

RULE MAKING ACTIVITIES

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

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

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

Department of Civil Service

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-15-12-00001-P

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

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

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

Subject: Jurisdictional Classification.

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

Text of proposed rule: Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Agriculture and Markets, by adding thereto the positions of Assistant Horticultural Inspector 1 and Assistant Horticultural Inspector 2.

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us

Data, views or arguments may be submitted to: Ilene Lees, Counsel, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-2624, email: ilene.lees@cs.state.ny.us

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

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-06-12-00001-P, Issue of February 8, 2012.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-06-12-00001-P, Issue of February 8, 2012.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-06-12-00001-P, Issue of February 8, 2012.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-06-12-00001-P, Issue of February 8, 2012.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-15-12-00002-P

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

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

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

Subject: Jurisdictional Classification.

Purpose: Delete and classify subheading in the exempt class; delete and classify positions in the exempt class.

Text of proposed rule: Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Department of State, by deleting therefrom the subheading "Commission on Public Integrity," and the positions of Administrative Officer, Associate Counsel (4), Compliance Auditor (CPI) (3), Confidential Assistant (4), Confidential Clerk (5), Confidential Legal Assistant, Confidential Stenographer (4), Counsel, Deputy Counsel (2), Director Public Information, Executive Director, Filings Examiner (CPI) (11), Hearing Examiner, Information Technology Specialist (CPI) (4), Investigator (5), Manager Information Services, Manager of Training, Program Manager (3), Secretary (2), Training Assistant and Training Associate (2); and, in the Department of State, by adding thereto the subheading "Joint Commission on Public Ethics," and the positions of Administrative Officer, Associate Counsel (4), Compliance Auditor (CPI) (3), Confidential Assistant (4), Confidential Clerk (5), Confidential Legal Assistant, Confidential Stenographer (4), Counsel, Deputy Counsel (2), Director Public Information, Executive Director, Filings Examiner (CPI) (11), Hearing Examiner, Information Technology Specialist (CPI) (4), Investigator (4), Manager Information Services, Manager of Training, Program Manager (2), Secretary (2), Training Assistant and Training Associate (2).

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us

Data, views or arguments may be submitted to: Ilene Lees, Counsel, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-2624, email: ilene.lees@cs.state.ny.us

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

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was

previously printed under a notice of proposed rule making, I.D. No. CVS-06-12-00001-P, Issue of February 8, 2012.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-06-12-00001-P, Issue of February 8, 2012.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-06-12-00001-P, Issue of February 8, 2012.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-06-12-00001-P, Issue of February 8, 2012.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-15-12-00003-P

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

Proposed Action: Amendment of Appendixes 1 and 2 of Title 4 NYCRR.

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

Subject: Jurisdictional Classification.

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

Text of proposed rule: Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Executive Department under the subheading "Division of Homeland Security and Emergency Services," by adding thereto the position of Assistant Director State Emergency Management Office; and,

Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Executive Department under the subheading "Division of Homeland Security and Emergency Services," by deleting therefrom the position of Assistant Director State Emergency Management Office (1).

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us

Data, views or arguments may be submitted to: Ilene Lees, Counsel, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-2624, email: ilene.lees@cs.state.ny.us

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

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-06-12-00001-P, Issue of February 8, 2012.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-06-12-00001-P, Issue of February 8, 2012.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-06-12-00001-P, Issue of February 8, 2012.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-06-12-00001-P, Issue of February 8, 2012.

Education Department

EMERGENCY RULE MAKING

Certified Public Accountants

I.D. No. EDU-45-11-00011-E

Filing No. 250

Filing Date: 2012-03-21

Effective Date: 2012-03-21

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

Action taken: Repeal of sections 29.10(h) and 70.7; addition of new sections 29.10(h) and 70.7; and amendment of section 70.8(a) and (d)(2) of Title 8 NYCRR.

Statutory authority: Education Law, sections 207(not subdivided), 6504(not subdivided), 6506(1), 6507(2)(a), 7406(2), 7408(3)(b) and (h); and L. 2011, ch. 456

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

Specific reasons underlying the finding of necessity: The proposed amendment is necessary to conform the Rules of the Board of Regents and the Regulations of the Commissioner of Education to the requirements of chapter 456 of the Laws of 2011. Chapter 456 amended sections 7406, 7406-a, and section 7408 of Education Law to provide that a certified public accountant, licensed by another state which the Board of Regents has determined to have substantially equivalent public accountant licensure requirements, or whose individual licensure qualifications are verified by the Department to be substantially equivalent to New York's requirements, and in good standing, may practice public accountancy in this state, if the certified public accountant holds a valid license to practice public accountancy in the other state and practices public accountancy in another state that is his or her principal place of business. The new law also allows a certified public accountant who qualifies for a practice privilege to register a public accounting firm in this state.

The proposed amendment implements the new law and add definitions of unprofessional conduct related to the statutory changes. The Board of Regents approved emergency regulations in October 2011, with an effective date of November 15, 2011, consistent with the effective date of the law. The proposed amendment was substantially revised and adopted as an emergency rule at the January 2012 Regents meeting, with an effective date of January 20, 2012. The proposed amendment is being adopted as a permanent rule at the March Regents meeting. Pursuant to the State Administrative Procedure Act, the earliest date the permanent rule may take effect is upon publication of a Notice of Adoption in the State Register on April 11, 2012. However, the January emergency rule will expire on March 20, 2012. A lapse in the rule could potentially disrupt the New York State practice of out-of-state certified public accountants who qualify for a practice privilege under the applicable statutes. Emergency action on the amended regulations is necessary for the preservation of the public safety and general welfare in order to ensure that the emergency rule remains continuously in effect until the effective date of its adoption as a permanent rule.

Subject: Certified Public Accountants.

Purpose: To implement chapter 456 of the Laws of 2011.

Text of emergency rule: 1. Subdivision (h) of section 29.10 of the Rules of the Board of Regents is repealed and a new subdivision (h) is added, effective March 21, 2012 to read as follow:

(h) *Practice privilege.*

(1) *Anyone practicing public accountancy under a practice privilege pursuant to subdivision 2 of section 7406 of the Education Law shall be subject to all applicable provisions of the Education Law and of this title relating to professional misconduct as if he or she is licensed to practice in New York.*

(2) *Unprofessional conduct in the practice of public accountancy shall include the failure to provide notice as required by paragraph (6) or paragraph (7) of subdivision (b) of section 70.7 of this title.*

2. Section 70.7 of the Regulations of the Commissioner of Education is repealed and a new section 70.7 is added, effective March 21, 2012, to read as follows:

§ 70.7 *Practice by certain out-of-state individuals and firms.*

(a) Practice by certain out-of-state firms.

(1) A firm that holds a valid license, registration, or permit in another state shall register with the Department if the firm offers to engage or engages in the practice of public accountancy pursuant to subdivision 1 or 2 of section 7401 of the Education Law;

(2) A firm that holds a valid license, registration, or permit in another state that is not required to register with the Department pursuant to paragraph (1) of this subdivision, including those out-of-state firms that use the title "certified public accountant" or "certified public accountants" or the designation "CPA" or "CPAs" but do not have an office in New York, may practice in this state without a firm registration with the Department, if the firm's practice is limited to the practice of public accountancy pursuant to subdivision 3 of section 7401 of the Education Law;

(3) A firm may register and perform services pursuant to this subdivision only if:

(i) at least one partner of a partnership or limited liability partnership, member of a limited liability company or shareholder of a professional service corporation or the sole proprietor is licensed as a certified public accountant engaged within the United States in the practice of public accountancy and is in good standing as a certified public accountant of one or more of the states of the United States;

(ii) the firm complies with the Department's mandatory quality review program pursuant to section 7410 of the Education Law; and

(iii) the services are performed by an individual who is licensed and in good standing as a certified public accountant of one or more states of the United States.

(b) Practice by certain out-of-state individuals.

(1) An individual who holds a certificate or license as a certified public accountant issued by another state, who is in good standing in the state where certified or licensed, and whose principal place of business is not in this state may practice public accountancy in this state without obtaining a license pursuant to section 7404 of the Education Law, if:

(i) the Department has determined that the other state has education, examination, and experience requirements for certification or licensure that are substantially equivalent to or exceed the requirements for licensure in this state; or

(ii) the Department has verified that the individual possesses licensure qualifications that are substantially equivalent to or exceed the requirements for licensure in this state.

(2) Except as otherwise provided in paragraph (6) or (7) of this subdivision, an individual who meets the requirements of paragraph (1) of this subdivision and who offers or renders professional services in person or by mail, telephone, or electronic means may practice public accountancy in this state without notice to the Department. An individual who wishes to practice public accountancy in this state, but does not meet the requirements of paragraph (1) of this subdivision is subject to the full licensing and registration requirements of the education law and of this title.

(3) An individual licensee or individual practicing under this subdivision who signs or authorizes someone to sign the accountant's report on the financial statement on behalf of a firm shall meet the competency requirements set out in the professional standards for such services and as set out in paragraph (13) of subdivision (a) of section 29.10 of this title.

(4) An individual practicing under this section shall practice through a firm that is registered with the Department pursuant to section 7408 of the Education Law if the individual performs any attest or compilation service as defined in section 7401-a of the Education Law.

(5) Each certified public accountant who practices in this state pursuant to this section and each firm that employs such certified public accountant to provide services in New York consent to all of the following as a condition of the exercise of such practice privilege:

(i) to the personal and subject matter jurisdiction and disciplinary authority of the Board of Regents as if the practice privilege is a license and an individual with a practice privilege is a licensee;

(ii) to comply with Article 149 of the Education Law and the provisions of this Title relating to public accountancy; and

(iii) to the appointment of the Secretary of State or other public official acceptable to the Department, in the certified public accountant's state of licensure or the state in which the firm has its principal place of business, as the certified public accountant's or firm's agent upon whom process may be served in any action or proceeding by the Department against such certified public accountant or firm.

(6) In the event the license from the state of the certified public accountant's principal place of business is no longer valid or in good standing, or that the certified public accountant has had any final disciplinary action taken by the licensing or disciplinary authority of any other state concerning the practice of public accountancy that has resulted in any of the dispositions specified in subparagraphs (i) or (ii) of this paragraph, the certified public accountant shall so notify the Department, on a form

prescribed by the Department, and shall immediately cease offering to perform or performing such services in this state individually and on behalf of his or her firm, until he or she has received from the Department written permission to do so:

(i) the suspension or revocation of his or her license; or

(ii) other disciplinary action against his or her license that arises from:

(a) gross negligence, recklessness or intentional wrongdoing relating to the practice of public accountancy; or

(b) fraud or misappropriation of funds relating to the practice of public accountancy; or

(c) preparation, publication, or dissemination of false, fraudulent, or materially incomplete or misleading financial statements, reports or information relating to the practice of public accountancy.

