Yersinia ruckeri (Enteric Red Mouth);*

[(iii)] (v) *Infectious Pancreatic Necrosis Virus (IPN);*

(3) Effective January 1, 2009, a fish health inspection report shall certify that the fish are free of the pathogens listed in paragraph (2) of this subdivision.]

Paragraph 188.2(b) is amended to read as follows:

(b) Additional fish health inspection requirements for Salmonidae.

(1) In addition to the requirements of subdivision (a) of this section, a fish health certification report for Salmonidae shall certify that the fish are free of:

(i) *Myxobolus cerebralis (whirling disease);*

(ii) *Infectious Hematopoietic Necrosis Virus (IHNV).];*

(iii) *Renibacterium salmoninarum (bacterial kidney disease).*

(2) Until January 1, 2009, a fish health certification report for Salmonidae shall also certify the presence or absence of *Renibacterium salmoninarum (bacterial kidney disease).*

(3) Effective January 1, 2009, a fish health certification report shall certify that the Salmonidae fish are free of *Renibacterium salmoninarum (bacterial kidney disease).*

Paragraph 188.2(c) is amended to read as follows:

(c) [Effective January 1, 2009,] *M[n]o fish shall be placed into the waters of the State unless a fish health certification report certifies that such fish are free of all pathogens identified in this section.*

Text of proposed rule and any required statements and analyses may be obtained from: Shaun Keeler, New York State Department of Environmental Conservation, 625 Broadway, Albany, NY 12233, (518) 402-8928, email: sxkeeler@gw.dec.state.ny.us

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

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

Additional matter required by statute: A Programmatic Impact Statement pertaining to these actions is on file with the Department of Environmental Conservation.

This action was not under consideration at the time this agency's regulatory agenda was submitted.

Regulatory Impact Statement

1. Statutory authority:

Section 3-0301 of the Environmental Conservation Law (ECL) establishes the general functions, powers and duties of the Department of Environmental Conservation (department) and the Commissioner, including general authority to adopt regulations. Sections 11-0303 and 11-0305 of the ECL authorize the department to provide for the management and protection of the State's fisheries resources, taking into consideration ecological factors, public safety, and the safety and protection of private property. Section 11-1319 of the ECL governs possession of fish taken in the waters of the State.

The Commissioner of the Department of Environmental Conservation (Commissioner), pursuant to ECL sections 3-0301, 11-0303, and 11-0305, has authority to protect the fish and wildlife resources of New York State.

ECL section 11-0325 provides the department with authority to take ac-

tion necessary to protect fish and wildlife from dangerous diseases. If the department determines that an epizootic disease which endangers the health and welfare of native fish populations exists in any area of the State, or is in imminent danger of developing or being introduced into the State, the department is authorized to adopt measures or regulations necessary to prevent the development, spread or introduction of such disease.

2. Legislative objectives:

The legislative objective of ECL sections 3-0301, 11-0303, and 11-0305 is to grant the Commissioner the powers necessary for the department to protect New York's natural resources, including fish resources, in accordance with the environmental policy of the State. Regulating the manner of taking fish including establishing limitations on the use of bait fish for angling are tools used by the department in achieving the legislation referenced above.

The legislative objective of ECL section 11-0325 is to provide the department with broad authority to respond to the presence or threat of a disease that endangers the health or welfare of fish or wildlife populations.

3. Needs and benefits:

Changes to the "fish health-bait fish" and "sportfishing" regulations including those pertaining to the use of bait fish are intended to provide for optimum angler opportunities consistent with resource conservation and protection. This includes safeguarding against the spread of fish pathogens to uninfected waters by the use of bait fish as part of angling.

The emergence of viral hemorrhagic septicemia (VHS), a serious pathogen of fish, as a disease in New York waters starting in May of 2006, led the department to put in place regulations (an emergency rule making in November of 2006 followed by an adoption rule making in November of 2007) protecting against the spread of the VHS virus as well as additional fish pathogens to uninfected waters, including resulting from the movement of bait fish between water bodies. These regulations included prohibitions on the overland (motorized) transport of uncertified bait fish as a measure towards obtaining compliance with the requirement of using uncertified bait fish only on the same water body from which it was collected.

Since the inception of these regulations, the overland (motorized) transport prohibition has received much objection by anglers, particularly in areas where the use of personally collected bait fish has historically been a prominent part of angling. In the summer of 2010, the department sought public input on this issue including conducting three public meetings. Utilizing the feedback obtained, the department is now proposing providing for the overland (motorized) transport of bait fish by anglers, within specific defined transportation corridors, provided the movement of these bait fish to other water bodies can be protected against (note that any commercial sale of uncertified bait fish is still subject to permit by the department). The three corridors outlined in the proposed rule-making provide opportunity for the overland (motorized) transport of uncertified bait fish by anglers, to accommodate the movement of bait fish for use at different locations on the same water body within these corridors.

4. Costs:

Enactment of the regulation modifications described herein will not result in increased expenditures by the State, local government, or the general public. It will potentially reduce costs of fishing for some anglers as it will provide the opportunity to collect, possess and transport (overland), by motorized vehicle, personally collected baitfish for use on the same body of water, within some specific defined transport corridors. This will result in the opportunity for anglers to replace previously commercially purchased certified baitfish with those that are personally collected and can now be transported (reverting to conditions that existed prior to November, 2006 for some areas of the State).

As far as licensed bait fish sellers, in some areas of the State some bait fish dealers selling certified bait fish may have reduced sales as a result of anglers now being able to transport bait fish (uncertified) that they've collected themselves. On the other hand, some licensed bait fish sellers may benefit, as within the defined corridors, anglers will also now have the opportunity to overland transport uncertified bait fish purchased from commercial bait fish sellers (provided that the bait fish seller is permitted by the department to sell uncertified bait).

5. Local government mandates:

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

6. Paperwork:

No additional paperwork will be required as a result of these proposed changes in regulations.

7. Duplication:

The proposed amendment does not duplicate any State or Federal requirement.

8. Alternatives:

There are two principle alternatives that have been identified: a "No Action" alternative and the alternative of "eliminating the current overland (motorized) transport prohibition statewide". The "No Action" alternative would preclude providing for the overland (motorized)

transport of uncertified bait fish, including wild bait fish collected by anglers, within a defined area, for use on the same water body. The alternative eliminating the overland (motorized) transport restriction, statewide, is much wider in scope than establishing defined transportation corridors as defined in this rule making. Total elimination of the current restriction would provide less capability to guard against the movement of uncertified bait fish between water bodies. A more restricted approach, such as the proposed, is needed to safeguard against the spread of fish pathogens compromising the health of New York's freshwater fish populations and causing significant economic impacts to the commercial and recreational activities associated with the State's freshwater fish populations.

9. Federal standards:

The United States Department of Agriculture-Animal and Plant Health Inspection Service (USDA-APHIS) issued a Federal order (October 24, 2006) that prohibits the importation of certain species of live fish from Ontario and Quebec and interstate movement of the same fish species from eight states bordering the Great Lakes. This prohibition remains unaffected by the change of being more permission in the intrastate overland (motorized) transport of uncertified baitfish.

10. Compliance schedule:

Immediate compliance will be required.

Regulatory Flexibility Analysis

The purpose of this rule making is to amend and update the Department of Environmental Conservation's (department) regulations pertaining to the use of bait fish and fish health. Restricting the use of uncertified bait fish to the same body of water from which collected is a principle means towards preventing the spread of viral hemorrhagic septicemia (VHS) and other pathogens to additional water bodies, and "fish health-bait fish regulations" were put in place in 2006 and 2007 for this. The current regulations contain a prohibition on the overland (motorized) transport of uncertified bait fish. Since the inception of the regulations the overland (motorized) transport prohibition on personally collected bait fish has received much objection from anglers, particularly in areas where the use of personally collected bait fish is a prominent part of angling. As part of this objection, many anglers point out that there is little risk for overland transport as long as the bait fish are used on the same water body from which they are collected. The proposed rule making addresses this by providing for the overland (motorized) transport of personally collected bait fish by anglers, as well as for the angler transport of commercially purchased (uncertified) bait fish within defined transportation corridors [any commercial sale of uncertified bait fish remains subject to permit from the department].

The department has determined that the proposed regulations will not impose an adverse impact or any new or additional reporting, recordkeeping or other compliance requirements on small businesses or local governments. Receipt issuing requirements for the sale of bait fish remain in place as previously established. Since small businesses and local governments have no management or compliance role in the regulation of sport fisheries including the use of bait fish as a part of angling, there is no impact upon these entities. Small businesses may, and town or village clerks do issue fishing and sportsman licenses. However, the department's rule making proposal does not change this process.

Based on the above, the department has determined that a regulatory flexibility analysis is not required.

Rural Area Flexibility Analysis

The purpose of this rule making is to amend and update the Department of Environmental Conservation's (department) regulations pertaining to the use of bait fish and fish health. Restricting the use of uncertified bait fish to the same body of water from which collected is a principle means towards preventing the spread of viral hemorrhagic septicemia (VHS) and other pathogens to additional water bodies, and "fish health-bait fish regulations" were put in place in 2006 and 2007 for this. The current regulations contain a prohibition on the overland (motorized) transport of uncertified bait fish. Since the inception of the regulations the overland (motorized) transport prohibition on personally collected bait fish has received much objection from anglers, particularly in areas where the use of personally collected bait fish is a prominent part of angling. As part of this objection, many anglers point out that there is little risk for overland (motorized) transport as long as the bait fish are used on the same water body from which they are collected. The proposed rule making addresses this by providing for the overland (motorized) transport of personally collected bait fish by anglers, as well as the angler transport of commercially purchased (uncertified) bait fish, within defined transportation corridors [any commercial sale of uncertified bait fish remains subject to permit from the department].

The department has determined that the proposed regulations will not impose an adverse impact or any new or additional reporting, recordkeeping or other compliance requirements on public or private entities in rural areas. Receipt issuing requirements for the sale of bait fish remain in place

as previously established. All reporting or recordkeeping requirements associated with sportfishing are administered by the department. The proposed regulations are not anticipated to negatively change the number of participants or the frequency of participation in regulated activities. To the contrary, the allowances being made for the overland (motorized) transport of uncertified bait fish by anglers may enhance freshwater fishing participation in the defined areas of the State where this is being provided for.

Small businesses may, and town or village clerks do issue fishing and sportsman licenses. However, the department's rule making proposal does not change this process.

Since the department's proposed rule making will not impose an adverse impact on public or private entities in rural areas and will have no effect on current reporting, recordkeeping, or other compliance requirements, the department has concluded that a rural area flexibility analysis is not required for this regulatory proposal.

Job Impact Statement

The Department of Environmental Conservation (department) has determined that this proposed rule making will not have a substantial adverse impact on jobs and employment opportunities. Providing for the overland (motorized) transport of bait fish by anglers within limited defined travel corridors, for the purposes of accommodating angling practices on specific water bodies, will have limited impact on jobs and employment opportunities. Therefore, the department has determined that a job impact statement is not required.

Commercial baitfish dealers currently selling certified bait fish may be affected by this rule making as anglers will once again be allowed to transport personally collected bait fish overland in a few defined areas of the state (i.e. within specifically defined transportation corridors).

Rule makings in 2006 and 2007 established a statewide ban on the overland (motorized) transport of uncertified bait fish by anglers. This was established as part of protecting New York's freshwater fish species and their populations from (viral hemorrhagic septicemia (VHS) by preventing the spread of this virus to additional waters. While the ability for anglers to personally collect their own baitfish would now be provided for, it will still be restricted (e.g. uncertified personally collected baitfish can only be used on the same water body from which collected). Commercial sales of (certified) baitfish, serving anglers fishing these waters of the State since 2006/2007 could partially be replaced by personally collected bait fish, thus affecting bait fish sale levels that might have become elevated by the statewide ban put on the overland (motorized) transport of uncertified bait fish four years ago.

Some of licensed commercial bait fish dealers may benefit as the rule making also includes a provision for anglers to now transport uncertified baitfish (overland) that is commercially purchased from a bait fish dealer. This is conditioned by the requirement that the commercial baitfish dealer be permitted by the Department to sell uncertified baitfish within one of defined transportation corridors (and with the bait fish only for use on the same body from which obtained).