(7) Any certified public accountant who, within the seven years immediately preceding the date on which he or she wishes to practice in New York, has been subject to any of the actions specified in subparagraphs (i), (ii), (iii), or (iv) of this paragraph shall so notify the Department, on a form prescribed by the Department, and shall not practice public accountancy in this state pursuant to Education Law section 7406(2) and this section, until he or she has received from the Department written permission to do so. In determining whether the certified public accountant shall be allowed to practice in this state, the Department shall follow the procedure to determine whether an applicant for licensure is of good moral character. Anyone failing to provide the notice required by this paragraph shall be subject to the personal and subject matter jurisdiction and disciplinary authority of the Board of Regents as if the practice privilege is a license, and an individual with a practice privilege is a licensee, and may be deemed to be practicing in violation of Education Law section 6512:

(i) has been the subject of any final disciplinary action taken against him or her by the licensing or disciplinary authority of any other jurisdiction with respect to any professional license or has any charges of professional misconduct pending against him or her in any other jurisdiction; or

(ii) has had his or her license in another jurisdiction reinstated after a suspension or revocation of said license; or

(iii) has been denied issuance or renewal of a professional license or certificate in any other jurisdiction for any reason other than an inadvertent administrative error; or

(iv) has been convicted of a crime or is subject to pending criminal charges in any jurisdiction.

(8) Notwithstanding paragraph (1) of this subdivision or any other inconsistent law or rule to the contrary, a certified public accountant licensed by another state and in good standing, who otherwise meets the practice privilege requirements under this section and files an application for licensure under Education Law section 7404, may continue to practice under such privilege for a period coterminous with the period during which his or her application for licensure remains pending with the Department, including any period after the certified public accountant establishes a principal place of business in New York, while his or her application is pending.

3. Subdivision (a) of section 70.8 of the Regulations of the Commissioner of Education is amended, effective March 21, 2012, as follows:

(a) Pursuant to the provisions of Education Law section 7408, a firm shall register with the department if:

(1) ...

(2) except as otherwise provided in section 70.7(a)(2) of this Part, the firm uses the title "CPA" or "CPA firm" or the title "PA" or "PA firm."

4. Paragraph (2) of subdivision (d) of section 70.8 of the Regulations of the Commissioner of Education is amended, effective March 21, 2012, as follows:

(2) \$10 for the sole proprietor or each general partner of a partnership or partner of a limited liability partnership, member of a limited liability company or shareholder of a professional service corporation whose principal place of business is located in New York [or who is otherwise authorized to practice in New York through a temporary practice permit issued pursuant to section 70.7 of this part] and for each certified public accountant or public accountant licensed in New York State that signs or authorizes someone to sign an engagement on behalf of a New York State client but whose principal place of business is not located in New York State. Any firm that registers with the Department pursuant to the provisions of Education Law section 7408, but does not have a sole proprietor or a general partner of a partnership or a partner of a limited liability partnership, or a member of a limited liability company or a shareholder of a professional service whose principal place of business is in NYS, shall pay \$10 for the firm.

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-45-11-00011-P, Issue of November 9, 2011. The emergency rule will expire May 19, 2012.

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

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

Section 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 in 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.

Chapter 456 of the Laws of 2011 repealed section 7406-a and amended sections 7406 and 7408 of the Education Law.

Subdivision (2) of section 7406 of the Education Law provides that a certified public accountant, licensed by another state which the Board of Regents has determined to have substantially equivalent public accountant licensure requirements, or whose individual licensure qualifications are verified by the Department to be substantially equivalent to New York's requirements, and in good standing, may practice public accountancy in this state, if the certified public accountant holds a valid license to practice public accountancy in the other state and practices public accountancy in another state that is his or her principal place of business.

Section 7408 of the Education Law establishes a registration requirement for public accounting firms that perform attest and/or compilation services and professional services that are incident to attest and/or compilation services or that use the title CPA or CPA firm or the title PA or PA firm, and authorizes the Board of Regents to establish a registration process for public accounting firms. This section also restricts the use of certain titles and designations by non-licensed accountants and establishes reporting requirements for non-licensed accountants issuing financial statements.

2. LEGISLATIVE OBJECTIVES:

The proposed amendments to the Rules of the Board of Regents and to the Regulations of the Commissioner of Education are necessary to implement chapter 456 of the Laws of 2011, which became effective on February 1, 2012.

3. NEEDS AND BENEFITS:

The proposed amendments are needed to implement chapter 456 of the Laws of 2011. The new law repeals a statutory provision which enabled certain certified public accountants (CPAs) licensed in states other than New York to provide attest and compilation services in this state on a temporary and limited basis. It also repeals a provision which authorized certain out-of-state CPAs to provide non-attest services in New York. In lieu of these provisions, chapter 456 establishes a practice privilege provision to permit practice in New York by certain CPAs licensed in other states.

4. COSTS:

(a) Cost to State government: There are no additional costs beyond those imposed by the statute; however, there will be a reduction in the revenue that had been generated by the issuance of temporary practice permits of approximately \$25,000 per year.

(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 beyond those imposed by the current regulation.

(d) Costs to the regulatory agency: As stated above in "Costs to State Government," the proposed amendments will not impose any additional costs on SED beyond those imposed by the statute; however, there will be a reduction in the revenue that had been generated by the issuance of temporary practice permits of approximately \$25,000 per year.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendments relate to establishing a practice privilege in public accountancy to permit practice in New York by certain CPAs licensed in other states. The amendments do not impose any programs, service, duty, or responsibility upon local governments.

6. PAPERWORK:

The amendments will not impose any other paperwork requirement.

7. DUPLICATION:

The proposed amendments do not duplicate any 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 established in law for the subject matter of the proposed amendments.

10. COMPLIANCE SCHEDULE:

Regulated parties are required to comply with the regulation as of November 15, 2011, the effective date of the new law. The rule will be permanently adopted on February 1, 2012.

Regulatory Flexibility Analysis

The purpose of the proposed amendments to the Rules of the Board of Regents and the Regulations of the Commissioner of Education are to implement chapter 456 of the Laws of 2011. The new law repeals a statutory provision which enabled certain certified public accountants (CPAs) licensed in states other than New York to provide attest and compilation services in this state on a temporary and limited basis. It also repeals a provision which authorized certain out-of-state CPAs to provide non-attest services in New York. In lieu of these provisions, chapter 456 establishes a practice privilege provision to permit practice in New York by certain CPAs licensed in other states.

The amendments do not regulate small businesses or local governments. It does not impose any reporting, recordkeeping, or other compliance requirements on small business or local governments beyond those inherent in the statute, or have any adverse economic effect on them. Because it is evident from the nature of the proposed amendments that they do not 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 amendments will affect an estimated 2,743 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 purpose of the proposed amendments to the Rules of the Board of Regents and the Regulations of the Commissioner of Education is to implement chapter 456 of the Laws of 2011. The new law repeals a statutory provision which enabled certain certified public accountants (CPAs) licensed in states other than New York to provide attest and compilation services in this state on a temporary and limited basis. It also repeals a provision which authorized certain out-of-state CPAs to provide non-attest services in New York. In lieu of these provisions, chapter 456 establishes a practice privilege provision to permit practice in New York by certain CPAs licensed in other states. The proposed amendment will not impose any compliance requirements beyond those inherent in chapter 456 and 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 amendments will not impose any additional costs on licensees, including those that are located in rural areas of the State.

4. MINIMIZING ADVERSE IMPACT:

The proposed amendments implement chapter 456 of the Laws of 2011 and make no exception for licensees who live or work in rural areas. Because of the nature of the proposed amendments, alternative approaches for rural areas were not considered.

5. RURAL AREA PARTICIPATION:

The proposed amendments to the Rules of the Board of Regents and the Regulations of the Commissioner of Education implement chapter 456 of the Laws of 2011. During the legislative process, the State Education Department solicited comments from the State Board for Public Accountancy and the New York State Society of Certified Public Accountants, both of which include members located in all areas of New York State, including rural areas of the State.

Job Impact Statement

The purpose of the proposed amendments to the Rules of the Board of Regents and the Regulations of the Commissioner of Education is to implement chapter 456 of the Laws of 2011. The new law repeals a statutory provision which enabled certain certified public accountants (CPAs) licensed in states other than New York to provide attest and compilation services in this state on a temporary and limited basis. It also repeals a provision which authorized certain out-of-state CPAs to provide non-attest services in New York. In lieu of these provisions, chapter 456 establishes a practice privilege provision to permit practice in New York by certain CPAs licensed in other states. Because it is evident from the nature of the rule and regulation that they will have no impact on the number of jobs and number employment opportunities in public account-

ing or any other field beyond those inherent in chapter 456, no affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required, and one has not been prepared.

Assessment of Public Comment

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

NOTICE OF ADOPTION

Certified Public Accountants

I.D. No. EDU-45-11-00011-A

Filing No. 260

Filing Date: 2012-03-23

Effective Date: 2012-04-11

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

Action taken: Repeal of sections 29.10(h) and 70.7; addition of new sections 29.10(h) and 70.7; and amendment of section 70.8(a) and (d)(2) of Title 8 NYCRR.

Statutory authority: Education Law, sections 207(not subdivided), 6504(not subdivided), 6506(1), 6507(2)(a), 7406(2), 7408(3)(b) and (h) and L. 2011, ch. 456

Subject: Certified Public Accountants.

Purpose: To implement chapter 456 of the Laws of 2011.

Text or summary was published in the November 9, 2011 issue of the Register, I.D. No. EDU-45-11-00011-P.

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

Revised rule making(s) were previously published in the State Register on January 25, 2012.

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Preschool and School-Age Individual Evaluations

I.D. No. EDU-01-12-00006-A

Filing No. 265

Filing Date: 2012-03-23

Effective Date: 2012-04-11

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

Action taken: Amendment of sections 200.4 and 200.16 of Title 8 NYCRR.

Statutory authority: Education Law, sections 101(not subdivided), 207(not subdivided), 305(1) and (2), 4402(1), 4403(3) and 4410(13)

Subject: Preschool and School-Age Individual Evaluations.

Purpose: Amend timeline for completion of preschool evaluation; repeal requirement of psychologist written determination for psychological assessment in reevaluation; clarify 60 day timeline for initial evaluations.

Text or summary was published in the January 4, 2012 issue of the Register, I.D. No. EDU-01-12-00006-P.

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

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

Assessment of Public Comment

Since publication of a Notice of Proposed Rule Making in the State Register on January 4, 2012, the State Education Department (SED) received the following substantive comments on the proposed amendment.

General Comments

COMMENT:

Proposal would repeal requirements that exceed federal mandates at a time when revenues and local capacity continue to decrease.

DEPARTMENT RESPONSE:

Comments are generally supportive. No response is necessary.

COMMENT:

Proposal would compromise the quality of evaluation process and negatively impact students with disabilities.

DEPARTMENT RESPONSE:

Nothing in the proposed amendment would relieve districts of their obligation to ensure that students are appropriately evaluated and provided a free appropriate public education (FAPE).

§ 200.4

COMMENT:

Support eliminating the written report of the psychologist of the need to conduct a psychological as part of a student's reevaluation as it will not have any substantive, negative impact on process or capacity of schools to provide FAPE; will provide some relief, eliminate unnecessary paperwork and reduce psychologists' workloads, allowing more effective utilization of staff resources to meet student needs. No other related service provider is required to write a report on the need to conduct an evaluation. Report is redundant as reevaluation process requires team to review existing data and determine whether formal assessments, including a psychological evaluation, are needed. Reason for psychologist's determination is documented in prior written notice and best practice would be to include this in meeting minutes and "other options considered" section of individualized education program (IEP). Time spent reviewing file and writing justification takes almost as much time as a reevaluation and psychologists often administer new testing to avoid unnecessary paperwork. The decision to conduct a psychological evaluation is a Committee on Special Education (CSE) responsibility and the report should not drive the reevaluation.

DEPARTMENT RESPONSE:

Comments are supportive. No response is necessary.

COMMENT:

Proposal suggests psychologists have nothing valuable to contribute, does not serve public well or provide reasonable benefit in mandate relief discussion. Proposed amendment would curtail psychologists' scope of practice. Report represents culmination of a psychologist's review and supports integrity of process; is more than confirmation that no further data/testing is needed; and provides parents and districts written documentation of how an individual child's needs and progress were examined and why evaluation was unnecessary. Report ensures psychologist's expertise is used to provide child specific information; informs CSE decisions; supports meaningful participation of parents in process; and documents district's efforts to provide FAPE. Prior notice does not provide record of process relating to an individual child. Report is only place in student's record that documents what information was reviewed and how the determination was made. Report need not be time consuming and could be brief summary. Eliminating report will compromise process; weaken district's ability to defend CSE decisions; and increase school liability. In absence of report there will be no way to hold staff accountable for conducting reviews and there may be pressure to omit process entirely. Concerned proposal could make it easier for districts to decide not to reevaluate for wrong reasons (e.g., staff shortages or the needs of staff, administrators and/or the system).

DEPARTMENT RESPONSE:

Nothing in the proposed rule reflects negatively on the value of a psychologist or in any way affects a psychologist's scope of practice. A psychologist's determination that a psychological evaluation is not necessary as part of a student's reevaluation must, consistent with federal and State regulations, still continue to be considered by the CSE in its determination of what evaluations will be conducted as part of the student's reevaluation. The proposed rule simply repeals the requirement for a written report by the psychologist when he/she determines that a psychological evaluation is not a needed component of an individual student's reevaluation. Nothing would prohibit the district from requiring the psychologist to provide a written report of his/her determination to the CSE.

COMMENT:

Replacing current process with CSE review/meeting could result in psychologists being left out of process and decisions being made by unqualified individuals. Concerned about lack of specificity in requirement for CSE and "other qualified professionals" to review existing data, and which professionals would conduct this review. Psychologists play a pivotal role in managing the reevaluation process and it is critical that they be part of team that conducts this review. A psychologist is the only trained/qualified professional within school to administer, score and interpret data and to assess whether a psychological evaluation is warranted. The proposal jeopardizes the protections and benefits these professionals provide. If report is eliminated, require school psychologist be one of the professionals on CSE that reviews and interprets psychological data.

DEPARTMENT RESPONSE:

Nothing in the proposed rule would replace the current role of the school

psychologist to determine whether a psychological is a necessary component of a student's initial or reevaluation. For an initial evaluation, the psychologist would continue to be required to prepare a written report for consideration by the CSE when the psychologist's determination is that a psychological is not necessary. The proposed rule would, however, no longer require the written summary of the psychologist's determination when it relates to a reevaluation. The CSE, which includes the school psychologist, would continue to be required to consider the psychologist's determination when the CSE identifies what, if any, evaluations will be conducted for a student's reevaluation. The phrase "other qualified professionals, as appropriate" is a federal regulation which provides flexibility for districts to determine, on a student-by-student basis, which professionals should be consulted in the determination as to tests and assessments needed as part of a student's initial or reevaluation.

COMMENT:

The proposed rule is unclear as to whether a psychologist continues to have the responsibility to determine when a psychological evaluation is warranted or merely eliminates the written report for reevaluations. Clarify if the proposed amendment would change the requirement that a psychologist is a mandated member of the CSE.

DEPARTMENT RESPONSE:

The proposed rule would not repeal the requirement that a psychologist make an assessment of the need to administer a psychological evaluation for a school-age student as part of the student's initial or reevaluation; nor would it change the required CSE membership or eliminate the requirement that the psychologist prepare a written report when a psychological evaluation is conducted.

COMMENT:

Oppose the elimination of updated psychological testing.

DEPARTMENT RESPONSE:

Nothing in the proposed rule would relieve a district of its responsibility to conduct a psychological evaluation as part of a reevaluation when appropriate for the individual student.

COMMENT:

The proposed rule suggests that the psychologist cannot access information to support his/her determination of the need to conduct a psychological evaluation.

DEPARTMENT RESPONSE:

Nothing in the proposed rule would limit a psychologist's access to information needed to make an assessment as to whether a psychological evaluation is necessary for an individual student.

COMMENT:

Summary of data used to support a psychologist's determination should be included in evaluation section of an IEP so that others understand the decision.

DEPARTMENT RESPONSE:

The IEP documents relevant and current assessment data that informs the student's present level of performance. If a psychological was determined to be unnecessary for an individual student, there is no need to document this in the IEP. When a reevaluation is proposed for an individual student, prior written notice to the parent must include a description of the proposed reevaluation and the uses to be made of the information as well as a description of each evaluation procedure, assessment, record or report the CSE used as a basis for the proposed action. If the psychologist's assessment was that a psychological was not necessary, it would be appropriate that this information be reported to the parent in prior written notice.

COMMENT:

The proposed rule clarifies when the 60-day timeline for initial evaluations is applicable. Add word "only" to further clarify that the timeline pertains only to initial evaluations.

DEPARTMENT RESPONSE:

The proposed language provides sufficient clarification and no further changes are necessary.

COMMENT:

Oppose 60-day timeline for initial evaluations as it will delay proper evaluation. Clarify the timeline when the evaluation is not an initial evaluation.

DEPARTMENT RESPONSE:

The proposed rule is a clarifying amendment that the 60-day timeline applies only to initial evaluations. For evaluations to be conducted when the student is referred for another evaluation, State regulations currently require the evaluation be conducted, considered by the CSE and changes to the IEP be implemented within 60 school days of the referral for review. Therefore, the proposed rule would not delay the completion of a student's evaluation.

§ 200.16

COMMENT:

Support aligning preschool timeline with school-age timeline and federal standard. Proposal provides more reasonable, achievable timeline

that will not compromise service delivery; reduces burden current timeline places on Committees on Preschool Special Education (CPSEs) by providing additional time to complete evaluations, while maintaining current timeframe for recommendations; allows time to assist parents in understanding the system and guide them through the process; and will result in more comprehensive, higher-quality evaluations and reports. Evaluator shortages (e.g., bilingual evaluators) make it challenging to meet 30 day timeline, especially in rural areas. Most common delays are between 1-10 days. Extending timeline approximately 10-12 days will make compliance possible in more instances.

DEPARTMENT RESPONSE:

Comments are supportive. No response is necessary.

COMMENT:

Evidence supports identifying children and providing services as early as possible. Change from 30 to 60 days is large amount of time in young child's life. Lengthening timeline will reduce time CPSEs have to implement services; could delay provision of services; violates scientific evidence; and is a disservice to children. Children develop quickly and additional 30 days will invalidate evaluation scores. Concerned proposal will: exacerbate NYS' noncompliance regarding early intervention to CPSE transition and implementation of services in timely manner; decrease the chances that an IEP will be completed by a child's third birthday; and result in a gap in services. Hiring more psychologists would allow districts to complete evaluations within 30 days and less money to be spent reimbursing private evaluators. As NYS' preschool system relies on coordination of many parties, including parents, districts, counties and evaluators, challenge SED's assertion that delays are due in part to evaluators. There are many reasons for not meeting evaluation timeline (e.g., inability to obtain parent consent, scheduling of CPSE and board of education (BOE) meetings, provider shortages). Extending timeline will not necessarily fix problem. Current regulations require a recommendation be made by the CPSE to the BOE within 30 school days of receipt of consent to evaluate, not completion of evaluation. The scheduling of BOE meetings and a timeline triggered by "receipt of consent" will continue to be impediments to timely evaluations. Maintain current regulatory framework and conduct deeper analysis of reasons why evaluations are not timely. To reduce confusion, instead of mixing "school" and "calendar" days, consider always using "calendar days."

DEPARTMENT RESPONSE:

In 2009 federal fiscal year, only 68.4 percent of preschool children had initial evaluations completed within 30 school days of the parent's consent to evaluate. Approximately 35 percent of these delays were between one and ten days. Changing the timeline from 30 school days to 60 calendar days (depending on school calendars) is a difference of approximately 12 calendar days, not an additional 30 days as the commenter suggests. While there are other factors that contribute to delays in completion of the preschool evaluations, the proposed rule would address one substantive factor, without impacting on the timeline required for IEP implementation. Certain timelines (e.g., IEP implementation) require consideration of a school calendar.

COMMENT:

Credentialing requirements limit the capacity of many psychologists to provide preschool evaluations and contribute to evaluator shortages. Assembly Bill 418a would grant licensure to Master level school psychologists, expand pool of qualified evaluators to meet educational needs and allow federal reimbursement for services.

DEPARTMENT RESPONSE:

Comments are beyond scope of proposed regulations.

NOTICE OF ADOPTION

Due Process Procedures for Criminal History Record Checks of Prospective School Employees and Applicants for Certification

I.D. No. EDU-02-12-00005-A

Filing No. 262

Filing Date: 2012-03-23

Effective Date: 2012-04-11

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

Action taken: Amendment of section 87.5 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207(not subdivided), 305(30)(a), 3001-d(1-4) and 3035(3)(a)

Subject: Due Process Procedures for Criminal History Record Checks of Prospective School Employees and Applicants for Certification.

Purpose: Eliminate oral argument in appeals of State Education Department determinations denying clearance for employment.

Text or summary was published in the January 11, 2012 issue of the Register, I.D. No. EDU-02-12-00005-P.

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

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Waiver Requirements for Special Education Schools and Early Intervention Agencies

I.D. No. EDU-02-12-00018-A

Filing No. 261

Filing Date: 2012-03-23

Effective Date: 2012-04-11

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

Action taken: Amendment of section 29.18; and addition of section 59.15 to Title 8 NYCRR.

Statutory authority: Education Law, sections 207(not subdivided), 6501(not subdivided), 6503-b, 6504(not subdivided), 6506(2), 6507(2)(a), 6508(1), 6509(9), 6510(1)-(9) and 6511(not subdivided)

Subject: Waiver requirements for special education schools and early intervention agencies.