In addition, there are several other factors that buffer potential fiscal impacts to the State's licensed bait fish dealers. Only a portion of anglers collect their own bait fish, and some of those that do still purchase bait fish as well. Secondly, the regulation is not statewide in scope, and many of the state's commercial bait fish sellers (approximately 400 statewide) will be largely unaffected. In addition, a portion of the licensed commercial baitfish operators sell bait as just one component of their business (e.g. in conjunction with selling fishing tackle, fishing clothing, operating a marina), and would therefore remain very viable even without the sale of bait fish.

The department has determined that this proposed rule making will not have a substantial adverse impact on jobs and employment opportunities. While it is difficult to determine exactly if and how many jobs may be affected by this rule making, based on the above, the department believes that it will be very few and will not result in the decrease of more than one hundred jobs (or the equivalent). Therefore, the department has determined that a job impact statement is not required.

Department of Health

EMERGENCY RULE MAKING

NYS Newborn Screening Panel

I.D. No. HLT-14-11-00001-E

Filing No. 278

Filing Date: 2011-03-16

Effective Date: 2011-03-16

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

Action taken: Amendment of section 69-1.2 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 2500-a

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

Specific reasons underlying the finding of necessity: Advancing technology, and emerging and rising public expectations for this critical public health program demand that the panel of screening conditions be expanded through this amendment of 10 NYCRR Section 69-1.2, which would add one inherited disorder of the immune system to the scope of newborn screening services already provided by the Department's Wadsworth Center. This regulatory amendment adds one condition - severe combined immunodeficiency (SCID) - to the 44 genetic/congenital disorders and one infectious disease that comprise New York State's newborn screening test panel. The Department of Health finds that immediate adoption of this rule is necessary to preserve the public health, safety and general welfare, and that compliance with State Administrative Procedure Act (SAPA) Section 202(1) requirements for this rulemaking would be contrary to the public interest.

Immediate implementation of the proposed screening for SCID is both feasible and obligatory at this time. A laboratory test method using a dried blood spot specimen was recently validated by the Department's Newborn Screening Program. The Program has determined that a scaled-up version of the recently developed test method reproducibly generates reliable results for the large number of newborns' specimens accepted by the Program. The required instrumentation (i.e., robots to prepare DNA and thermal cyclers to detect TRECs) is already in operation at the Department's Wadsworth Center laboratory and dedicated to newborn screening. A system for follow-up and ensuring access to necessary treatment for identified infants is fully established and adequately staffed.

Early detection through screening is critical to successful treatment of SCID. A survey of more than 150 patients commissioned by the Immune Deficiency Foundation found that SCID patients who were diagnosed early and treated by 3.5 months showed a 91-percent survival rate; those treated after 3.5 months had a 76-percent survival rate. Average costs for a bone marrow transplant also increase significantly after the infant reaches 3.5 months of age, exceeding \$300,000 because of additional complications and the need for more supportive care. Now that the Program is technically proficient in DNA technology, data collection and interpretation, and has demonstrated proficiency in triage and referral procedures, failure to include SCID screening immediately would mean infants would go undetected, undetected, and may suffer serious systemic infections and even succumb to an early death. Accordingly, the Department is obligated to avoid further delays in implementing screening for SCID.

Subject: NYS Newborn Screening Panel.

Purpose: Adds Severe Combined Immunodeficiency (SCID) to NYS Newborn Screening Panel.

Text of emergency rule: Section 69-1.2(b) is amended as follows:

(b) Diseases and conditions to be tested for shall include:

argininemia (ARG);

* * * *

propionic acidemia (PA);

severe combined immunodeficiency and other inherited T-cell deficiencies (SCID)

short-chain acyl-CoA dehydrogenase deficiency (SCADD);

tyrosinemia (TYR); and

very long-chain acyl-CoA dehydrogenase deficiency (VLCADD)

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 June 13, 2011.

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: regsqa@health.state.ny.us

Summary of Regulatory Impact Statement

Statutory Authority:

Public Health Law (PHL) Section 2500-a (a) provides statutory authority for the Commissioner of Health to designate in regulation diseases or conditions for newborn testing in accordance to the Department's mandate to prevent infant and child mortality, morbidity, and diseases and disorders of childhood.

Legislative Objectives:

In enacting PHL Section 2500-a, the Legislature intended to promote public health through mandatory screening of New York State newborns to detect those with serious but treatable neonatal conditions and to ensure their referral for medical intervention. Emerging medical treatments and the complexity of genetic testing require periodic reassessments of the benefits of newborn screening. These reassessments ensure that the New York State's Newborn Screening Program (the NYS Program) meets the legislative intent of preventing childhood diseases and disorders by early detection. This proposal, which would modify the newborn screening panel currently in regulation by adding severe combined immunodeficiency (SCID), is in keeping with the legislature's public health aims of early identification and timely medical intervention for all the State's youngest citizens.

Needs and Benefits:

Severe Combined Immunodeficiency (SCID) is a primary immune deficiency, which results in the infant's failure to develop a normal immune system. The defining characteristic for SCID is a severe defect in the production and function of T-cells and/or B-cells. Affected infants are susceptible to a wide range of infections that are typically controlled by a normal immune system. If undetected and untreated, SCID typically leads to death in the first year of life. It is noteworthy that, in May of 2010, the U.S. Department of Health and Human Services (DHHS) Secretary Kathleen Sebelius added SCID to the core newborn screening panel that represents a national standard 30-test panel that states are encouraged to adopt.

The pediatric immunology community now recognizes this once-fatal disease is a disorder that can be treated and most likely cured at a reasonable cost. Early detection through screening is critical to successful treatment. Current estimates suggest that one in every 50,000 to 100,000 newborns may be affected; however, since many infants may succumb to infection before being diagnosed, the true incidence of SCID and related forms of T-cell immune deficiency may be higher. A DNA-based test for immune deficiency has been recently modified for accurate, high-throughput analyses, making possible its use for newborn screening. This test detects T-cell Receptor Gene Excision Circles or TRECs, which are produced during normal T-cell maturation but are absent or severely reduced in infants with SCID.

Immediately after confirming a SCID diagnosis, infants are started on intravenous immunoglobulins (IVIG) and antibiotics, and a donor search is initiated to perform stem cell transplant from donor bone marrow or cord blood. SCID infants and children require IVIG for as long as they lack the ability to produce antibodies - before and often for some time after a transplant. If the transplant proves not totally corrective, IVIG may be needed for life. Alternatively, enzyme replacement therapy with bovine pegademase (PEG-ADA), an injectable medication, can be used to treat the approximately 40-percent of SCID patients with a form of the disorder characterized by a deficiency of the enzyme adenosine deaminase. This treatment is typically used only when the patient is not a candidate for the more conventional bone marrow transplant treatment.

General health care costs attributable to treatment of SCID-confirmed infants, including those related to a stem cell transplant (i.e., use of a surgical suite, stays in the neonatal intensive care unit) cannot be assessed due to large variations in charges for the professional component of specialists' and ancillary providers' services, and the scope of potentially required donor-matching services. However, overall health care costs would be reduced since early diagnosis of SCID provides the opportunity for less expensive treatments, and avoids medical complications, thereby reducing the number and average length of hospital stays, and emergency and intensive care services necessary due to recurrent infections in affected children.

If a matched, related donor cannot be found or a transplant fails, infants diagnosed with SCID typically are initially treated using IVIG as an outpatient procedure. Since IVIG only replaces the missing end product, but does not correct the deficiency in antibody production, the replacement therapy usually becomes necessary for the patient's entire lifespan. The cost of lifetime IVIG replacement therapy is estimated to be approximately \$600,000. Costs for enzyme replacement therapy for one form of SCID with PEG-ADA, which is designated as an orphan drug, are

estimated at \$3,800 per injection. PEG-ADA is administered by intramuscular injection twice weekly and once weekly after stabilization is reached, usually in one to three weeks. Costs for a transplant including a 1 year follow-up period are \$300,000, while costs for an unscreened and undiagnosed child who does not receive early treatment can exceed \$600,000.

Costs:

Costs to Private Regulated Parties:

Birthing facilities would incur no new costs related to collection and submission of blood specimens to the NYS Program, since the dried blood spot specimens now collected would also be tested for SCID.

The NYS Program estimates that following implementation of this proposal, 125 newborns would screen positive for SCID annually statewide, with SCID being confirmed in seven of those infants.

Birthing facilities would likely incur minimal additional costs related to fulfilling their responsibilities for referral of screen-positive infants; such costs would be limited to human resources costs for less than 0.5 person-hour. Any birthing facility can calculate its specific cost impact based on its annual number of births and related expenses, and a referral rate of one infant per 2,100 births. The Department estimates that on average specialized care facilities would receive referrals of fewer than two infants per month for clinical assessment and additional testing to confirm or refute screening results.

Annual cost for arranging for SCID-related referrals for a facility at which 2,000 babies are delivered each year would range from ½ of \$40 to ½ of \$100, depending on whether clerical staff or nursing staff arranged for the referral, or specifically \$20-50 a year. Larger birthing facilities (i.e., those with the resources to perform transplants) would not incur even these minimal costs for referral to another facility.

Costs for Implementation and Administration of the Rule:

Costs to State Government:

State-operated facilities providing birthing services and infant follow-up and medical care would incur costs and savings as described above for private regulated parties.

State Medicaid costs will not increase with regard to referral costs, as such costs are included in rates for delivery-related services, and are not separately reimbursed. Costs associated with treatment for SCIDS for Medicaid-eligible infants would generally be borne by the State, as most counties have already reached their cap for Medicaid liability. However, there would likely be a net savings to Medicaid since early diagnosis provides the opportunity for less expensive treatment, (on the order of \$300,000) and avoids medical complications, thereby reducing the number and average length of hospital stays, and emergency and intensive care services necessary due to recurrent infections (which can exceed \$600,000).

Costs to the Department:

Costs incurred by the Department's Wadsworth Center for performing SCID screening tests, providing short- and long-term follow-up, and supporting continuing research in neonatal and genetic diseases will be covered by State budget appropriations. The Program expects minimal to no additional laboratory instrumentation costs related to this proposal, since the necessary technology has already been purchased.

The Department will incur minimal administrative costs for notifying all New York State-licensed physicians, hospital chief executive officers (CEOs) and their designees, and other affected parties, by letter informing them of a newborn screening panel expansion or, on an ongoing basis, of information regarding positive SCID screening results.

Costs to Local Government:

Local government-operated facilities providing birthing services and medical care to affected infants would incur the costs and savings described above for private regulated parties.

Local Government Mandates:

The proposed regulations impose no new mandates on any county, city, town or village government; or school, fire or other special district, unless a county, city, town or village government; or school, fire or other special district operates a facility, such as a hospital, caring for infants 28 days of age or under and, therefore, is subject to these regulations to the same extent as a private regulated party.

Paperwork:

No increase in paperwork would be attributable to activities related to specimen collection, and reporting and filing of test results. Facilities that submit newborn specimens will sustain minimal to no increases in paperwork, specifically, only that necessary to conduct and document follow-up and/or referral of infants with abnormal screening results. Educational materials for parents and health care professionals and forms will be updated to include information on SCID at minimal costs at the next printing.

Duplication:

These rules do not duplicate any other law, rule or regulation.

Alternative Approaches:

Potential delays in detection of SCID until onset of clinical symptoms would result in increased infant morbidity and mortality, and are therefore unacceptable. Given the recent recommendation by DHHS, which takes into account that treatment is available to ameliorate adverse clinical outcomes in affected infants, the Department has determined that there are no alternatives to requiring newborn screening for this condition.

Federal Standards:

The DHHS has recommended a core newborn screening panel that represents a national standard 30-test panel that states are encouraged to adopt. A DHHS-commissioned Advisory Committee on Heritable Disorders of Newborns and Children recently recommended that states' newborn screening programs amend their test panels to include SCID. With the addition of SCID to its panel, the NYS Program would include all the DHHS-recommended tests.

Compliance Schedule:

The Commissioner of Health is expected to notify all New York State-licensed physicians by letter informing them of this newborn screening panel expansion. The letter will also be distributed to hospital CEOs and their designees responsible for newborn screening, as well as to other affected parties.

The infrastructure and mechanisms for making the necessary referrals is already in place in birthing facilities. Consequently, regulated parties should be able to comply with these regulations as of their effective date.