Purpose: To implement chapter 581 of the Laws of 2011 by establishing waiver requirements for certain entities.

Text or summary was published in the January 11, 2012 issue of the Register, I.D. No. EDU-02-12-00018-P.

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

Text of rule and any required statements and analyses may be obtained from: Mary Gammon, New York State Education Department, 89 Washington Avenue, Albany, NY 12234, (518) 474-6400, email: legal@mail.nysed.gov

Assessment of Public Comment

Since publication of a Notice of Proposed Rule Making in the State Register on January 11, 2012, the State Education Department received the following comments.

COMMENT: A commenter asked for clarification whether the waiver "travels with the entity," in the case of a change to the ownership of an entity holding a waiver or a merger with another entity. The commenter noted that section 59.15(i) speaks to the "Transfer or Assignment of Waiver" and suggested that the regulation should make clear that the entity itself has propriety over the waiver, even if the ownership situation or personages of the entity change.

RESPONSE: The commenter is correct that the entity retains the waiver if a change of ownership should occur, unless the change constitutes a change in control of the entity, in which case it may constitute a prohibited transfer.

COMMENT: A commenter asked if some of the information provided with an application waiver under section 6503-a of the Education Law, may be transferable to comply with similar requirements for a waiver under section 6503-b.

RESPONSE: The Department will work with an entity seeking a waiver under 6503-b to consider and review as part of that application any information that was submitted as part of an application for a waiver under 6503-a.

COMMENT: The commenter asked whether an approved private school for the education of students with disabilities is exempt from the waiver requirement, as the schools are currently under the supervision of the Education Department.

RESPONSE: The school should obtain a waiver, unless it has a clear exemption from corporate practice restrictions, such as a school that is also a health facility licensed under Article 28 of the Public Health Law. Since all such approved schools are not the same, each should make the decision to apply based on the specific circumstances.

COMMENT: A commenter indicated that the \$345 application fee and the \$260 triennial registration fee established in law are excessive, given that the rates for approved private schools remain at the 2008 level.

RESPONSE: As noted by the commenter, the fee is established in law and cannot be changed by regulation. The fee provides funding for the new responsibilities given to the New York State Education Department

(NYSSED), including the review, approval and issuance of waivers and the disciplinary process.

COMMENT: A commenter asked if the waiver will apply to a professional services entity that is authorized to provide certain services, but wants to provide additional early intervention services beyond those that the entity is otherwise authorized to provide.

RESPONSE: No, a professional services entity can only provide those early intervention services that it is lawfully authorized to provide.

COMMENT: Please clarify if the exemption from a waiver, as defined in section 59.15(b)(2), applies only to the provision of special education services.

RESPONSE: If an entity is exempt from the waiver under this section, it may provide the services specified in 6503-b(2)(a) and (b), provided that the entity is legally authorized to provide services.

COMMENT: Please clarify if the exemption from a waiver, as defined in section 59.15(b)(2) for a child care institution, extends to early intervention services.

RESPONSE: A child care institution that provides early intervention services may be required to obtain a waiver if such services are provided directly by the child care institution.

COMMENT: Section 59.15(c)(1) indicates that an entity applying for a waiver after July 1, 2013 must demonstrate a need for the entity's services. The New York State Department of Health (NYSDOH) suggests that, at a minimum, the Education Department consult with and/or obtain from NYSDOH a recommendation in determining the need for early intervention agencies.

RESPONSE: The law and regulations imply a collaboration between NYSED and NYSDOH, and we look forward to working with our colleagues to determine the need for agencies and services.

COMMENT: Section 59.15(c)(3)(ii)(b) states the application must include evidence that the entity is an approved agency, as defined in the Education Law. Does this process require that the entity already be an approved early intervention agency? Does the process allow an applicant for a waiver to be in the process of receiving a NYSDOH approval as a new agency?

RESPONSE: When the Education Department establishes the process for review and approval of waiver applicants, it will allow an entity that is approved, or has an application pending with NYSED or NYSDOH, to apply for a waiver. The issuance of a waiver may be dependent on approval by the agency, or the approval of the agency may be dependent on the issuance of a waiver, depending upon the procedures that will be developed.

COMMENT: Section 59.15(c)(3)(vi) of the regulation requires an entity to include a list of jurisdictions in which the entity may provide services. Please clarify the definition of "jurisdiction" and would this restrict an approved EI agency from providing a home and community based service in jurisdictions that were not listed in the application?

RESPONSE: The definition of jurisdiction would include other states, territories or the District of Columbia. The Department asks for this information in the event it is necessary to review any disciplinary action against an entity in another U.S. jurisdiction.

COMMENT: Section 59.15(c)(3)(vii)(h) states the entity will comply with section 18 of the Public Health Law relating to patient access to records. Access to early intervention records is governed by the Family Educational Rights and Privacy Act (FERPA) and perhaps this regulation is intended to address the records maintained by physicians involved in multi-disciplinary evaluations. Please clarify?

RESPONSE: A licensed professional or entity is required to comply with all state or federal laws or regulations relating to privacy and access to records. In the event that FERPA is applicable, those rules for access to records would apply.

COMMENT: Under section 59.15(d)(2) the application must include an attestation of moral character from each director, officer or trustee of the entity seeking a waiver, and questions will be referred to the Office of Professional Discipline and the determination made in accordance with Subpart 28-1 of the Rules of the Board of Regents. Does this process allow for an interagency exchange of information since the continued approval as an EI agency should also be re-assessed should there be a discovery related to moral character?

RESPONSE: Education Law section 6510(8) states that investigation files related to the moral fitness of an applicant are confidential, but allows the NYSED to share information with other duly authorized public agencies responsible for professional regulation or criminal prosecution. Therefore, the Department may consult with NYSDOH or other agency, as appropriate, in the review of a question of an applicant's moral character.

COMMENT: NYSDOH suggests that section 59.15(e)(1) be amended to clarify that a special education school or early intervention program operating under a waiver may employ "or contract with" individuals licensed or otherwise authorized to practice a profession.

RESPONSE: The comment has already been addressed in subdivision

59.15(d) which requires the entity, as part of the application, to describe whether the services will be provided by licensed or authorized individuals employed by the entity or provided through a contract with licensed professionals or individuals otherwise authorized to practice or a professional entity, as set forth in Education Law section 6503-b(6). Therefore, a clarification of section 59.15(3)(1) is not required.

COMMENT: Section 59.15(f) states an application may be denied if all necessary information has not been received. We suggest that this process allow for notification to the NYSDOH of the determination to deny an application, with respect to an early intervention agency.

RESPONSE: The Education Department concurs with the suggestion and will provide notification to the NYSDOH if any application is denied. It should be noted that all approved entities will be posted on the Office of the Professions website: www.op.nysed.gov.

COMMENT: Section 59.15(f) states that, if an application is denied, the entity must cease the provision of professional services. Does this allow for a period of time for the transitioning of services to new agencies or must the provision of professional services end immediately upon the NYSED notification of denial?

RESPONSE: Education Law 6503-b(3)(b) states that if the waiver application is denied the school or agency shall cease providing such services in the State of New York. The regulation is consistent with the statute.

COMMENT: Section 59.15(g)(1) states an entity must display a waiver certificate for each setting at which professional services. The commenter asked for clarification about this requirement when the agency provides services in the client's home and there may not be a facility operated by the agency.

RESPONSE: Similar to section 59.8(c) of the Commissioner's Regulations, which requires a licensed professional to display the registration certificate, where practice is carried on in places other than individual offices, the entity shall have a current waiver certificate available for inspection at all times.

COMMENT: Section 59.15(g)(2) states that an application for additional waiver certificates may be made as part of the initial application or after the Department has approved the entity for a waiver. Please clarify if the agency will be required to pay a fee if they apply for additional certificates after submitting the initial waiver application.

RESPONSE: The regulations do not impose any fee for additional waiver certificates, if the entity has paid the initial application fee.

COMMENT: Section 59.15(g)(5) allows an entity to submit an amended application to include additional professional services. In the case of an early intervention program applying for a waiver, would NYSED seek the input of NYSDOH in regard to those entities?

RESPONSE: The Department plans to consult with NYSDOH, as appropriate, throughout its review of applications.

COMMENT: Section 59.15(h)(1) and (2) state that an entity holding a waiver must notify the NYSED within 30 days if there is a change in the location of its executive offices and within 60 days if there are other changes in the information supplied to the Department. The NYSDOH asks for clarification if NYSED plans to approve or deny any planned changes or if the notification can be submitted after the fact.

RESPONSE: The NYSED would expect that notification be made after a planned change of address, phone number, etc., has been made, in order to ensure that NYSED can contact the entity in the future. Whether the Department would approve or deny any planned change would depend on the nature of the change submitted.

COMMENT: Section 59.15(j) states a waiver is valid for three years and an entity must submit an application for renewal. The NYSDOH asks if NYSED contemplates posting information about an entity's waiver status, including expiration date, on the Office of the Professions website. Further, will there be a process by which NYSDOH is notified regarding the decisions of an early intervention agency?

RESPONSE: The Department will post on the Office of the Professions website (www.op.nysed.gov) information about entities, including the date a waiver certificate expires.

COMMENT: Section 29.18 of the Regents Rules indicates that an entity holding a waiver is subject to the same disciplinary procedures and protections as a licensed individual or professional corporation. Will this process allow for the disclosure of information to the NYSDOH regarding the investigation and resulting decision for those entities which are EI agencies?

RESPONSE: As noted in the earlier response, under Education Law section 6510(8) information about pending investigations and disciplinary action is protected, but may be shared with "other duly authorized public agencies responsible for professional regulation or criminal prosecution." All final actions taken by the Board of Regents will be posted on the Department's website, the same as for actions taken against a licensed individual or professional entity.

COMMENT: One commenter expressed strong opinions about the pro-

visions of Chapter 581 of the Laws of 2011 to allow the Department to issue waivers from corporate practice restrictions to for-profit providers, and urged that the Department oppose the waiver process to ensure public protection.

RESPONSE: The Department is implementing legislation that it supported to ensure that special education schools and early intervention agencies providing services to children are accountable to the Board of Regents, thus providing public protection.

NOTICE OF ADOPTION

Code of Conduct

I.D. No. EDU-03-12-00003-A

Filing No. 264

Filing Date: 2012-03-23

Effective Date: 2012-04-11

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

Action taken: Amendment of section 100.2(1); and addition of section 119.6 to Title 8 NYCRR.

Statutory authority: Education Law, sections 11(1)-(7), 12(1) and (2), 13(1)-(3), 14(1) and (3), 101(not subdivided), 207(not subdivided), 305(1) and (2), 2801(1)-(5); and L. 2010, ch. 482, sections 2 and 4

Subject: Code of Conduct.