Regulatory Flexibility Analysis

Effect on Small Businesses and Local Governments:

This proposed amendment to add one new condition - an immunodeficiency disorder known as severe combined immunodeficiency (SCID) to the list of 44 genetic/congenital disorders and one infectious disease, for which every newborn in New York State must be tested, will affect hospitals, alternative birthing centers, and physician and midwifery practices operating as small businesses, or operated by local government, provided such facilities care for infants 28 days of age or under, or are required to register the birth of a child. The Department estimates that ten hospitals and one birthing center in the State meet the definition of a small business. No facility recognized as having medical expertise in clinical assessment and treatment of SCID is operated as a small business. Local governments, including the New York City Health and Hospitals Corporation, operate 21 hospitals. New York State licenses 67,790 physicians and certifies 350 licensed midwives, some of whom, specifically those in private practice, operate as small businesses. It is not possible, however, to estimate the number of these medical professionals operating an affected small business, primarily because the number of physicians involved in delivering infants cannot be ascertained.

Compliance Requirements:

The Department expects that affected facilities, and medical practices operated as small businesses or by local governments, will experience minimal additional regulatory burdens in complying with the amendment's requirements, as functions related to mandatory newborn screening are already embedded in established policies and practices of affected institutions and individuals. Activities related to collection and submission of blood specimens to the State's Newborn Screening Program will not change, since newborn dried blood spot specimens now collected and mailed to the Program for other currently performed testing would also be used for the additional test proposed by this amendment.

Birthing facilities and at-home birth attendants (i.e., licensed midwives) would be required to follow up infants screening positive for SCID, and assume some responsibility for referral for medical evaluation and additional testing as they do for other conditions. The anticipated increased burden is expected to have a minimal effect on the ability of small businesses or local government-operated facilities to comply, as no such facility would experience an increase of more than one to two per month in the number of infants requiring referral.

On average, each birthing facility can expect to refer no more than one additional infant per year for clinical assessment and confirmatory testing as a result of this amendment's proposal to add SCID screening to the existing newborn screening panel. This increase is expected to have minimal effect on a birthing facility's workload since at present approximately 30 infants, on average, are referred by birthing facilities statewide; with the addition of SCID this number would increase by an average of one infant. Therefore, no additional staff would be required for these institutions to comply with this proposal.

The Department anticipates that more than 95 percent of approximately 125 referred infants will ultimately be found not to be afflicted with SCID, based on clinical assessment and laboratory tests.

The Department expects that regulated parties will be able to comply with these regulations as of their effective date, upon filing with the Secretary of State.

Professional Services:

No need for additional professional services is anticipated. Birthing facilities' existing professional staff are expected to be able to assume any

increase in workload resulting from the Program's newborn screening for SCID and identification of screen-positive infants. Infants with positive screening tests for SCID would be referred to a facility employing a physician and other medical professionals with expertise in SCID.

Compliance Costs:

Birthing facilities operated as small businesses and by local governments, and practitioners who are small business owners (e.g., private practicing licensed midwives who assist with at-home births) will incur no new costs related to collection and submission of blood specimens to the State Newborn Screening Program, since the dried blood spot specimens now collected and mailed to the Program for other currently available testing would also be used for the additional test proposed by this amendment. However, such facilities, and, to a lesser extent, at-home birth attendants, would likely incur minimal costs related to following up infants screening positive for SCID, primarily because the testing proposed under this regulation is expected to result in, on average, fewer than one referral per year at each of the 11 birthing facilities that are small businesses.

The NYS Program estimates that following implementation of this proposal, 125 newborns would screen positive for SCID annually statewide. Since timing is crucial, i.e., treatment must commence early to be effective, newborns who screen positive will require immediate referral to a facility with the requisite expertise for clinical assessment and laboratory testing. The Department estimates that on average such a facility would receive referrals of fewer than one infant per month for clinical assessment and additional testing to confirm or refute screening results. Cost figures that follow are based on 125 as a high-end estimate for the maximum number of infants statewide needing immediate referral.

Communicating the need for and/or arranging referral for medical evaluation of an identified infant would require less than 0.5 person-hour; no additional staff would be required. Annual cost for arranging for SCID-related referrals for a facility at which 2,000 babies are delivered each year would range from 1/2 of \$40 to 1/2 of \$100, depending on whether clerical staff or nursing staff arranged for the referral, or specifically \$20-50 a year. Larger birthing facilities (i.e., those with the resources to perform transplants) would not incur even these minimal costs for referral to another facility.

Economic and Technological Feasibility:

The proposed regulation would present no economic or technological difficulties to any small businesses and local governments affected by this amendment. The infrastructure for specimen collection and referrals of affected infants are already in place.

Minimizing Adverse Impact:

The Department did not consider alternate, less stringent compliance requirements, or regulatory exceptions for facilities operated as small businesses or by local government, because of the importance of the proposed testing to statewide public health. The addition of SCID to the newborn screening panel will not impose a unique burden on facilities and practitioners that are operated by a local government or as a small business. These amendments will not have an adverse impact on the ability of small businesses or local governments to comply with Department requirements for mandatory newborn screening, as full compliance would require minimal enhancements to present specimen collection, reporting, follow-up and recordkeeping practices.

Small Business and Local Government Participation:

The Program will notify all New York State-licensed physicians by letter informing them of this newborn screening panel expansion. An informational letter will also be distributed to hospital chief executive officers (CEOs) and their designees responsible for newborn screening, as well as to other affected parties. Regulated parties that are small businesses and local governments are expected to be prepared to participate in screening and follow-up for SCID on the effective date of this amendment because the staff and infrastructure needed for specimen collection and referrals of affected infants are already in place.

Rural Area Flexibility Analysis

Types of Estimated Numbers of Rural Areas:

Rural areas are defined as counties with a population of fewer than 200,000 residents; and, for counties with a population larger than 200,000, rural areas are defined as towns with population densities of 150 or fewer persons per square mile. Forty-four counties in New York State with a population under 200,000 are classified as rural, and nine other counties include certain townships with population densities characteristic of rural areas.

This proposed amendment to add one new condition - severe combined immunodeficiency (SCID) - to the list of 44 genetic/congenital disorders and one infectious disease, for which every newborn in the State must be tested, would affect hospitals, alternative birthing centers, and physician and midwifery practices located in rural areas, provided such facilities care for infants 28 days of age or under, or are required to register the birth of a child. The Department estimates that 54 hospitals and birthing centers operate in rural areas, and another 30 birthing facilities are located in

counties with low-population density townships. No facility recognized as having medical expertise in clinical assessment and treatment of SCID operates in a rural area. New York State licenses 67,790 physicians and certifies 350 licensed midwives, some of whom are engaged in private practice in areas designated as rural; however, the number of professionals practicing in rural areas cannot be estimated because licensing agencies do not maintain records of licensees' employment addresses.

Reporting, Recordkeeping and Other Compliance Requirements:

The Department expects that birthing facilities and medical practices affected by this amendment and operating in rural areas will experience minimal additional regulatory burdens in complying with the amendment's requirements, as activities related to mandatory newborn screening are already part of established policies and practices of affected institutions and individuals. Collection and submission of blood specimens to the State's Newborn Screening Program will not be altered by this amendment; the dried blood spot specimens now collected and mailed to the Program for other currently available newborn testing would also be used for the additional test proposed by this amendment. However, birthing facilities and at-home birth attendants (*i.e.*, licensed midwives) would be required to follow up infants screening positive for SCID, and assume referral responsibility for medical evaluation and additional testing. This requirement is expected to affect minimally the ability of rural facilities to comply, as no such facility would experience an increase of more than one to two per month in infants requiring referral. Therefore, the Department anticipates that regulated parties in rural areas will be able to comply with these regulations as of their effective date, upon filing with the Secretary of State.

Professional Services:

No need for additional professional services is anticipated. Birthing facilities' existing professional staff are expected to be able to assume any increase in workload resulting from the Program's newborn screening for SCID and identification of screen-positive infants. Infants with a positive screening test for SCID will be referred to a facility employing a physician and other medical professionals with expertise in SCID.

Compliance Costs:

Birthing facilities operating in rural areas and practitioners in private practice in rural areas (*i.e.*, licensed midwives who assist with at-home births) will incur no new costs related to collection and submission of blood specimens to the State's Newborn Screening Program, since the dried blood spot specimens now collected and mailed to the Program for other currently available testing would also be used for the additional test proposed by this amendment. However, such facilities and, to a lesser extent, at-home birth attendants would likely incur minimal costs related to follow-up of infants screening positive, since the proposed added testing is expected to result in no more than one additional referral per month. Communicating the need and/or arranging referral for medical evaluation of one additional identified infant would require less than 0.5 person-hour, and these tasks are expected to be able to be accomplished with existing staff. Annual cost for arranging for SCID-related referrals for a facility at which 2,000 babies are delivered each year would range from ½ of \$40 to ½ of \$100, depending on whether clerical staff or nursing staff arranged for the referral, or specifically \$20-50 a year. Larger birthing facilities (*i.e.*, those with the resources to perform transplants) would not incur even these minimal costs for referral to another facility. The Department estimates that more than 95 percent of infants will be ultimately found not to be afflicted with the target condition, based on clinical assessment and additional testing.

Minimizing Adverse Impact:

The Department did not consider less stringent compliance requirements or regulatory exceptions for facilities located in rural areas because of the importance of expanded infant testing to statewide public health and welfare. The addition of SCID to the newborn screening panel will not impose a unique burden on facilities and practitioners operating in rural areas. These amendments will not have an adverse impact on the ability of regulated parties in rural areas to comply with Department requirements for mandatory newborn screening, as full compliance would entail minimal changes to present collection, reporting, follow-up and record-keeping practices.

Rural Area Participation:

The Program will notify all New York State-licensed physicians by letter informing them of this newborn screening panel expansion. An informational letter will also be distributed to hospital chief executive officers (CEOs) and their designees responsible for newborn screening, as well as to other affected parties. Regulated parties in rural areas are expected to be able to participate in screening and follow-up for SCID on the effective date of this amendment.

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. The amendment

proposes the addition of an immune system disorder, severe combined immunodeficiency (SCID), to the scope of newborn screening services provided by the Department. It is expected that no regulated parties will experience other than minimal impact on their workload, and therefore none will need to hire new personnel. Therefore, this proposed amendment carries no adverse implications for job opportunities.

REVISED RULE MAKING NO HEARING(S) SCHEDULED

Sexually Transmitted Disease (STD) Reporting and Treatment Requirements

I.D. No. HLT-14-10-00006-RP

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

Proposed Action: Amendment of section 2.10 and Part 23 of Title 10 NYCRR.

Statutory authority: Public Health Law, sections 206(1), 225 and 2311

Subject: Sexually Transmitted Disease (STD) Reporting and Treatment Requirements.

Purpose: Reporting of cases or suspected cases or outbreaks of communicable disease by physicians, list and reporting of STDs.

Text of revised rule: Section 2.10 is amended as follows:

Section 2.10 Reporting cases or suspected cases or outbreaks of communicable disease by physicians.

It shall be the duty of every physician to report to the city, county or district health officer, within whose jurisdiction such patient [is] resides, the full name, age and address of every person with a suspected or confirmed case of a communicable disease, any outbreak of communicable disease, any unusual disease or unusual disease outbreak and as otherwise authorized in section 2.1 of this Part, together with the name of the disease if known, and any additional information requested by the health officer in the course of an investigation pursuant to this Part, within 24 hours from the time the case is first seen by him, and such report shall be by telephone, facsimile transmission or other electronic communication if indicated, and shall also be made in writing, except that the written notice may be omitted with the approval of the State Commissioner of Health. [(a) Cases in State institutions and facilities licensed under article 28 of the Public Health Law.] When a case which is required to be reported under section 2.1 of this Part occurs in a State institution or a facility licensed under Article 28 of the Public Health Law, the person in charge of the institution or facility shall report the case to the State Department of Health and to the city, county or district health officer, in whose jurisdiction such institution is located.

[(b) Cases of sexually transmitted diseases. Provided further that cases of gonorrhea, chlamydia trachomatis infection and syphilis shall be reported in writing, and that the patient's initials may be given in lieu of the patient's name. The physician shall keep a record of each case reported by initials and the corresponding name of the patient together with his address. The name and address of the patient shall be reported to the local or State health official to whom the attending physician is required to report such case, upon the special request of such official.]

Section 23.1 is amended as follows:

Section 23.1 List of sexually transmissible diseases.

The following [is a list] are groups of sexually transmissible diseases [(STD)] (STDs) and shall constitute the definition of sexually transmissible diseases for the purposes of this Part:

[Chlamydia trachomatis infection*]

Gonorrhea*

Syphilis*

Non-gonococcal Urethritis (NGU)*

Non-gonococcal (mucopurulent) Cervicitis*

Trichomoniasis*

Genital Herpes Simplex*

PID Gonococcal/Non-gonococcal

Lymphogranuloma Venereum*

Chancroid*

Ano-genital warts

Granuloma Inguinale*

Yeast Vaginitis

Gardnerella Vaginitis

Pediculosis Pubis

Scabies

Treatment facilities referred to in section 23.2 of this part must provide diagnosis and treatment for those STD designated by.]

Group A

Treatment facilities referred to in section 23.2 of this part must provide diagnosis and treatment free of charge as provided in subdivision (c) of section 23.2 of this Part for the following STDs:

Chlamydia trachomatis infection
Gonorrhea
Syphilis
Non-gonococcal Urethritis (NGU)
Non-gonococcal (mucopurulent) Cervicitis
Trichomoniasis
Lymphogranuloma Venereum
Chancroid
Granuloma Inguinale
Group B

Treatment facilities referred to in section 23.2 of this Part must provide diagnosis free of charge and must provide treatment as provided in subdivision (d) of section 23.2 of this Part for the following STDs:

Ano-genital warts
Human Papilloma Virus (HPV)
Genital Herpes Simplex
Group C

Treatment facilities referred to in section 23.2 of this Part must provide diagnosis free of charge and must provide treatment as provided in subdivision (e) of section 23.2 of this Part for the following STD:

Pelvic Inflammatory Disease (PID) Gonococcal/Non-gonococcal
Group D

Treatment facilities referred to in section 23.2 of this Part must provide diagnosis free of charge and must provide treatment as provided in subdivision (f) of section 23.2 of this Part for the following STDs:

Yeast (Candida) Vaginitis
Bacterial Vaginosis
Pediculosis Pubis
Scabies

Section 23.2 is amended as follows:

23.2 Treatment facilities.

Each health district shall provide adequate facilities[, without charge,] for the diagnosis and treatment of persons living within its jurisdiction who are infected or are suspected of being infected with STD as specified in section 23.1.

(a) Such persons shall be examined and shall have appropriate laboratory specimens taken and laboratory tests performed for those diseases designated in this Part as [sexually transmissible diseases] STDs for which such person exhibits symptoms or is otherwise suspected of being infected.

(b) The examinations and laboratory tests shall be conducted in accordance with accepted medical procedures as described in the most recent STD clinical guidelines and laboratory guidelines distributed by the New York State Department of Health.

(c) Any persons diagnosed as having [syphilis or gonorrhea, or those who have been exposed to syphilis or gonorrhea,] any of the STDs in Group A in section 23.1 of this Part shall be treated with appropriate medication in accordance with accepted medical procedures as described in the most recent treatment [schedule] guidelines distributed by the department [of health].

[(d) Because antiviral therapy is rapidly evolving, the choice of therapy for persons having herpes (hominis) infection shall be in accordance with established medical procedure as described in the STD clinical guidelines distributed by the New York State Department of Health.

(e) Any person diagnosed as having the other sexually transmissible diseases (Non-gonococcal Urethritis, Non-gonococcal (mucopurulent) Cervicitis, Trichomoniasis, Lymphogranuloma Venereum, Chancroid, and Granuloma Inguinale) designated for the purposes of this section shall be treated by means of a written prescription issued in accordance with accepted medical procedure as described in the STD clinic guidelines distributed by the New York State Department of Health.]

[(d) Any persons diagnosed as having any of the STDs in Group B in section 23.1 of this Part must be provided treatment either directly in the clinic or through a written or electronic prescription or referral. If treatment is provided directly, it must be provided free of charge.

(e) Any person diagnosed as having the STD in Group C in section 23.1 of this Part may be managed by immediate referral. If outpatient treatment is appropriate as indicated by accepted clinical guidelines and is provided directly, it must be provided free of charge.

(f) Any person diagnosed as having any of the STDs in Group D in section 23.1 of this Part may be provided treatment directly within the clinic or through a written or electronic prescription. If treatment is provided directly, it must be provided free of charge.

Section 23.3 is deleted:

[23.3 STD reporting.

(a) The reporting obligations of this section shall not affect the obligation to report individual cases of syphilis and gonorrhea imposed by section 2.10(b) of this Chapter.

(b) Cases of STD diagnosed in public health clinics operated by, and for, a health district must be reported by mail to the New York State Department of Health, Empire State Plaza, Tower Building, Albany, N.Y. 12237, by the 15th of the month following the month in which the case is diagnosed. Such reports shall be made on a standard form provided by the Department of Health.

(c) Cases of STD diagnosed by health providers other than those specified in subdivision (b) of this section may be tabulated and reported as described in that subdivision.]

Section 23.4 is renumbered as section 23.3, and a new Section 23.3 is added as follows:

[23.4] 23.3 Cases treated by other providers.

(a) Every physician, licensed midwife or nurse practitioner providing (as authorized by their scope of practice) gynecological, obstetrical, genito-urological, contraceptive, sterilization, or termination of pregnancy services or treatment, shall offer to administer to every patient treated by such physician, licensed midwife[,] or nurse practitioner, appropriate examinations or tests for STD as defined in this Part.

(b) The administrative officer or other person in charge of a clinic or other facility providing gynecological, obstetrical, genito-urological, contraceptive, sterilization or termination of pregnancy services or treatment shall require the staff of such clinic or facility to offer to administer to every resident of the State of New York coming to such clinic or facility for such services or treatment, appropriate examinations or tests for the detection of sexually transmissible diseases.

Revised rule compared with proposed rule: Substantial revisions were made in sections 2.10, 23.1 and 23.2.

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

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

Public comment will be received until: 30 days after publication of this notice.

Revised Regulatory Impact Statement

Statutory Authority:

Sections 225(4) and 225(5) (a), (h), and (i) of the Public Health Law (PHL) authorize the Public Health and Health Planning Council to establish and amend State Sanitary Code provisions relating to the designation of communicable diseases dangerous to public health, and the nature of information required to be furnished by physicians in each case of communicable disease. PHL Section 206(1) (d) authorizes the commissioner to “investigate the causes of disease, epidemics, the sources of mortality, and the effect of localities, employments and other conditions, upon the public health.” PHL Section 206(1) (e) permits the commissioner to “obtain, collect and preserve such information relating to marriage, birth, mortality, disease and health as may be useful in the discharge of his duties or may contribute to the promotion of health or the security of life in the state. . .”

Article 23 of the PHL provides the authority for the control of sexually transmissible diseases (STDs) by local health officers. Section 2304 outlines the responsibility of each board of health of a health district “to provide adequate facilities for the free diagnosis and treatment of persons living within its jurisdiction who are suspected of being infected or are infected with” an STD; that the health officer “shall administer these facilities and shall promptly examine or arrange for the examination of persons suspected of being infected. . .”; and that these facilities “shall comply with the requirements of the commissioner” of the New York State Department of Health (NYSDOH).

Section 2.10 of the State Sanitary Code codified in Title 10 (Health) of the Codes, Rules, and Regulations of the State of New York requires the reporting of cases or suspected cases or outbreaks of communicable disease, including chancroid, chlamydia, gonorrhea, lymphogranuloma venereum, hepatitis B virus and syphilis, as outlined in Section 2.1, by physicians.

The part of the State Sanitary Code codified in Sections 23.1 through 23.4 of Title 10 outlines the list of STDs, the rules for the examination by the health department of persons infected or suspected of being infected with STD; the reporting obligations for STD, and the requirement that either physicians or clinics providing gynecological, obstetrical, genito-urinary, contraceptive, sterilization, or termination of pregnancy shall offer every patient appropriate examination or tests for STD.

Legislative Objectives:

The following are proposed changes to Sections 2.10, 23.1, 23.2, 23.3 and 23.4 that deal with the reporting of cases or suspected cases or outbreaks of communicable disease by physicians, list of sexually transmitted diseases, treatment facilities, and STD reporting. These regulations meet the legislative objective of protecting the public health by removing archaic language, which requires the filing of written reports. In

addition, language allowing reporting using patient's initials is equally archaic and is being removed. HIPAA regulations (45 CFR Parts 160 and 164) as well as other confidentiality protections currently make reporting by initials unnecessary. Further, the proposed legislation updates the list and the terminology used for conditions in Section 23.1 designated as requiring free diagnosis and treatment in Section 23.2 (c): specifically chlamydia, gonorrhea, syphilis, non-gonococcal urethritis, mucopurulent cervicitis, trichomoniasis, lymphogranuloma venereum, chancroid and granuloma Inguinale.

The syndromal condition, pelvic inflammatory disease (PID) is being added to the list of STDs requiring free diagnosis, but free treatment is not required for PID. The NYSDOH will promulgate diagnostic criteria for PID. Outpatient treatment may be offered by local health department STD clinics or a managed referral to another health care provider must take place. Local health departments must be able to confirm the follow-up of PID patients if requested by the NYSDOH. Confirmation includes facilitating the referral to another medical provider, ensuring that the patient attended the referral appointment, and verifying that treatment was provided. Facilities described in Part 23.2 (local health department clinics) must provide treatment for genital herpes simplex, ano-genital warts, and human papilloma virus on-site or by means of a written or electronic prescription or by referral to another provider. Yeast (candida) vaginitis, bacterial vaginosis, pediculosis pubis and scabies may be treated on site by the Part 23.2 facility or by means of a written or electronic prescription.

The proposed changes are consistent with the current guidance from the Centers for Disease Control and Prevention (CDC) as to what conditions constitute sexually transmitted diseases. The changes also clarify disease reporting requirements for medical providers and medical management requirements for local health departments.

Needs and Benefits:

A. Background

Proposed changes to Section 23.1 clarify and update the official list of STDs in NYS including NYC based on current medical technology and understanding. Proposed changes to Sections 23.1 and 23.2 also clarify and simplify local health department service responsibilities relating to STD control.

The CDC's Program Operations Guidelines for STD Prevention states "Medical services at the public STD clinic should be low or no cost, confidential, and convenient to avoid creation of barriers between the patient and the accessibility of services." Recommendations regarding the range of services include at a minimum that clinics should have the capacity to: accurately diagnose and treat bacterial STDs and to distribute medications for diseases diagnosed in the clinic. Medications "must be available for locally prevalent STDs, with prescriptions available for diagnosed diseases not prevalent in the community." The proposed regulations are consistent with these federal guidelines.

Modification of the treatment requirements for pelvic inflammatory disease in Section 23.2(e) will permit the local health department to either treat the patient on site free of charge OR immediately refer the individual for out-patient management to another medical facility.

The list of conditions in Sections 23.2 (d) and 23.2 (f) designated as requiring free diagnosis, permits the local health department to either treat the patient on site free of charge OR to treat with either prescription or referral. This list includes: genital herpes, ano-genital warts, human papilloma virus, yeast (candida) vaginitis, bacterial vaginosis, pediculosis pubis, and scabies. For genital herpes, free diagnosis would not include a requirement for providing antibody serologic testing as this is not considered a diagnostic test for acute or recurrent infection, but rather a screening test for past exposure that is useful for counseling purposes. Language relating to therapy for herpes infection is being updated since the preferred therapy is now firmly established. Part 23.2 facilities will have a choice of providing on-site treatment for herpes or providing a prescription.

If the local health department selects to treat with either prescription or referral for conditions listed in 23.2(d) or (f), or chooses the referral option for conditions listed in 23.2(e), they are absolved of the cost for treatment and will not be responsible for any residual costs of treatment that are not covered by the patient or insurance carriers.

In addition, for the purpose of these regulations, the cervical Papanicolaou (Pap) test, while an indirect indicator of human papilloma virus infection, is a screening test for cervical cancer rather than an STD. Thus, local health departments would not be required to offer cervical Pap tests free of charge. These changes are recommended based on the positive fiscal impact they will have on the local health department's provision of STD clinical services.