Purpose: Conform Commissioners Regulations on Codes of Conduct to the Dignity for All Students Act (ch. 482, L. 2010).

Text of final rule: 1. Paragraph (2) of subdivision (1) of section 100.2 of the Regulations of the Commissioner of Education is amended, effective July 1, 2012, as follows:

(2) Code of Conduct

(i) On or before July 1, 2001, each board of education and board of cooperative educational services shall adopt and provide for the enforcement of a written code of conduct for the maintenance of order on school property and at school functions, as defined in Education Law, [section] sections 11(1) and (2) and 2801(1), which shall govern the conduct of students, teachers, other school personnel, and visitors. Such a code shall be developed in collaboration with student, teacher, administrator, and parent organizations, school safety personnel and other school personnel and shall be approved by the board of education, or other governing body, or by the chancellor of the city school district in the case of the City School District of the City of New York. The City School District of the City of New York shall adopt a district-wide code of conduct and each community school district may, upon approval of the chancellor, adopt and implement additional policies, which are consistent with the city school district's district-wide code of conduct, to reflect the individual needs of each community school district. A school district or board of cooperative educational services shall adopt its code of conduct only after at least one public hearing that provides for the participation of school personnel, parents, students, and any other interested parties.

(ii) The code of conduct shall include, but is not limited to:

(a) provisions regarding conduct, dress and language deemed appropriate and acceptable on school property and at school functions, and conduct, dress, and language deemed unacceptable and inappropriate on school property and provisions regarding acceptable civil and respectful treatment of teachers, school administrators, other school personnel, students, and visitors on school property and at school functions, including the appropriate range of disciplinary measures which may be imposed for violation of such code, and the roles of teachers, administrators, other school personnel, the board of education and parents;

(b) provisions prohibiting discrimination and harassment against any student, by employees or students on school property or at a school function, that creates a hostile environment by conduct, with or without physical contact and/or by verbal threats, intimidation or abuse, of such a severe nature that:

(1) has or would have the effect of unreasonably and substantially interfering with a student's educational performance, opportunities or benefits, or mental, emotional and/or physical well-being; or

(2) reasonably causes or would reasonably be expected to cause a student to fear for his or her physical safety.

Such conduct shall include, but is not limited to, threats, intimidation, or abuse based on a person's actual or perceived race, color, weight, national origin, ethnic group, religion, religious practices, disability, sexual orientation, gender as defined in Education Law § 11(6), or sex; provided that nothing in this subdivision shall be construed to prohibit a denial of admission into, or exclusion from, a course of instruction based on a person's gender that would be permissible under Education Law sec-

tions 3201-a or 2854(2) (a) and Title IX of the Education Amendments of 1972 (20 U.S.C. section 1681, et seq.), or to prohibit, as discrimination based on disability, actions that would be permissible under section 504 of the Rehabilitation Act of 1973;

[(b)] (c) standards and procedures to assure security and safety of students and school personnel;

[(c)] (d) provisions for the removal from the classroom [and from], school property and school functions of students and other persons who violate the code;

[(d)] (e) provisions prescribing the period for which a disruptive pupil may be removed from the classroom for each incident, provided that no such pupil shall return to the classroom until the principal makes a final determination pursuant to Education Law section 3214(3-a)(c), or the period of removal expires, whichever is less;

[(e)] (f) disciplinary measures to be taken in incidents on school property or at school functions involving the possession or use of illegal substances or weapons, the use of physical force, vandalism, violation of another student's civil rights, harassment and threats of violence;

(g) provisions for responding to acts of discrimination and harassment against students by employees or students on school property or at a school function pursuant to clause (b) of this subparagraph;

[(f)] (h) provisions for detention, suspension and removal from the classroom of students, consistent with Education Law section 3214 and other applicable Federal, State, and local laws including provisions for the school authorities to establish policies and procedures to ensure the provision of continued educational programming and activities for students removed from the classroom, placed in detention, or suspended from school, which shall include alternative educational programs appropriate to individual student needs;

[(g)] (i) procedures by which violations are reported, determined, discipline measures imposed and discipline measures carried out;

[(h)] (j) provisions ensuring such code and the enforcement thereof are in compliance with State and Federal laws relating to students with disabilities;

[(i)] (k) provisions setting forth the procedures by which local law enforcement agencies shall be notified of code violations which constitute a crime;

[(j)] (l) provisions setting forth the circumstances under and procedures by which persons in parental relation to the student shall be notified of code violations;

[(k)] (m) provisions setting forth the circumstances under and procedures by which a complaint in criminal court, a juvenile delinquency petition or person in need of supervision petition as defined in [articles] Articles three and seven of the Family Court Act will be filed;

[(l)] (n) circumstances under and procedures by which referral to appropriate human service agencies shall be made;

[(m)] (o) a minimum suspension period, for any student who repeatedly is substantially disruptive of the educational process or substantially interferes with the teacher's authority over the classroom, provided that the suspending authority may reduce such period on a case-by-case basis to be consistent with any other State and Federal Law. For purposes of this requirement, "repeatedly is substantially disruptive of the educational process or substantially interferes with the teacher's authority over the classroom" shall mean engaging in conduct which results in the removal of the student from the classroom by teacher(s) pursuant to the provisions of Education Law section 3214(3-a) and the provisions set forth in the code of conduct on four or more occasions during a semester, or three or more occasions during a trimester, as applicable;

[(n)] (p) a minimum suspension period for acts that would qualify the pupil to be defined as a violent pupil pursuant to Education Law section 3214(2-a)(a), provided that the suspending authority may reduce such period on a case-by-case basis to be consistent with any other State and Federal law;

[(o)] (q) a bill of rights and responsibilities of students which focuses upon positive student behavior and a safe and supportive school climate, [and] which shall be written in plain-language, publicized and explained in an age-appropriate manner to all students on an annual basis; and

[(p)] (r) guidelines and programs for in-service education programs for all district staff members to ensure effective implementation of school policy on school conduct and discipline, including but not limited to, guidelines on promoting a safe and supportive school climate while discouraging, among other things, discrimination or harassment against students by students and/or school employees; and including safe and supportive school climate concepts in the curriculum and classroom management.

(iii) Additional responsibilities.

(a) Each board of education and, in the case of the City School District of the City of New York, the chancellor of such city school district, and each board of cooperative educational services shall annually review

and update as necessary its code of conduct, taking into consideration the effectiveness of code provisions and the fairness and consistency of its administration. A school district may establish a committee pursuant to Education Law section 2801(5) (a) to facilitate the review of its code of conduct and the district's response to code of conduct violations. A board of education or board of cooperative educational services may adopt any revision to the code of conduct only after at least one public hearing that provides for the participation of school personnel, parents, students, and any other interested party. Each district shall file a copy of its code of conduct and any amendments with the commissioner, in a manner prescribed by the commissioner, no later than 30 days after their respective adoptions.

(b) Each board of education and board of cooperative educational services shall ensure community awareness of its code of conduct by:

(1) posting the complete code of conduct, respectively, on the Internet web site, if any, of the school or school district, or of the board of cooperative educational services, including any annual updates to the code made pursuant to clause (a) of this subparagraph and any other amendments to the code;

[(1)] (2) providing copies of a summary of the code of conduct to all students, in an age-appropriate version, written in plain-language, at a [general] school assembly to be held at the beginning of each school year;

[(2)] (3) [mailing] providing a plain language summary of the code of conduct to all persons in parental relation to students before the beginning of [the] each school year and making such summary available thereafter upon request;

[(3)] (4) providing each existing teacher with a copy of the complete code of conduct and a copy of any amendments to the code as soon as practicable following initial adoption or amendment of the code, and providing new teachers with a complete copy of the current code upon their employment; and

[(4)] (5) making complete copies available for review by students, parents or [other] persons in parental relation to students, [nonteaching] other school staff and other community members.

2. Section 119.6 of the Regulations of the Commissioner of Education is added, effective July 1, 2012, as follows:

119.6 Policies against discrimination and harassment. Each charter school shall include in its disciplinary rules and procedures pursuant to Education Law section 2851(2)(h) or, if applicable, in its code of conduct:

(a) provisions, in an age-appropriate version and written in plain-language, prohibiting discrimination and harassment against any student, by employees or students on school property or at a school function, that creates a hostile environment by conduct, with or without physical contact and/or by verbal threats, intimidation or abuse, of such a severe nature that:

(1) has or would have the effect of unreasonably and substantially interfering with a student's educational performance, opportunities or benefits, or mental, emotional and/or physical well-being; or

(2) reasonably causes or would reasonably be expected to cause a student to fear for his or her physical safety.

Such conduct shall include, but is not limited to, threats, intimidation, or abuse based on a person's actual or perceived race, color, weight, national origin, ethnic group, religion, religious practices, disability, sexual orientation, gender as defined in Education Law § 11(6), or sex; provided that nothing in this subdivision shall be construed to prohibit a denial of admission into, or exclusion from, a course of instruction based on a person's gender that would be permissible under Education Law sections 3201-a or 2854(2)(a) and Title IX of the Education Amendments of 1972 (20 U.S.C. section 1681, et seq.), or to prohibit, as discrimination based on disability, actions that would be permissible under section 504 of the Rehabilitation Act of 1973;

(b) provisions for responding to acts of discrimination and harassment against students by employees or students on school property or at a school function as defined in Education Law sections 11(1) and (2), pursuant to subdivision (a) of this section, including but not limited to disciplinary measures to be taken; and

(c) guidelines on promoting a safe and supportive school climate while discouraging, among other things, discrimination or harassment against students by students and/or school employees; and including safe and supportive school climate concepts in the curriculum and classroom management.

Final rule as compared with last published rule: Nonsubstantive changes were made in sections 100.2(1)(2) and 119.5.

Text of rule and any required statements and analyses may be obtained from: Mary Gammon, State Education Department, Office of Counsel, State Education Building, Room 148, 89 Washington Ave., Albany, NY 12234, (518) 474-8857, email: legal@mail.nysed.gov

Revised Regulatory Impact Statement

Since publication of a Notice of Proposed Rule Making in the *State Register* on January 25, 2012, nonsubstantial changes were made to the proposed rule as follows:

1. Proposed section 119.5 of the Commissioner's Regulations was re-numbered as section 119.6, because a section 119.5 was previously added to the Commissioner's Regulations as part of a separate rule making (EDU-42-11-00016-A; January 4, 2012 State Register).

2. Proposed section 100.2(1)(2)(iii)(b)(1) was revised to clarify that only those schools, school districts and boards of cooperative educational services that maintain websites are required to post their codes of conduct, and any updates and amendments to them, on such websites.

These changes require that the Paperwork section of the previously published Regulatory Impact Statement be revised to read as follows:

6. PAPERWORK:

The proposed amendment requires:

- each school district to file its code of conduct and any amendments with the Commissioner, in a manner prescribed by the Commissioner, within 30 days after their respective adoptions;
- each school district and BOCES to post the complete code of conduct, and any updates and amendments to the code, on the school's or school district's Internet web site, if any;
- each school district and BOCES to provide all students with copies of a summary of the code of conduct, in an age-appropriate version, written in plain-language, at a school assembly to be held at the beginning of each school year;
- each school district and BOCES to provide a plain language summary of the code of conduct to all persons in parental relation to students before the beginning of the school year, and make the summary available thereafter upon request.

Revised Regulatory Flexibility Analysis

Since publication of a Notice of Proposed Rule Making in the *State Register* on January 25, 2012, a nonsubstantial change was made to the proposed rule as described in the Statement Concerning the Regulatory Impact Statement filed herewith.

These changes require that the Compliance section of the previously published Regulatory Flexibility Analysis for Small Businesses and Local Government be revised to read as follows:

COMPLIANCE REQUIREMENTS:

Consistent with Education Law section 2801 and Article 2, as respectively amended and added by Chapter 482 of the Laws of 2010, the proposed amendment requires each school district and BOCES code of conduct to include:

- provisions prohibiting discrimination and harassment against any student by employees or students on school property or at a school function, that creates a hostile environment by conduct, with or without physical contact and/or by verbal threats, intimidation or abuse, of such a severe nature that: (1) has or would have the effect of unreasonably and substantially interfering with a student's educational performance, opportunities or benefits, or mental, emotional and/or physical well-being; or (2) reasonably causes or would reasonably be expected to cause a student to fear for his or her physical safety. Such conduct shall include, but is not limited to, threats, intimidation or abuse based on a person's actual or perceived race, color, weight, national origin, ethnic group, religion, religious practices, disability, sexual orientation, gender as defined in Education Law section 11(6), or sex;
- provisions for responding to such acts of discrimination or harassment against students by employees or students on school property or at a school function;
- a bill of rights and responsibilities of students which focuses upon positive student behavior and a safe and supportive school climate, which shall be written in plain-language, publicized and explained in an age-appropriate manner to all students on an annual basis; and
- guidelines and programs for in-service education programs for all district staff members to ensure effective implementation of school policy on school conduct and discipline, including but not limited to, guidelines on promoting a safe and supportive school climate while discouraging, among other things, discrimination or harassment against students by students and/or school employees, and including safe and supportive school climate concepts in the curriculum and classroom management.

The proposed amendment further requires:

- each school district to file its code of conduct and any amendments with the Commissioner, in a manner prescribed by the Commissioner, within 30 days after their respective adoptions;
- each school district and BOCES to post the complete code of conduct, and any updates and amendments to the code, on the school's or school district's Internet web site, if any;
- each school district and BOCES to provide all students with copies

of a summary of the code of conduct, in an age-appropriate version, written in plain-language, at a school assembly to be held at the beginning of each school year;

- each school district and BOCES to provide a plain language summary of the code of conduct to all persons in parental relation to students before the beginning of the school year, and make the summary available thereafter upon request.

The proposed amendment also requires that charter schools include in their disciplinary rules and procedures pursuant to Education Law section 2851(2)(h) or, if applicable, in its code of conduct, provisions prohibiting discrimination and harassment against any student, by employees or students on school property or at a school function; provisions for responding to acts of discrimination and harassment against students by employees or students on school property or at a school function; and (c) guidelines on promoting a safe and supportive school climate while discouraging, among other things, discrimination or harassment against students by students and/or school employees; and including safe and supportive school climate concepts in the curriculum and classroom management.

Revised Rural Area Flexibility Analysis

Since publication of a Notice of Proposed Rule Making in the *State Register* on January 25, 2012, a nonsubstantial change was made to the proposed rule as described in the Statement Concerning the Regulatory Impact Statement filed herewith.

These changes require that the Reporting, Recordkeeping and Other Compliance Requirements; and Professional Services section of the previously published Rural Area Flexibility Analysis be revised to read as follows:

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

Consistent with Education Law section 2801 and Article 2, as respectively amended and added by the Dignity for All Students Act ("Dignity Act" - Chapter 482 of the Laws of 2010, the proposed amendment requires each school district and BOCES code of conduct to include:

- provisions prohibiting discrimination and harassment against any student by employees or students on school property or at a school function, that creates a hostile environment by conduct, with or without physical contact and/or by verbal threats, intimidation or abuse, of such a severe nature that: (1) has or would have the effect of unreasonably and substantially interfering with a student's educational performance, opportunities or benefits, or mental, emotional and/or physical well-being; or (2) reasonably causes or would reasonably be expected to cause a student to fear for his or her physical safety. Such conduct shall include, but is not limited to, threats, intimidation or abuse based on a person's actual or perceived race, color, weight, national origin, ethnic group, religion, religious practices, disability, sexual orientation, gender as defined in Education Law section 11(6), or sex;
- provisions for responding to such acts of discrimination or harassment against students by employees or students on school property or at a school function;
- a bill of rights and responsibilities of students which focuses upon positive student behavior and a safe and supportive school climate, which shall be written in plain-language, publicized and explained in an age-appropriate manner to all students on an annual basis; and
- guidelines and programs for in-service education programs for all district staff members to ensure effective implementation of school policy on school conduct and discipline, including but not limited to, guidelines on promoting a safe and supportive school climate while discouraging, among other things, discrimination or harassment against students by students and/or school employees, and including safe and supportive school climate concepts in the curriculum and classroom management.

The proposed amendment further requires:

- each school district to file its code of conduct and any amendments with the Commissioner, in a manner prescribed by the Commissioner, within 30 days after their respective adoptions;
- each school district and BOCES to post the complete code of conduct, and any updates and amendments to the code, on the school's or school district's Internet web site, if any;
- each school district and BOCES to provide all students with copies of a summary of the code of conduct, in an age-appropriate version, written in plain-language, at a school assembly to be held at the beginning of each school year;
- each school district and BOCES to provide a plain language summary of the code of conduct to all persons in parental relation to students before the beginning of the school year, and make the summary available thereafter upon request.

The proposed amendment also requires that charter schools include in their disciplinary rules and procedures pursuant to Education Law section

2851(2)(h) or, if applicable, in its code of conduct, provisions prohibiting discrimination and harassment against any student, by employees or students on school property or at a school function; provisions for responding to acts of discrimination and harassment against students by employees or students on school property or at a school function; and (c) guidelines on promoting a safe and supportive school climate while discouraging, among other things, discrimination or harassment against students by students and/or school employees; and including safe and supportive school climate concepts in the curriculum and classroom management.

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

Revised Job Impact Statement

Since publication of a Notice of Proposed Rule Making in the *State Register* on January 25, 2012, a nonsubstantial change was made to the proposed rule as described in the Statement Concerning the Regulatory Impact Statement filed herewith.

The proposed amendment, as revised, applies to school districts, boards of cooperative educational services (BOCES) and charter schools and relates to implementation of codes of conduct and disciplinary rules and procedures for the maintenance of public order on school property and at school functions consistent with the Dignity for All Students Act (L. 2010, Ch. 482). The proposed revised amendment will not have an adverse impact on jobs or employment opportunities. Because it is evident from the nature of the proposed revised amendment that it will have a positive impact, or no impact, on jobs or employment opportunities, no further steps were needed to ascertain those facts and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

Assessment of Public Comment

Since publication of a Notice of Proposed Rule Making in the *State Register* on January 18, 2012, the State Education Department received the following comments.

1. COMMENT:

We commend the State Education Department for its thoughtful approach to implementing DASA. Successful implementation is critical to the safety and well-being of New York students. We fully support the proposed rule as a component of such implementation.

DEPARTMENT RESPONSE:

No response is necessary, as the comment is supportive.

2. COMMENT:

The proposed rule's provision that the complete code of conduct, including annual updates and other amendments to the code, be posted on the Internet web site of each school district will impose a hardship on small school districts that do not maintain an Internet web site. It was suggested that, in lieu of such requirement, a school district be allowed to mail copies of the code to all families in the district.

DEPARTMENT RESPONSE:

The proposed provision [section 100.2(1)(2)(iii)(b)(1)] is intended to require only those schools, school districts and boards of cooperative educational services that maintain websites to post their codes of conduct, and any updates and amendments to them, on such websites. The proposed amendment has been revised to clarify this. The Department may consider issuing guidance with respect to those schools and school districts that do not maintain websites.

NOTICE OF ADOPTION

Instruction in Civility, Citizenship and Character Education and the Dignity for All Students Act

I.D. No. EDU-04-12-00002-A

Filing No. 263

Filing Date: 2012-03-23

Effective Date: 2012-04-11

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

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

Statutory authority: Education Law, sections 101(not subdivided), 207(not subdivided), 305(1) and (2), 801-a(1)(not subdivided), and L. 2010, ch. 482, section 3

Subject: Instruction in civility, citizenship and character education and the Dignity for All Students Act.

Purpose: Conform Commissioners Regulations to the Dignity for All Students Act (ch. 482, L. 2010).

Text or summary was published in the January 25, 2012 issue of the Register, I.D. No. EDU-04-12-00002-P.

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

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

Assessment of Public Comment

Since publication of a Notice of Proposed Rule Making in the State Register on January 18, 2012, the State Education Department received the following comments.

1. COMMENT:

We commend the State Education Department for its thoughtful approach to implementing DASA. Successful implementation is critical to the safety and well-being of New York students. We fully support the proposed rule as a component of such implementation.

DEPARTMENT RESPONSE:

No response is necessary, as the comment is supportive.

2. COMMENT:

The proposed rule's provision that the complete code of conduct, including annual updates and other amendments to the code, be posted on the Internet web site of each school district will impose a hardship on small school districts that do not maintain an Internet web site. It was suggested that, in lieu of such requirement, a school district be allowed to mail copies of the code to all families in the district.

DEPARTMENT RESPONSE:

The proposed provision [section 100.2(1)(2)(iii)(b)(1)] is intended to require only those schools, school districts and boards of cooperative educational services that maintain websites to post their codes of conduct, and any updates and amendments to them, on such websites. The proposed amendment has been revised to clarify this. The Department may consider issuing guidance with respect to those schools and school districts that do not maintain websites.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Reporting Requirements Under the Dignity for All Students Act (L. 2010, Ch. 482)

I.D. No. EDU-15-12-00011-P

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

Proposed Action: Addition of section 100.2(kk) to Title 8 NYCRR.

Statutory authority: Education Law, sections 11(1-7), 15(not subdivided), 16(not subdivided), 101(not subdivided), 207(not subdivided), 305(1), (2), 2854(1)(b); and L. 2010, ch. 482

Subject: Reporting requirements under the Dignity for All Students Act (L. 2010, ch. 482).

Purpose: To establish standards for reporting material incidents of discrimination and harassment.