Section 23.3 has been eliminated since it is inconsistent with the reporting requirements of communicable diseases as written in Section 2.10. In addition, laboratories currently report test results electronically to the health departments. The counties are required to complete a case investigation and report morbidity to the state using the Communicable Disease Electronic Surveillance System (CDESS).

COSTS:

Costs to Regulated Parties:

The deletion of Sections 2.10(b) and 23.3 updates the Sanitary Code to reflect accepted practice, reporting by name only. There will be no increased costs to physicians as a result of this change.

Costs to Local and State Governments:

There would be no increased costs incurred from the changes to Part 23 to local health department facilities. Changes in the official list of STDs will have minimal cost impact on local health departments as most have already adopted the updated STD nomenclature. Clearly identifying those STDs that must be diagnosed and treated on site at local health departments, diseases diagnosed and referred for treatment, and diseases treated by prescription, will clarify vagaries of the regulations as currently written. These clarifications have been requested by local health department officials.

Local health departments are already required to provide free diagnosis of all the listed STD conditions. In fact, the proposed changes would actually serve to lessen the burden of costs to local health departments associated with the treatment of some selected conditions by permitting either referral or use of a written or electronic prescription. In addition, the local health departments may realize some increased revenues by having the ability to bill third parties for selected screening services which are considered "non-diagnostic" tests for the purposes of this section (i.e., herpes simplex antibody serology, and cervical Pap smears), a practice which is currently permitted for HIV antibody serologic testing.

Increased costs for services under Public Health Law section 602(3)(b) - disease control and 10 NYCRR sections 40-2.80 and 2.81 are expected to be negligible, in the \$25,000 - \$50,000 annual range statewide, as county health departments already have the diagnostic capability required in the proposed changes. Treatment costs are expected to remain stable since the medications recommended are inexpensive and more conditions can now be treated through prescription. In addition, clarifying which STDs can be treated by prescription or by referral may reduce overall costs thereby potentially lessening Article 6 costs to the state.

Costs to the Department of Health:

There would be no increased costs to the Department of Health as a result of these regulatory changes. The infrastructure of the state DOH to manage the proposed changes is in place. Medicaid costs for STDs are typically associated with care for complications of untreated disease. The proposed changes should decrease Medicaid costs by encouraging patients to visit local health departments for free diagnosis and treatment, thereby reducing complications which would normally require hospitalization. The Department of Health will maintain its commitment to assist counties with disease intervention activities including interviewing patients and partner notification.

Paperwork:

There will be no new paperwork associated with these changes. The proposed changes will result in decreased paperwork since written reporting is no longer required.

Local Government Mandates:

There are no new mandates associated with these regulatory changes. Current mandates are clarified, simplified, and worded in such a way as to eliminate additional financial burden on local governments.

Duplication:

There is no duplication of these regulatory changes in existing State or federal law.

Alternatives:

The Department considered no action to update these regulations, but determined that the proposed revisions would be more prudent.

The deletion of Section 2.10(b) and Section 23.3 removes archaic language in order to make the regulations consistent with current reporting practices.

The proposed changes to Part 23 clarify existing responsibilities of the local health department in providing diagnostic and treatment services for STD. Variations in the nomenclature of STDs and the diagnosis and treatment requirements reflect the most recent Program Operations Guidelines promulgated by CDC. For the most part, these changes are in place in local health departments and clarify vague language that has previously existed.

Federal Standards:

The proposed regulations are consistent with federal guidelines. The regulatory changes recommended are consistent with federal standards as promulgated in the CDC Program Operations Guidelines.

Compliance Schedule:

Compliance with these revisions of the Sanitary Code will be mandated upon filing of a Notice of Adoption of this regulation in the New York State Register.

Revised Regulatory Flexibility Analysis

Changes made to the last published rule do not necessitate revision to the previously published RFA.

Revised Rural Area Flexibility Analysis**Effect on Rural Areas:**

The proposed regulatory changes will apply statewide and will affect reporting of STD by health care providers in the same manner across the state. The effect on rural health departments in the provision of services for the diagnosis and treatment of persons with STD or suspected STD infection within their jurisdiction will also be similar to the rest of the state. Analysis of STD data statewide shows that rural areas do not have a disproportionate number of STD cases.

Compliance Requirements:

There are no new compliance requirements associated with these proposed changes.

Professional Services:

No additional professional services will be required. Any additional needed training on reporting will be provided by the New York State Department of Health in multi-county meetings or on an individual basis as necessary or as requested. Clinical training will be made available by the Montefiore Medical Center STD Center for Excellence, a contractor for the Bureau of STD Prevention and Epidemiology.

Compliance Costs:

No additional costs will be incurred as a result of these revisions to the Sanitary Code.

Due to rising costs and decreased revenues, local health departments are struggling to maintain services as required by the Public Health Law and Sanitary Code. These proposed revisions should actually lessen the burden of costs associated with treatment for some conditions by allowing the use of prescriptions to meet the "treatment" requirement.

Minimizing Adverse Impact:

There will be no adverse impacts on reporting or clinical services as a result of these changes. The changes will likely enhance screening and have the potential for actually enhancing the scope of services for county residents who receive STD care through the local health department.

Feasibility Assessment:

There will be no increased workload associated with these revisions.

Rural Area Participation:

Local governments have been consulted in the process through communication with local health departments and the New York State Association of County Health Officers.

Revised Job Impact Statement

Changes made to the last published rule do not necessitate revision to the previously published JIS.

Assessment of Public Comment

The NYS Department of Health (NYSDOH) received written comments on the proposed amendments to Parts 2.1 and Part 23 of Title 10 of the Official Compilation of Codes, Rules and Regulations of the State of New York from the New York City Department of Health and Mental Hygiene, (NYCDOHMH) and an anonymous entity. Each noted concerns with the proposed amendments which are summarized below, followed by the NYSDOH response.

Comment #1

The proposed regulations for Section 2.10 place reporting requirements solely on physicians which is overly restrictive. The provision should be revised to permit other licensed health care professionals who may provide care for a patient to report cases. In addition, the provision should clarify the meaning of the phrase "report to the health officer within whose jurisdiction such patient is." Finally, it is suggested that local health departments have the authority to waive the requirement to report in writing instead of limiting this authority to the State Commissioner of Health.

Response:

These comments are not commenting on the Department's proposed amendments; rather, these comments are proposing that the Department make additional amendments to a part of the regulation that the Department was not proposing to amend. Nevertheless, NYSDOH now proposes to modify the regulatory language in Section 2.10 to state "It shall be the duty of every physician to report to the city, county or district health officer, within whose jurisdiction such patient resides. . ."

Other licensed health care professionals who may provide care for a patient are permitted to report cases; nothing in these regulations prohibits them from doing so. Furthermore, it is permissible for a physician to designate another person, including another health care professional, to report cases on behalf of the physician.

The statutory authority to mandate reporting of cases is limited to the State Commissioner of Health and consequently, only the commissioner can approve requests to omit written reports.

Comment #2

The proposed § 23.1 presents the list or groups of sexually transmitted diseases that local health departments have responsibility for diagnosing and treating. However, the Regulatory Impact Statement states that the proposed changes to § 23.1 clarify and update the official reportable STDs

in NYS including NYC. It is requested that NYSDOH change the relevant statement in the Regulatory Impact Statement to reflect that the proposed group of conditions in § 23.1 should be interpreted to apply to local health department responsibility for care and treatment and not to those STDs which are reportable.

Response:

NYSDOH agrees with the comment that the group of conditions listed in Section 23.1 represent those conditions for which the local health department is required to provide diagnosis and treatment. NYSDOH has amended the Regulatory Impact Statement for Part 23 in "Needs and Benefits: A. Background. Proposed changes to Section 23.1 clarify and update the official list of STDs in NYS including NYC based on current medical technology and understanding." The list of communicable diseases which must be reported is established in Section 2.1 and includes chancroid, chlamydia, gonorrhea, lymphogranuloma venereum, and syphilis.

Comment #3

The proposed regulation does not appear to permit direct treatment of Group B conditions by local health departments; the proposed language should be further revised to permit direct treatment and furthermore, health departments should also be permitted to bill for such treatment.

The proposed regulations that permit treatment by written prescription should be aligned with NYCRR 63.6(a)(7) and 8 NYCRR Part 29 which authorizes the use of electronic prescriptions in addition to written prescriptions.

Response:

NYSDOH agrees that local health departments should have the opportunity to provide care directly in the clinic for those conditions in Group B. Furthermore, NYSDOH agrees to reconcile § 23.1 with NYCRR 63.6(a)(7) and 8 NYCRR Part 29. However, NYSDOH does not agree that local health departments that choose to provide treatment directly for Group B conditions be authorized to bill for such treatment. PHL § 2304 is the basis for the proposed regulation and specifically states that diagnosis and treatment must be free. The revised regulations specify how such diagnosis and treatment may be offered but does not change section 2304 which requires that diagnosis and treatment must be free.

NYSDOH amended § 23.2 paragraph (d) to state "Any persons diagnosed as having any of the STDs in Group B in section 23.1 of this Part must be provided treatment either directly in the clinic or through a written or electronic prescription or referral. If treatment is provided directly, it must be provided free of charge." Article 6 funding permits local health departments to recover some of the costs of treatment for Group B conditions.

Comment #4

The proposed regulation does not clearly state that treatment for Group D conditions must be provided free of charge if local health departments choose to treat directly. The proposed regulations should be revised to permit local health departments to bill for Group D conditions that are treated directly.

Yeast should not be included in Group D as it is not always transmitted sexually. Furthermore, local health departments may not treat yeast infections as over the counter medication is available.

References to *Pediulosis* should be changed to *Pediculosis*.

Response:

NYSDOH does not agree that the local health department should have the authority to bill for conditions in Group D should it provide such treatment directly in the clinic. As stated in the NYSDOH response to the comment #3 regarding Group B conditions, PHL § 2304 is the basis for the proposed regulation and specifically states that diagnosis and treatment must be free. The revised regulations specify how such diagnosis and treatment may be offered but does not change § 2304 which requires that diagnosis and treatment must be free.

To clarify the financial responsibility of the local health department as regards treatment for Group D conditions, NYSDOH proposes to amend § 23.2 paragraph (f): "Any person diagnosed as having any of the STDs in Group D in § 23.1 of this Part may be provided treatment directly within the clinic or through a written or electronic prescription. If treatment is provided directly, it must be free of charge."

With respect to yeast, sexual transmission of yeast does occur. As it is not possible to distinguish between those cases which are sexually transmitted and those that are not, NYSDOH proposes to keep yeast in the list of Group D conditions to assure that those persons in need of diagnosis and treatment for this prevalent infection receive appropriate care without obstacle.

NYSDOH will also make technical correction to references to "*Pediulosis*" in the regulations and Regulatory Impact Statement.

Comment #5

In section 23.2, references are made to the use of clinical, laboratory or treatment guidelines for the diagnosis and treatment of persons infected with STDs as defined by 23.1. Requiring the use of such guidelines, which

do not go through a regulatory approval process, limits health department flexibility in determining the best course of care. The language should be modified to permit health departments this flexibility.

Response:

NYSDOH distributes currently published CDC treatment and laboratory guidelines that are developed by a national panel of experts and are subject to a federal review and approval process. The CDC treatment guidelines provide recommendations based on current scientific evidence published in the literature. Furthermore, these guidelines provide options for treatment thereby establishing flexibility for providers. While federal guidelines are considered best practice, they do not prevent local health departments from using clinical judgment for management and treatment of persons diagnosed with an STD. NYSDOH intends to maintain the language in section 23.2 as written in order to ensure that patients can receive diagnosis and treatment consistent with federal recommendations.

Comment #6

The Regulatory Impact Statement states that NYSDOH will issue diagnostic criteria for PID and will require local health departments to confirm follow-up of patients with PID. Additional guidance is being sought on the requirements of local health department confirmation.

The Regulatory Impact Statement indicates that serologic testing for genital herpes antibody and pap smears for human papilloma virus do not need to be provided for free as these tests are not considered diagnostic. It would be useful to include these specifications in the regulations themselves. Furthermore, these regulations should be reconciled with proposed regulations of APG (10 NYCRR Subpart 86-8) to enable local health departments to bill for pap smears on a fee-for-service basis.