Text of proposed rule: Subdivision (kk) of section 100.2 of the Regulations of the Commissioner of Education is added, effective July 1, 2012, as follows:

(kk) *Dignity Act reporting requirements.*

(1) *Definitions. For purposes of this subdivision:*

(i) "School property" means in or within any building, structure, athletic playing field, playground, parking lot, or land contained within the real property boundary line of a public elementary or secondary school; or in or on a school bus, as defined in Vehicle and Traffic Law section 142.

(ii) "School function" means a school-sponsored extra-curricular event or activity.

(iii) "Disability" means disability as defined in Executive Law section 292(21).

(iv) "Employee" means employee as defined in Education Law section 1125(3).

(v) "Sexual orientation" means actual or perceived heterosexual-ity, homosexuality or bisexuality.

(vi) "Gender" means actual or perceived sex and shall include a person's gender identity or expression.

(vii) "Harassment" means the creation of a hostile environment by conduct or by verbal threats, intimidation or abuse that has or would

have the effect of unreasonably and substantially interfering with a student's educational performance, opportunities or benefits, or mental, emotional or physical well-being; or conduct, verbal threats, intimidation or abuse that reasonably causes or would reasonably be expected to cause a student to fear for his or her physical safety; such conduct, verbal threats, intimidation or abuse includes but is not limited to conduct, verbal threats, intimidation and abuse based on a person's actual or perceived race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender or sex.

(viii) "Material Incident of Discrimination and Harassment" means a single incident or a series of related incidents where a student is subjected to discrimination and/or harassment by a student and/or employee on school property or at a school function that creates a hostile environment by conduct, with or without physical contact and/or by verbal threats, intimidation or abuse, of such severe or pervasive nature that:

(a) has or would have the effect of unreasonably and substantially interfering with a student's educational performance, opportunities or benefits, or mental, emotional and/or physical well-being; or

(b) reasonably causes or would reasonably be expected to cause a student to fear for his or her physical safety.

Such conduct shall include, but is not limited to, threats, intimidation or abuse based on a person's actual or perceived race, color, weight, national origin, ethnic group, religion, religious practices, disability, sexual orientation, gender or sex; provided that nothing in this subdivision shall be construed to prohibit a denial of admission into, or exclusion from, a course of instruction based on a person's gender that would be permissible under Education Law sections 3201-a or 2854(2)(a) and Title IX of the Education Amendments of 1972 (20 U.S.C. section 1681, et seq.), or to prohibit, as discrimination based on disability, actions that would be permissible under section 504 of the Rehabilitation Act of 1973.

(2) Reporting of incidents.

(i) For the 2012-2013 school year and for each succeeding school year thereafter, each school district, board of cooperative educational services (BOCES) and charter school shall submit to the commissioner an annual report of material incidents of discrimination and harassment that occurred in such school year, in accordance with Education Law section 15 and this subdivision. Such report shall be submitted in a manner prescribed by the commissioner, on or before the basic educational data system (BEDS) reporting deadline or such other date as determined by the commissioner.

(ii) For purposes of reporting pursuant to this subdivision, a school district, BOCES or charter school shall include in its annual report all material incidents of discrimination and harassment that:

(a) are the result of the investigation of a written or oral complaint made to the school principal or other school administrator responsible for school discipline, or to any other school employee; or

(b) are otherwise directly observed by such principal or administrator, or by any other school employee regardless of whether a complaint is made.

(iii) Such report shall include information describing the specific nature of the incident, including, but not limited to:

(a) the type(s) of bias involved (actual or perceived race, color, weight, national origin, ethnic group, religion, religious practices, disability, sexual orientation, gender, sex, or other). Where multiple types of bias are involved, they shall all be reported;

(b) whether the incident resulted from student and/or employee conduct;

(c) whether the incident involved physical contact and/or verbal threats, intimidation or abuse; and

(d) the location where the incident occurred (on school property and/or at a school function).

(3) Protection of people who report discrimination or harassment.

(i) Pursuant to Education Law section 16, any person having reasonable cause to suspect that a student has been subjected to discrimination or harassment by an employee or student, on school grounds or at a school function, who acting reasonably and in good faith, either reports such information to school officials, to the commissioner, or to law enforcement authorities or otherwise initiates, testifies, participates or assists in any formal or informal proceedings under this subdivision, shall have immunity from any civil liability that may arise from the making of such report or from initiating, testifying, participating or assisting in such formal or informal proceedings.

(ii) No school district, BOCES or charter school, or an employee thereof, shall take, request or cause a retaliatory action against any such person who, acting reasonably and in good faith, either makes such a report or initiates, testifies, participates or assists in such formal or informal proceedings.

Text of proposed rule and any required statements and analyses may be obtained from: Mary Gammon, State Education Department, Office of Counsel, State Education Building, Room 148, 89 Washington Ave., Albany, NY 12234, (518) 474-8857, email: legal@mail.nysed.gov

Data, views or arguments may be submitted to: Ken Slentz, Deputy Commissioner P-12 Education, State Education Department, State Education Building, 2M West, 89 Washington Ave., Albany, NY 12234, (518) 474-5520, email: NYSEDP12@mail.nysed.gov

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

Education Law section 11, as added by section 2 of Chapter 482 of the Laws of 2010 (Dignity for All Students Act - "Dignity Act"), establishes definitions for purposes of the new Article 2 of the Education Law added by such statute.

Education Law section 15, as added by section 2 of the Dignity Act, requires the Commissioner to create a procedure under which material incidents of discrimination and harassment on school grounds or at a school function are reported to the State Education Department at least on an annual basis. The procedure shall provide that such reports shall, wherever possible, also delineate the specific nature of such incidents of discrimination or harassment.

Education Law section 16, as added by section 2 of the Dignity Act confers, under certain specified conditions, immunity from civil liability on persons reporting discrimination or harassment of students by a school employee or student. The statute further provides that no school district or employee shall take, request or cause a retaliatory action against a person, acting reasonably and in good faith, who makes such report or who initiates, testifies, participates or assists in any formal or informal proceeding under Education Law Article 2.

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

Education Law section 305(1) empowers the Commissioner of Education to be the chief executive officer of the State system of education and the Board of Regents and authorizes the Commissioner to enforce laws relating to the educational system and to execute educational policies determined by the Board of Regents. Education Law section 305(2) authorizes the Commissioner to have general supervision over all schools subject to the Education Law.

Education Law section 2854(1)(b) provides that charter schools shall meet the same health and safety, civil rights, and student assessment requirements applicable to other public schools, except as otherwise specifically provided in Article 56 of the Education Law.

2. LEGISLATIVE OBJECTIVES:

Consistent with the above statutory authority, the proposed rule will implement sections 15 and 16 of Article 2 of the Education Law, as added by section 2 of Chapter 482 of the Laws of 2010.

3. NEEDS AND BENEFITS:

The proposed rule is necessary to implement provisions of the Dignity Act, by establishing standards for the reporting of material incidents of discrimination and harassment including, but not limited to, threats, intimidation or abuse based on a person's actual or perceived race, color, weight, national origin, ethnic group, religion, religious practices, disability, sexual orientation, gender or sex.

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 rule is necessary to conform the Commissioner's Regulations to the Dignity Act and will not impose any additional costs on the State, school districts, BOCES and charter schools, or the State Education Department, beyond those imposed by the statute. The proposed rule has been carefully drafted to meet statutory requirements and Regents policy while minimizing the impact on school districts, BOCES and charter schools.

5. LOCAL GOVERNMENT MANDATES:

The proposed rule is necessary to conform the Commissioner's Regulations to the Dignity Act (sections 15 and 16 of Article 2 of the Education Law, as added by section 2 of Chapter 482 of the Laws of 2010) and will not impose any additional program, service, duty or responsibility beyond those imposed by the statute. The statute requires the Commissioner to create a procedure under which material incidents of discrimination and harassment on school grounds or at a school function are reported to the Department on at least an annual basis.

6. PAPERWORK:

For the 2012-2013 school year and for each succeeding school year thereafter, each school district, board of cooperative educational services (BOCES) and charter school shall submit to the Commissioner an annual report of material incidents of discrimination and harassment that occurred in such school year.

A school district, BOCES or charter school shall include in its annual report all material incidents of discrimination and harassment that:

(a) are the result of the investigation of a written or oral complaint made to the school principal or other school administrator responsible for school discipline, or to any other school employee; or

(b) are otherwise directly observed by such principal or administrator, or by any other school employee regardless of whether a complain is made.

The report shall include information describing the specific nature of the incident, including, but not limited to:

(a) the type(s) of bias involved (actual or perceived race, color, weight, national origin, ethnic group, religion, religious practices, disability, sexual orientation, gender, sex or other). Where multiple types of bias are involved, they shall all be reported;

(b) whether the incident resulted from student and/or employee conduct;

(c) whether the incident involved physical contact and/or verbal threats, intimidation or abuse; and

(d) the location where the incident occurred (on school property and/or at a school function).

No school district, BOCES or charter school, or an employee thereof, shall take, request or cause a retaliatory action against any such person who, acting reasonably and in good faith, either makes such a report or initiates, testifies, participates or assists in such formal or informal proceedings.

Each school district, BOCES and charter school shall annually submit its report on material incidents of discrimination and harassment, in a manner prescribed by the commissioner, on or before the basic educational data system (BEDS) reporting deadline or such other date as determined by the Commissioner.

7. DUPLICATION:

The proposed rule does not duplicate existing State or Federal regulations, and is necessary to implement Chapter 482 of the Laws of 2010.

8. ALTERNATIVES:

The proposed rule is necessary to implement provisions of the Dignity Act to establish standards for school districts, BOCES and charter schools to report material incidents of discrimination and harassment, to ensure compliance with the new Article 2 of the Education Law, as added by the Dignity Act. There are no viable alternatives and none were considered.

9. FEDERAL STANDARDS:

There are no related Federal standards.

10. COMPLIANCE SCHEDULE:

The proposed rule is necessary to conform the Commissioner's Regulations with the Dignity Act and will not impose any additional compliance requirements or costs on regulated parties beyond those imposed by the statute. It is anticipated that regulated parties will be able to achieve compliance with proposed rule by its effective date.

Regulatory Flexibility Analysis**Small Businesses:**

The proposed rule applies to school districts, boards of cooperative educational services (BOCES) and charter schools and relates to reporting requirements under the Dignity for All Students Act ("Dignity Act", L. 2010, Ch. 482). The proposed rule 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 rule 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 rule applies to each school district, BOCES and charter school in the State. At present, there are 695 school districts (including New York City), 37 BOCES and approximately 190 charter schools.

2. COMPLIANCE REQUIREMENTS:

For the 2012-2013 school year and for each succeeding school year thereafter, each school district, board of cooperative educational services (BOCES) and charter school shall submit to the Commissioner an annual report of material incidents of discrimination and harassment that occurred in such school year.

A school district, BOCES or charter school shall include in its annual report all material incidents of discrimination and harassment that:

(a) are the result of the investigation of a written or oral complaint made to the school principal or other school administrator responsible for school discipline, or to any other school employee; or

(b) are otherwise directly observed by such principal or administrator, or by any other school employee regardless of whether a complain is made.