Response:

NYSDOH will establish criteria for PID that is based on federal guidelines as published by the CDC in its current STD Treatment Guidelines. The Regulatory Impact Statement provides that treatment of patients diagnosed with PID in local health departments may be via a "managed referral." The intent is to ensure that patients attend referral appointments and receive recommended treatment for this potentially serious syndrome. Follow-up confirmation by the local health department would include making the appointment for the client at the referral medical facility, confirming that the patient attended the appointment and verifying therapy for the patient's PID diagnosis.

NYSDOH has elected not to specifically identify in the proposed regulations which laboratory tests may or may not be used for diagnostic purposes and will not revise the language for Group B conditions to further elucidate those specific tests that are excluded. The current information in the Regulatory Impact Statement on pap smears and serologic testing for herpes antibody provides guidance for interpreting the regulations and will remain unchanged.

APG rate setting methodology and Medicaid reimbursement of pap smears is a separate issue and will not be addressed through these proposed regulations.

Comment #7

Guidance is sought on local health department reimbursement under Article 6 for treatment of Group C and D conditions for which it is not obligated to treat.

Response:

The STD policy statement which was jointly developed by NYSDOH and NYSACHO specifically establishes those conditions for which local health departments may recover Article 6 funding.

Comment #8

The statement that genital herpes serologic testing "is not considered a diagnostic test for acute or recurrent infection, but rather a screening test for past exposure that is useful for counseling purposes" is untrue. The diagnosis of recurrent genital herpes is challenging because viral culture is relatively insensitive in the absence of intact vesicles, and these vesicles may be absent or present for only a few hours in many patients with recurrent genital herpes. Polymerase chain reaction assays for herpes simplex virus are not a practical option for diagnostic purposes because of their high cost. In such settings, serologic testing is the preferred diagnostic option.

Response:

The comment is clinically inaccurate; serologic testing for genital herpes is not a diagnostic test.

Comment #9

Local health department clinics do not have the capacity or resources to establish billing systems for selected STD treatment services. Revenue generated through billing would be offset by the costs of establishing and operating such a system. There is concern that billing patients would create a disparity in the quality of services provided to those patients who can afford to pay compared to those who cannot.

Response:

These regulations do not require local health departments to bill patients or insurance carriers. For the conditions listed, local health department are

either required to treat for free or have the option to treat by prescription or referral.

Comment #10

NYSDOH should have consulted with more local health districts in drafting this regulation.

Response:

NYSDOH broadly solicited comments on the proposed regulations. As stated in the regulatory impact statement, NYSDOH consulted with a number of professional organizations, including the New York State Association of County Health Officers, as well as local governments to seek input during the drafting of these regulations.

Comment #11

It is recommended that NYSDOH post all comments in real-time in order to permit greater transparency in NYS governmental operations, reduce potential for duplicate comments, and improve the quality of the regulations.

Response:

NYSDOH consulted widely in the development of these regulations in order to ensure representation of those consumers and stakeholders who would be impacted by the proposed rules. This consultation process promoted transparency, discussion, and quality of the regulations. Finally, this Assessment of Public Comment serves to inform all parties of the comments that were submitted in response to these regulations and the NYSDOH response.

Comment #12

If local health departments choose to treat STDs through prescription or referral, it would be helpful to clarify that the local health department is not responsible for any residual costs of treatment that are not covered by the patient or third-party insurance.

Response:

NYSDOH does not intend for local health departments to accrue any cost burden associated with those conditions which may be treated through prescription or referral and will include additional language to this effect in the Regulatory Impact Statement.

Insurance Department

EMERGENCY RULE MAKING

Standards for the Management of the New York State Retirement Systems

I.D. No. INS-11-10-00002-E

Filing No. 294

Filing Date: 2011-03-21

Effective Date: 2011-03-21

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

Action taken: Amendment of Part 136 (Regulation 85) of Title 11 NYCRR.

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

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

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

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

This regulation was previously promulgated on an emergency basis on June 18, 2009, September 16, 2009, January 5, 2010, April 2, 2010, May 28, 2010, July 29, 2010, September 23, 2010, November 19, 2010, and

January 18, 2011. A public hearing was held on April 28, 2010. Comments were received from two entities recommending that the total ban on the use of placement agents be modified. The Department will continue to assess the comments that have been received and any others that may be submitted.

Regulation No. 85 needs to remain effective for the general welfare.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[(i) Third party administrator shall mean any person or entity that contractually provides administrative services to the retirement system, including receiving and recording employer and employee contributions, maintaining eligibility rosters, verifying eligibility for benefits or paying benefits and maintaining any other retirement system records. Administrative services do not include services provided to the fund relating to fund investments.]

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

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

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

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

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

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

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

(g) The Comptroller shall:

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

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

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

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

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

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

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt 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. INS-11-10-00002-P, Issue of March 17, 2010. The emergency rule will expire May 16, 2011.

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

Regulatory Impact Statement

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

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

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

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

Section 7401(a) sets forth the entities, including the public retirement systems, to which Article 74 applies. Section 7402(n) provides that it is a ground for rehabilitation if an entity subject to Article 74 has failed or refused to take such steps as may be necessary to remove from office any officer or director whom the Superintendent has found, after appropriate notice and hearing, to be a dishonest or untrustworthy person.

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

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

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

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

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

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

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

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

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

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

to explore remedies most appropriate to the pension funds that they represent.

Initially, the Superintendent concluded that only an immediate total ban on the use of placement agents could provide sufficient protection of the Fund's members and beneficiaries and safeguard the integrity of the Fund's investments. The proposed rule was published in the State Register on March 17, 2010. A Public Hearing was held on April 28, 2010. The following comments were received:

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

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

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

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

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

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

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

Regulatory Flexibility Analysis

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

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

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

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

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

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

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

2. Compliance Requirements: None.

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

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

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

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

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

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

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

Rural Area Flexibility Analysis

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

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

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

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

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

Job Impact Statement

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

Assessment of Public Comment

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

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

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

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

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

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

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

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

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

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

EMERGENCY RULE MAKING

Workers' Compensation Insurance

I.D. No. INS-14-11-00002-E

Filing No. 279

Filing Date: 2011-03-16

Effective Date: 2011-03-16

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

Action taken: Addition of Subpart 151-6 (Regulation 119) to Title 11 NYCRR.

Statutory authority: Insurance Law, sections 201 and 301; Workers' Compensation Law, sections 15(8)(h)(4) and 151(2)(b)

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

Specific reasons underlying the finding of necessity: Workers' Compensation Law sections 15(8)(h)(4), 25-A(3), and 151(2)(b) require the Workers' Compensation Board ("WCB") to assess insurers and the State Insurance Fund, for the Special Disability Fund, the Fund for Reopened Cases, and the operations of the Workers' WCB, respectively. The assessments are allocated to insurers, self-insurers, group self-insurers, and the State Insurance Fund based upon the total compensation payments made by all such entities. In the case of an insurer, once the assessment amount is determined, the insurer pays the percentage of the allocation based on the total premiums it wrote during the preceding calendar year.

Prior to January 1, 2010, the Workers' Compensation Law required the Workers' Compensation Board to assess insurers on the total "direct premiums" they wrote in the preceding calendar year, whereas the insurers were collecting the assessments from their insureds on the basis of "standard premium," which took into account high deductible policies. As high deductible policies increased in the marketplace, a discrepancy developed between the assessment an insurer collected, and the assessment the insured was required to remit to the Workers' Compensation Board.

Part QQ of Chapter 56 of the Laws of 2009 ("Part QQ") amended Workers' Compensation Law sections 15(8)(h)(4) and 151(2)(b) to change the basis upon which the WCB collects the portion of the allocation from

each insurer from "direct premiums" to "standard premium" in order to ensure that insurers are not overcharged or under-charged for the assessment, and to ensure that insureds with high deductible policies are charged the appropriate assessment. Effective January 1, 2010, therefore, each insurer pays a percentage of the allocation based on the total standard premium it wrote during the preceding calendar year. Part QQ requires the Superintendent of Insurance to define "standard premium," for the purposes of setting the assessments, and to set rules, in consultation with the WCB, and New York Compensation Rating Board, for collecting the assessment from insureds.

This regulation was previously promulgated on an emergency basis on December 29, 2009 and March 25, 2010. The proposal was sent to the Governor's Office of Regulatory Reform on January 14, 2010 and the Department is awaiting approval to publish the regulation, however because the effective date of the relevant provision of the law is January 1, 2010, and the need that the assessments be calculated and collected in a timely manner, it is essential that this regulation, which establishes procedures that implement provisions of the law, be continued on an emergency basis.

For the reasons cited above, this regulation is being promulgated on an emergency basis for the benefit of the general welfare.

Subject: Workers' Compensation Insurance.

Purpose: This regulation is necessary to standardize the basis upon which the workers' compensation assessments are calculated.

Text of emergency rule: A new subpart 151-6 entitled Workers' Compensation Insurance Assessments is added to read as follows:

Section 151-6.0 Preamble

(a) Workers' Compensation Law sections 15(8)(h)(4), 25-A(3), and 151(2)(b) require the workers compensation board to assess insurers, and the state insurance fund for the special disability fund, the fund for reopened cases, and the operations of the Board, respectively. First, the assessments are allocated to insurers, self-insurers, group self-insurers, and SIF based upon the total compensation payments made by all such entities. In the case of an insurer, once the assessment amount is determined, each pays the percentage of the allocation based on the total premiums it wrote during the preceding calendar year.

(b) Prior to January 1, 2010, each insurer paid a percentage of the allocation based on the total direct written premiums it wrote in the preceding calendar year. However, Part QQ of Chapter 56 of the Laws of 2009 ("Part QQ") amended Workers' Compensation Law sections 15(8)(h)(4), and 151(2)(b) to change the basis upon which the board collects the portion of the allocation from each insurer. Thus, effective January 1, 2010, each insurer pays a percentage of the allocation based on the total standard premium it wrote during the preceding calendar year. Part QQ requires the superintendent of insurance (the "superintendent") to define "standard premium," for the purposes of the assessments, and to set rules, in consultation with the board, and NYCIRB for collecting the assessment from insureds.

Section 151-6.1 Definitions

As used in this Part:

- (a) Board means the New York workers' compensation board.
- (b) Insurer means an insurer authorized to write workers' compensation insurance in this state, except for the SIF.
- (c) NYCIRB means the New York workers compensation rating board.
- (d) SIF means the state insurance fund.
- (e) Standard Premium means
 - (i) the premium determined on the basis of the insurer's approved rates; as modified by:
 - (a) any experience modification or merit rating factor;
 - (b) any applicable territory differential premium;
 - (c) the minimum premium;
 - (d) any Construction Classification Premium Adjustment Program credits;
 - (e) any credit from return to work and / or drug and alcohol prevention programs;
 - (f) any surcharge or credit from a workplace safety program;
 - (g) any credit from independently-filed insurer specialty programs (for example, alternative dispute resolution, drug-free workplace, managed care or preferred provider organization programs);
 - (h) any charge for the waiver of subrogation;
 - (i) any charge for foreign voluntary coverage; and
 - (j) the additional charge for terrorism, and the charge for natural disasters and catastrophic industrial accidents.
 - (ii) For purposes of determining standard premium, the insurer's expense constant, including the expense constant in the minimum premium, the insurer's premium discount, and premium credits for participation in any deductible program shall be excluded from the premium base.
 - (iii) The insurer shall use the definition of standard premium set forth in this Part to report standard premium to the Board.

Section 151-6.2 Collection of assessments

Any assessments required by Workers' Compensation Law sections 15(8)(h)(4), 25-A(3) and 151(2)(b) that are collected by an insurer or SIF from policyholders shall be collected through a surcharge based on standard premium in a percentage to be determined by the superintendent in consultation with NYCIRB and the Board.

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 June 13, 2011.

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

Regulatory Impact Statement

1. **Statutory authority:** The authority of the Superintendent of Insurance for the promulgation of Part 151-6 of Title 11 of the Official Compilation of Codes, Rules and Regulations of the State of New York (Fifth Amendment to Regulation No. 119) derives from Sections 201 and 301 of the Insurance Law, and Sections 15, 25-A, and 151 of the Workers' Compensation Law.

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

Sections 15, 25-A, and 151 of the Workers' Compensation Law, as amended by Part QQ of Chapter 56 of the Laws of 2009 require the Superintendent to define the "standard premium" upon which assessments are made for the Special Disability Fund, the Fund for Reopened Cases, and the operations of the Workers' Compensation Board ("WCB"). Section 15 of the Workers' Compensation Law further requires workers' compensation insurers to collect the assessments from their policyholders through a surcharge based on premiums in accordance with the rules set forth by the Superintendent, in consultation with the New York Workers' Compensation Insurance Rating Board ("NYCIRB"), and the chair of the WCB.

2. **Legislative objectives:** (a) Workers' Compensation Law sections 15(8)(h)(4), 25-A(3), and 151(2)(b) require the WCB to assess insurers writing workers' compensation insurance and the State Insurance Fund, for the Special Disability Fund, the Fund for Reopened Cases, and the operations of the WCB, respectively. The assessments are allocated to insurers, self-insurers, group self-insurers, and the State Insurance Fund based upon the total compensation payments made by all such entities. In the case of an insurer, once the assessment amount is determined, the insurer pays the percentage of the allocation based on the total premiums it wrote during the preceding calendar year.

Prior to January 1, 2010, the Workers' Compensation Law required the WCB to assess insurers based on the total "direct premiums" they wrote in the preceding calendar year, whereas the insurers collected assessments from their insureds based on the "standard premium," which took into account high deductible policies. As high deductible policies increased in the marketplace, a discrepancy developed between the assessment an insurer collected and the assessment the insurer was required to remit to the WCB.

Therefore, Part QQ of Chapter 56 of the Laws of 2009 ("Part QQ") amended Workers' Compensation Law sections 15(8)(h)(4) and 151(2)(b) to change the basis upon which the Board collects the portion of the allocation from each insurer from "direct premiums" to "standard premium" to ensure that insurers are not overcharged or under-charged for the assessment, and to make certain that insureds with high deductible policies are charged the appropriate assessment. Thus, effective January 1, 2010, each insurer pays a percentage of the allocation based on the total standard premium it wrote during the preceding calendar year. Part QQ requires the Superintendent to define "standard premium," for the purposes of the assessments, and to set rules, in consultation with the WCB and NYCIRB, for collecting assessments from insureds.

3. **Needs and benefits:** This amendment is necessary, and mandated by the Workers' Compensation Law, to standardize the basis upon which the workers' compensation assessments are calculated to eliminate any discrepancy between the amount that an insurer collects from employers and the amount that an insurer remits to the WCB.

The discrepancy in the assessment calculation and remittance became evident as a result of the proliferation of large deductible policies. In many instances, the "direct premium" paid on a large deductible policy is less than the "standard premium" would be for that policy. Insurers that offered high-deductible policies collected assessments based on the "standard premium," but the Workers' Compensation Law required the WCB to use "direct premiums" to bill insurers. Thus, in some instances, workers' compensation insurers collected from employers more money than they remitted to the WCB.

4. **Costs:** This amendment standardizes the basis upon which the work-

ers' compensation assessments are calculated to ensure that there is no discrepancy between the amount that an insurer collects from employers, and the amount that an insurer remits to the WCB. Although the amendment itself does not impose new costs, the impact of changing the basis for workers' compensation assessments may increase costs for some insurers, but reduce costs for others. Taken together, the amendment aims to level the playing field for insurers that offer large deductible policies and those that do not.

5. **Local government mandates:** The amendment does not impose any program, service, duty or responsibility upon a city, town or village, or school or fire district.

6. **Paperwork:** This amendment requires no new paperwork. Insurers and the State Insurance Fund already collect and remit assessments to the WCB. This regulation only standardizes the basis upon which the assessments are calculated, as required by the Workers' Compensation Law.

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

8. **Alternatives:** No alternatives were considered, because Part QQ requires the Superintendent to define "standard premium" for the purpose of the assessments, and to set rules, in consultation with the WCB and NYCIRB, for collecting the assessment from insureds. Based on discussions with NYCIRB and the WCB, the Superintendent determined that the term "standard premium" should conform to the definition currently used by insurers, and should ensure that the definition accounts for high deductible policies.

NYCIRB has been collecting premium data on a "standard" basis since its inception nearly 100 years ago. The "standard premium" is the premium without regard to credits, deviations, or deductibles. As new credits and types of policies (such as large deductible policies) develop, NYCIRB adjusts the definition to account for the changes. The Insurance Department is merely adopting NYCIRB's current definition.

9. **Federal standards:** There are no applicable federal standards.

10. **Compliance schedule:** The effective date of the relevant provision of the law is January 1, 2010. The assessments must be calculated and collected as of January 1, 2010.

Regulatory Flexibility Analysis

1. **Small businesses:**

The Insurance Department finds that this rule will not impose any adverse economic impact on small businesses and will not impose any reporting, recordkeeping or other compliance requirements on small businesses.

This amendment applies to all workers' compensation insurers authorized to do business in New York State, as well as to the State Insurance Fund ("SIF"). It standardizes the basis upon which the workers' compensation assessments are calculated to ensure that there is no discrepancy between the amount that an insurer collects from employers, and the amount that an insurer remits to the Workers' Compensation Board.

The basis for this finding is that this rule is directed at workers' compensation insurers authorized to do business in New York State, none of which falls within the definition of "small business" pursuant to section 102(8) of the State Administrative Procedure Act. The Insurance Department has monitored Annual Statements and Reports on Examination of authorized workers' compensation insurers subject to this rule, and believes that none of the insurers falls within the definition of "small business," because there are none that are both independently owned and have fewer than one hundred employees. Nor does SIF come within the definition of "small business" pursuant to section 102(8) of the State Administrative Procedure Act, because SIF is neither independently owned nor operated, and does not employ one hundred or fewer individuals.

2. **Local governments:**

The amendment does not impose any impacts, including any adverse impacts, or reporting, recordkeeping, or other compliance requirements on any local governments. This amendment does not affect self-insured local governments, because it applies only to insurers.

Rural Area Flexibility Analysis

1. **Types and estimated numbers of rural areas:** This amendment applies to all workers' compensation insurers authorized to do business in New York State, as well as the State Insurance Fund ("SIF"). These entities do business throughout New York State, including rural areas as defined in section 102(10) of the State Administrative Procedure Act ("SAPA").

2. **Reporting, recordkeeping and other compliance requirements, and professional services:** This regulation is not expected to impose any reporting, recordkeeping or other compliance requirements on public or private entities in rural areas. Insurers and SIF already collect and remit assessments to the Workers' Compensation Board ("WCB"). This amendment simply standardizes the basis upon which the assessments are calculated.

3. **Costs:** This amendment standardizes the basis upon which the workers' compensation assessments are calculated to ensure that there is no

discrepancy between the amount that an insurer collects from employers, and the amount that an insurer remits to the WCB. Although the amendment itself does not impose new costs, the impact of changing the basis for workers' compensation assessments may increase costs for some insurers, but reduce costs for others. Taken together, the amendment aims to level the playing field for insurers that offer large deductible policies and those that do not.

4. Minimizing adverse impact: The amendment does not impose any impact unique to rural areas.

5. Rural area participation: This amendment is required by statute. The entities covered by this amendment - workers' compensation insurers authorized to do business in New York State and the State Insurance Fund - do business in every county in this state, including rural areas as defined in section 102(10) of SAPA. This amendment standardizes the basis upon which the workers' compensation assessments are calculated.

Job Impact Statement

This rule will not adversely impact job or employment opportunities in New York. The rule merely standardizes the basis upon which workers' compensation assessments are calculated to ensure that there is no discrepancy between the amount that an insurer collects from employers, and the amount that an insurer remits to the Workers' Compensation Board. An insurer's existing personnel should be able to perform this task. There should be no region in New York that would experience an adverse impact on jobs and employment opportunities. This rule should not have a measurable impact on self-employment opportunities.

EMERGENCY RULE MAKING

Regulations Implementing the Comprehensive Motor Vehicle Insurance Repairs Act

I.D. No. INS-14-11-00003-E

Filing No. 295

Filing Date: 2011-03-21

Effective Date: 2011-03-21

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

Action taken: Amendment of Subpart 65-1 (Regulation 68-A) and Subpart 65-2 (Regulation 68-B) of Title 11 NYCRR.

Statutory authority: Insurance Law, sections 201, 301, 2307, 5103 and 5221

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

Specific reasons underlying the finding of necessity: Chapter 303 of the Laws of 2010 amended Insurance Law § 5103(b)(2) to prohibit an insurer from excluding from coverage any person who is injured as a result of operating a motor vehicle while in an intoxicated condition or while the person's ability to operate the vehicle is impaired by the use of a drug within the meaning of Vehicle and Traffic Law § 1192, and who receives necessary emergency health services rendered in a screening. The amendment permits an insurer to maintain a cause of action against the covered person for the amount of first party benefits paid or payable on behalf of the covered person if such person is found to have violated Vehicle and Traffic Law § 1192.

Chapter 303 of the Laws of 2010 became effective on January 26, 2011 and it is essential that this amendment be promulgated on an emergency basis in order to inform self-insurers of the new provisions in the law.

For the reasons cited above, this amendment is being promulgated on an emergency basis for the preservation of the general welfare.

Subject: Regulations Implementing the Comprehensive Motor Vehicle Insurance Repairs Act.

Purpose: To revise the regulations to comply with Chapter 303 of the Laws of 2010.

Text of emergency rule: Subdivision (b) of Section 65-1.1 is amended to read as follows:

(b) *An insurer shall provide the appropriate endorsement to be used with a policy.* The Mandatory Personal Injury Protection Endorsement (New York) and the Mandatory Personal Injury Protection Endorsement - Motorcycles (New York) set out below are approved and promulgated for use by an insurer [and, except]. *Except* as provided in subdivision (c) of this section and section 65-1.7 of this Subpart, [must be:

(1) furnished to all new insureds with policies effective on and after September 1, 2001; and

(2) enclosed with the first renewal policies renewed on and after September 1, 2001.] *an insurer shall provide:*

(1) *the Mandatory Personal Injury Protection Endorsement (New York) to every insured with respect to a policy issued, renewed, modified, altered or amended on or after January 26, 2011; or*

(2) *the Mandatory Personal Injury Protection Endorsement - Motorcycles (New York) to every insured with respect to a motorcycle policy issued or renewed.*

The "Exclusions" provision set forth in Subdivision (d) of Section 65-1.1 is amended to read as follows:

Exclusions

This coverage does not apply to personal injury sustained by:

(g) any person as a result of operating a motor vehicle while in an intoxicated condition or while his or her ability to operate [such] the vehicle is impaired by the use of a drug (within the meaning of section 1192 of the New York Vehicle and Traffic Law) *except that coverage shall apply to necessary emergency health services rendered in a general hospital, as defined in section 2801(10) of the New York Public Health Law, including ambulance services attendant thereto and related medical screening. However, where the person has been convicted of violating section 1192 of the New York Vehicle and Traffic Law while operating a motor vehicle in an intoxicated condition or while his or her ability to operate such vehicle is impaired by the use of a drug, and the conviction is a final determination, the Company has a cause of action against such person for the amount of first party benefits that are paid or payable;*¹²¹³ or

(h) any person while:

(1) committing an act which would constitute a felony, or seeking to avoid lawful apprehension or arrest by a law enforcement officer;²

(2) operating a motor vehicle in a race or speed test;²

(3) operating or occupying a motor vehicle known to that person to be stolen;² or

(4) repairing, servicing or otherwise maintaining a motor vehicle if [such] the conduct is within the course of a business of repairing, servicing or otherwise maintaining a motor vehicle and the injury occurs on the business premises;¹³¹⁴

Footnote 3 of Section 65-1.1 is amended to read as follows:

³[These exclusions] *This exclusion may be deleted, in the event the Company wishes to provide coverage under the indicated [circumstances] circumstance. Alternatively, the Company may delete the cause of action language only, provided, however, that, in either case, if the Company deletes this language, then the Company will be deemed to have waived its right to bring a cause of action against the person.*

The "Exclusions" provision set forth in Subdivision (c) of Section 65-1.3 is amended to read as follows:

Exclusions

This coverage does not apply to personal injury sustained by:

(g) any person as a result of operating a motor vehicle while in an intoxicated condition or while his or her ability to operate [such] the vehicle is impaired by the use of a drug (within the meaning of section 1192 of the New York Vehicle and Traffic Law) *except that coverage shall apply to necessary emergency health services rendered in a general hospital, as defined in section 2801(10) of the New York Public Health Law, including ambulance services attendant thereto and related medical screening. However, where the person has been convicted of violating section 1192 of the New York Vehicle and Traffic Law while operating a motor vehicle in an intoxicated condition or while his or her ability to operate such vehicle is impaired by the use of a drug, and the conviction is a final determination, the Company has a cause of action against such person for the amount of first party benefits that are paid or payable;*¹³¹⁴ or

Footnotes 14 through 18 of Sections 65-1.3 and 65-1.4 are renumbered to be Footnotes 15 through 19, respectively. A new Footnote 14 is added to read as follows:

¹⁴*This exclusion may be deleted, in the event the Company wishes to provide coverage under the indicated circumstance. Alternatively, the Company may delete the cause of action language only, provided, however, that, in either case, if the Company deletes this language, then the Company will be deemed to have waived its right to bring a cause of action against the person.*

The "Exclusions" provision set forth in Subdivision (j) of Section 65-2.3 is amended to read as follows:

Exclusions

This requirement for payment by a self-insurer of first-party benefits does not apply to personal injury sustained by:

(j) any person as a result of operating a motor vehicle while in an intoxicated condition or while his or her ability to operate such vehicle is impaired by the use of a drug (within the meaning of section 1192 of the New York Vehicle and Traffic Law) *except that coverage shall apply to necessary emergency health services rendered in a general hospital, as defined in section 2801(10) of the New York Public Health Law, including ambulance services attendant thereto and related medical screening. However, where the person has been convicted of violating section 1192 of the New York Vehicle and Traffic Law while operating a motor vehicle*

in an intoxicated condition or while his or her ability to operate such vehicle is impaired by the use of a drug, and the conviction is a final determination, the self-insurer has a cause of action against such person for the amount of first party benefits that are paid or payable; or

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 June 18, 2011.

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

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

Chapter 303 of the Laws of 2010 amended Insurance Law § 5103(b)(2) to prohibit a no-fault insurer from excluding from coverage necessary emergency health services rendered in a general hospital (as defined in Public Health Law § 2801[10]), including ambulance services attendant thereto and related medical screening, for any person who is injured as a result of operating a motor vehicle while in an intoxicated condition or while the person's ability to operate the vehicle is impaired by the use of a drug within the meaning of Vehicle and Traffic Law § 1192. Chapter 303 also permits a no-fault insurer to maintain a cause of action against the covered person for the amount of first party benefits paid or payable on behalf of the covered person if such person is found to have violated Vehicle and Traffic Law § 1192.

These regulatory actions are technical amendments, required to comply with Chapter 303 of the Laws of 2010. No Regulatory Impact Statement, Regulatory Flexibility Analysis for Small Businesses and Local Governments, or Rural Area Flexibility Analysis are necessary.

Job Impact Statement

The proposed rules are required in order to comply with Chapter 303 of the Laws of 2010. The proposed rules should have no adverse impact on jobs or economic opportunities in New York State as the rules merely revise The Mandatory Personal Injury Protection Endorsement (New York), the Additional Personal Injury Protection Endorsement (New York) and the rights and liabilities of self-insurers in order to comply with Chapter 303.

Public Service Commission

NOTICE OF ADOPTION

Lightened Regulation of Steam Operations

I.D. No. PSC-09-10-00010-A

Filing Date: 2011-03-22

Effective Date: 2011-03-22

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

Action taken: On 3/17/11, the PSC adopted an order granting Parkchester South Condominium, Inc. incidental and lightened ratemaking regulation of its steam operations.

Statutory authority: Public Service Law, sections 2(22), 5(1)(b), 78, 79, 80, 81, 82, 82-a, 83, 84, 85, 88, 89, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 114-a, 115, 117, 118, 119-b and 119-c

Subject: Lightened regulation of steam operations.

Purpose: To grant lightened regulation of steam operations.

Substance of final rule: The Commission, on March 17, 2011 adopted an order granting Parkchester South Condominium, Inc. incidental and lightened ratemaking regulation of its steam operations, 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-S-0060SA1)

NOTICE OF ADOPTION

Authority to Issue New Long-Term Debt

I.D. No. PSC-35-10-00022-A

Filing Date: 2011-03-22

Effective Date: 2011-03-22

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

Action taken: On 3/17/11, the PSC adopted an order approving KeySpan Gas East Corporation d/b/a National Grid's (KEDLI) request to issue and sell up to \$1.006 Billion of securities in one or more transactions by March 31, 2014.

Statutory authority: Public Service Law, sections 2, 5 and 69

Subject: Authority to issue new long-term debt.

Purpose: To approve KEDLI to issue and sell up to \$1.006 Billion of securities in one or more transactions by March 31, 2014.

Substance of final rule: The Commission, on March 17, 2011 adopted an order approving KeySpan Gas East Corporation d/b/a National Grid's (KEDLI) request to issue and sell up to \$1.006 Billion of securities in one or more transactions by March 31, 2014, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: 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-0365SA1)

NOTICE OF ADOPTION

Daily and Monthly Balancing and Semi-Annual Settlement Provisions

I.D. No. PSC-42-10-00010-A

Filing Date: 2011-03-17

Effective Date: 2011-03-17

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

Action taken: On 3/17/11, the PSC adopted an order approving Central Hudson Gas & Electric Corporation's amendments to PSC 12—Gas, effective April 1, 2011, to clarify the Daily Balancing provisions & revise the Monthly & Semi-Annual Cash Out provisions.

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

Subject: Daily and monthly balancing and semi-annual settlement provisions.

Purpose: To approve the daily and monthly balancing and semi-annual settlement provisions.

Substance of final rule: The Commission, on March 17, 2011 adopted an order approving Central Hudson Gas & Electric Corporation's amendments to PSC 12—Gas, effective April 1, 2011, to clarify the Daily Balancing provisions and revise the Monthly and Semi-Annual Cash Out provisions contained in its Retail Access Program.

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-G-0485SA1)

NOTICE OF ADOPTION**Accounting Treatment and Allocation of Proceeds between Shareholders and Ratepayers****I.D. No.** PSC-47-10-00013-A**Filing Date:** 2011-03-17**Effective Date:** 2011-03-17

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

Action taken: On 3/17/11, the PSC adopted an order approving Aqua New York of Sea Cliff, Inc. to establish a regulatory liability equal to 90 percent of the Methyl Tertiary Butyl Ether settlement proceeds of \$242,572 & defer the customers' share for the next rate case.

Statutory authority: Public Service Law, section 89-c

Subject: Accounting treatment and allocation of proceeds between shareholders and ratepayers.

Purpose: To approve the allocation of net proceeds and accounting entries.

Substance of final rule: The Commission, on March 17, 2011 adopted an order approving Aqua New York of Sea Cliff, Inc. to establish a regulatory liability equal to 90 percent of the Methyl Tertiary Butyl Ether (MTBE) settlement proceeds of \$242,572 and defer the customers' share of the MTBE settlement proceeds as a rate mitigator in its next base rate proceeding, 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-0500SA1)

NOTICE OF ADOPTION**Amended Petition and Related Agreement for the Provision of Water Service and Request for Tariff Waiver****I.D. No.** PSC-01-11-00015-A**Filing Date:** 2011-03-18**Effective Date:** 2011-03-18

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

Action taken: On 3/17/11, the PSC adopted an order approving the amended petition and related agreement submitted by Saratoga Water Services, Inc. and Albany Partners, LLC, and the request for waiver of tariff provisions referencing 16 NYCRR Parts 501 and 502.

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

Subject: Amended petition and related agreement for the provision of water service and request for tariff waiver.

Purpose: To approve the amended petition and related agreement for the provision of water service and request for tariff waiver.

Substance of final rule: The Commission, on March 17, 2011 adopted an order approving the amended petition and related agreement submitted by Saratoga Water Services, Inc. and Albany Partners, LLC, and the request for waiver of tariff provisions referencing 16 NYCRR Parts 501 and 502, 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-W-0169SA1)

NOTICE OF ADOPTION**Two-Year Extension to Provide Telecommunications Relay Service and Captioned Telephone Service in New York****I.D. No.** PSC-02-11-00009-A**Filing Date:** 2011-03-18**Effective Date:** 2011-03-18

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

Action taken: On 3/17/11, the PSC adopted an order granting a two-year extension of the award for Sprint Communications Company L.P. to provide Telecommunications Relay Service and Captioned Telephone Service in New York.

Statutory authority: Public Service Law, section 92-a

Subject: Two-year extension to provide Telecommunications Relay Service and Captioned Telephone Service in New York.

Purpose: To approve a two-year extension to provide Telecommunications Relay Service and Captioned Telephone Service in New York.

Substance of final rule: The Commission, on March 17, 2011 adopted an order granting a two-year extension of the award for Sprint Communications Company L.P. to provide Telecommunications Relay Service and Captioned Telephone Service in New York, to cover the period July 1, 2011 through June 30, 2013; subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(10-C-0649SA1)

NOTICE OF ADOPTION**Approval of Issues of Stock****I.D. No.** PSC-02-11-00010-A**Filing Date:** 2011-03-17**Effective Date:** 2011-03-17

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

Action taken: On 3/17/11, the PSC adopted an order authorizing Corning Natural Gas Corporation to issue a stock dividend of 600,272 shares of stock at a par value of \$5.00 per share valued at \$3,003,635 no later than December 31, 2011.

Statutory authority: Public Service Law, section 69

Subject: Approval of issues of stock.

Purpose: To approve the issues of stock.

Substance of final rule: The Commission, on March 17, 2011 adopted an order authorizing Corning Natural Gas Corporation to issue a stock dividend of 600,272 shares of stock at a par value of \$5.00 per share valued at \$3,003,635 no later than December 31, 2011, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(10-G-0647SA1)

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

Petition for the Submetering of Electricity**I.D. No.** PSC-14-11-00009-P

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

Proposed Action: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by 83-30 118th Street to submeter electricity at 83-30 118th Street, Kew Gardens, New York.

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

Subject: Petition for the submetering of electricity.

Purpose: To consider the request of 83-30 118th Street to submeter electricity at 83-30 118th Street, Kew Gardens, New York.

Substance of proposed rule: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by 83-30 118th Street to submeter electricity at 83-30 118th Street, Kew Gardens, New York, located in the territory of Consolidated Edison Company of New York, Inc.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.state.ny.us/f96dir.htm>. For questions, contact: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann_ayer@dps.state.ny.us

Data, views or arguments may be submitted to: Jaclyn A. Brillling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: Secretary@dps.state.ny.us

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

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

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(11-E-0104SP1)

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

Granting of Easements on and the Transfer of Title of Utility Property**I.D. No.** PSC-14-11-00010-P

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

Proposed Action: The Commission is considering whether to approve, reject, in whole or in part, or modify a petition filed by Central Hudson Gas & Electric Corporation for approval to grant easements on and to transfer title to portions of utility property.

Statutory authority: Public Service Law, section 70

Subject: Granting of easements on and the transfer of title of utility property.

Purpose: To approve granting of easements and transfers of title.

Substance of proposed rule: The Commission is considering whether to approve, reject, in whole or in part, or modify a petition filed by Central Hudson Gas & Electric Corporation concerning the proposed transfer of property in connection with a project known as Walkway Over the Hudson (Project). The petition changes aspects of the Project related to the east bank of the Hudson River in the City of Poughkeepsie that were addressed in the Commission's Order Approving Transfer Of Property (Issued and Effective June 25, 2009) in Case 09-M-0485. The petition changes the transferee from the Poughkeepsie-Highland Railroad Bridge Co. Inc. to the State of New York, acting by and through the Commissioner of Parks, Recreation and Historic Preservation, corrects the acreage transferred from 0.059 acres to 0.069 acres, increases the easement interests from 0.119 acres to 0.172 acres and includes an additional 0.300 acre post-construction emergency and maintenance right of access. The Commis-

sion 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, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: Secretary@dps.state.ny.us

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

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

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(11-M-0101SP1)