The report shall include information describing the specific nature of the incident, including, but not limited to:

(a) the type(s) of bias involved (actual or perceived race, color, weight, national origin, ethnic group, religion, religious practices, disability, sexual orientation, gender, sex or other). Where multiple types of bias are involved, they shall all be reported;

(b) whether the incident resulted from student and/or employee conduct;

(c) whether the incident involved physical contact and/or verbal threats, intimidation or abuse; and

(d) the location where the incident occurred (on school property and/or at a school function).

No school district, BOCES or charter school, or an employee thereof, shall take, request or cause a retaliatory action against any such person who, acting reasonably and in good faith, either makes such a report or initiates, testifies, participates or assists in such formal or informal proceedings.

Each school district, BOCES and charter school shall annually submit its report on material incidents of discrimination and harassment, in a manner prescribed by the commissioner, on or before the basic educational data system (BEDS) reporting deadline or such other date as determined by the Commissioner.

3. PROFESSIONAL SERVICES:

The proposed rule will not impose any additional professional services requirements.

4. COMPLIANCE COSTS:

The proposed rule is necessary to conform the Commissioner's Regulations with the Dignity Act and will not impose any additional costs beyond those imposed by the statute.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

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

6. MINIMIZING ADVERSE IMPACT:

The proposed rule is necessary to conform the Commissioner's Regulations with the Dignity Act and will not impose any additional compliance requirements or costs on school districts, BOCES and charter schools beyond those imposed by the statute. Because these statutory requirements specifically apply to school districts, BOCES and charter schools it is not possible to exempt them from the proposed rule's requirements or impose a lesser standard. The proposed rule has been carefully drafted to meet statutory requirements and Regents policy while minimizing the impact on school districts, BOCES and charter schools.

7. LOCAL GOVERNMENT PARTICIPATION:

The proposed rule was developed in cooperation with the Dignity Act Task Force State Policy Work Group which is comprised of other State agencies, the New York City Department of Education, and several not-for-profit organizations. Comments on the proposed rule 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 rule applies to all school districts and boards of cooperative educational services (BOCES) in the State, including those located in the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square mile or less. The proposed rule also applies to charter schools. At present, there is one charter school in a rural area.

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

For the 2012-2013 school year and for each succeeding school year thereafter, each school district, board of cooperative educational services (BOCES) and charter school shall submit to the Commissioner an annual report of material incidents of discrimination and harassment that occurred in such school year.

A school district, BOCES or charter school shall include in its annual report all material incidents of discrimination and harassment that:

(a) are the result of the investigation of a written or oral complaint made to the school principal or other school administrator responsible for school discipline, or to any other school employee; or

(b) are otherwise directly observed by such principal or administrator, or by any other school employee regardless of whether a complain is made.

The report shall include information describing the specific nature of the incident, including, but not limited to:

(a) the type(s) of bias involved (actual or perceived race, color, weight, national origin, ethnic group, religion, religious practices, disability, sexual orientation, gender, sex or other). Where multiple types of bias are involved, they shall all be reported;

(b) whether the incident resulted from student and/or employee conduct;

(c) whether the incident involved physical contact and/or verbal threats, intimidation or abuse; and

(d) the location where the incident occurred (on school property and/or at a school function).

No school district, BOCES or charter school, or an employee thereof, shall take, request or cause a retaliatory action against any such person who, acting reasonably and in good faith, either makes such a report or initiates, testifies, participates or assists in such formal or informal proceedings.

Each school district, BOCES and charter school shall annually submit its report on material incidents of discrimination and harassment, in a manner prescribed by the commissioner, on or before the basic educational data system (BEDS) reporting deadline or such other date as determined by the Commissioner.

The proposed rule will not impose any additional professional services requirements.

3. COSTS:

The proposed rule is necessary to conform the Commissioner's Regulations with the Dignity Act and will not impose any additional costs on school districts, BOCES and charter schools in rural areas beyond those imposed by the statute.

4. MINIMIZING ADVERSE IMPACT:

The proposed rule is necessary to conform the Commissioner's Regulations to the Dignity Act and will not impose any additional compliance requirements or costs beyond those imposed by the statute. The proposed rule has been carefully drafted to meet statutory requirements and Regents policy while minimizing the impact on school districts, BOCES and charter schools. The statute which the proposed rule implements applies to all school districts, BOCES and charter schools throughout the State, including those in rural areas. Therefore, it was not possible to establish different requirements for entities in rural areas, or to exempt them from the rule's provisions.

5. RURAL AREA PARTICIPATION:

Comments on the proposed rule were solicited from the Department's Rural Advisory Committee, whose membership includes school districts located in rural areas. The proposed amendments were developed in cooperation with the Dignity Act Task Force State Policy Work Group which is comprised of other State agencies, the New York City Department of Education, and several not-for-profit organizations.

Job Impact Statement

The proposed rule relates to reporting requirements under the Dignity for All Students Act (L. 2010, Ch. 482) and is applicable to school districts, boards of cooperative educational services and charter schools. The proposed amendment will not have an adverse impact on jobs or employment opportunities. Because it is evident from the nature of the proposed amendment that it will have 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.

REVISED RULE MAKING NO HEARING(S) SCHEDULED

Annual Professional Performance Reviews for Classroom Teachers and Building Principals

I.D. No. EDU-23-11-00006-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 100.2(o); and addition of Subpart 30-2 to Title 8 NYCRR.

Statutory authority: Education Law, sections 101(not subdivided), 207(not subdivided), 215(not subdivided), 305(1) and (2) and 3012-c(1)-(8), as added by L. 2010, ch. 103 and amended by a chapter of the Laws of 2012 (as enacted by S.6732/A.9554).

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

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

Substance of revised rule: The Commissioner of Education proposes to amend section 100.2(o) of the Commissioner's Regulations and add a new Subpart 30-2 to the Rules of the Board of Regents, to implement Education Law section 3012-c, as added by Chapter 103 of the Laws of 2010 and as amended by a Chapter of the Laws of 2012 (S.6732/ A.9554), by establishing standards and criteria for conducting annual professional performance reviews of classroom teachers and building principals employed by school districts and boards of cooperative educational services.

Since publication of a Notice of Emergency Adoption and Proposed

Rule Making in the State Register on June 8, 2011, substantial revisions have been made to the proposed rule as set forth in the Revised Regulatory Impact Statement submitted herewith. The following is a summary of the substance of the revised proposed rule.

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

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

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

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

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

This section further provides that nothing shall be construed to affect the statutory rights of a school district or BOCES to terminate a probationary teacher or principal for statutorily and constitutionally permissible reasons other than the performance of the teacher or principal in the classroom or school, including but not limited to misconduct.

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

Section 30-2.3 sets forth the content requirements for APPR plans submitted under Subpart 30-2. By September 1, 2011, each school district shall adopt an APPR plan for its classroom teachers of common branch subjects, ELA or mathematics in grades four to eight and building principals of schools in which such teachers are employed. By July 1, 2012, each school district/BOCES shall adopt and submit an APPR plan to the Commissioner for approval, on a form prescribed by the Commissioner, which may be an annual or multi-year plan, for the APPR of all of its classroom teachers and building principals. The Commissioner shall be required to approve or reject the plan by September 1, 2012. To the extent that by July 1, 2012 or by July 1 of any subsequent year, any of the items required to be included in the plan are not finalized by such date, as a result of unresolved collective bargaining negotiations, the entire plan shall be submitted to the Commissioner upon resolution of its terms.

Section 30-2.4 sets forth requirements for evaluating classroom teachers of common branch subjects, ELA or mathematics in grades four to eight for the 2011-2012 school year. 20 points of the evaluation will be based on student growth on State assessments or other

comparable measures and 20 points will be based on locally selected measures as described in the section. 60 points of the evaluation will be based on multiple measures of teacher and principal effectiveness as described in this section. A teacher's performance must be assessed based on a teacher practice rubric(s) approved by the Department. A principal's performance must be assessed based on an approved principal practice rubric. Provision is made for granting a variance for use of existing rubrics. At least 31 of the 60 points for teachers shall be based on multiple classroom observations. At least 31 of the 60 points for principals shall be based on a broad assessment of the principal's leadership and management actions by the principal's supervisor or a trained independent evaluator. This section also prescribes options for any remaining points of the 60 points.

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

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

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

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

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

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

Section 30-2.11 describes requirements for appeals procedures through which an evaluated teacher or principal may challenge their APPR and provides that appeals must be timely and expeditious.

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

Revised rule compared with proposed rule: Substantial revisions were made in sections 30-2.1, 30-2.3, 30-2.4, 30-2.5, 30-2.6, 30-2.10, 30-2.11 and 30-2.12.

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

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

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

Revised Regulatory Impact Statement

Since publication of a Notice of Emergency Adoption and Proposed Rule Making in the State Register on June 8, 2011, substantial revisions were made to the proposed rule to conform the proposed rule to and implement the provisions of a Chapter of the Laws of 2012 (S.6732/A.9554) by making the following substantive changes to Subpart 30-2 of the Rules of the Board of Regents.

Section 30-2.1 is revised to clarify that nothing in the law or the implementing regulations shall be construed to affect the statutory right of a school district or board of cooperative educational services (BOCES) to terminate a probationary teacher or principal for statutorily and constitutionally permissible reasons other than the performance of the teacher or principal in the classroom or school, including but not limited to misconduct.

Section 30-2.3 is revised to require that the governing body of each school district and BOCES shall adopt an annual or multi-year, annual professional performance review (APPR) plan, on a form prescribed by the Commissioner, by July 1, 2012 and to submit such plan to the Commissioner for approval. The Commissioner will approve or reject the plan by September 1, 2012, or as soon as practicable thereafter. The Commissioner will reject a plan if it does not rigorously adhere to the provisions of the law or regulations. If a plan is rejected, the Commissioner will describe the deficiencies in the plan and direct that each deficiency be resolved through collective bargaining to the extent required under article 14 of the Civil Service Law. If material changes are made to the plan, the school district or BOCES will be required to submit the material changes, on a form prescribed by the Commissioner, to the Commissioner for approval. If all of the terms have not been finalized as a result of unresolved collective bargaining negotiations, the entire plan shall be submitted to the Commissioner upon resolution of all of its terms, consistent with Article 14 of the Civil Service Law. This section also provides that the entire APPR shall be completed and provided to a teacher or principal as soon as practicable but in no case later than September 1 of the school year next following the school year for which the classroom teacher or building principal's performance is being measured. The teacher's or principal's score and rating on the locally selected measures subcomponent and on the other measures subcomponent shall be provided to the teacher or principal, in writing, no later than the last day of the school year for which the teacher or principal is being measured. This section also clarifies that this does not authorize a teacher or principal to trigger the appeal process prior to receipt of their composite score or rating. This section further clarifies that each APPR shall be based on the state assessments or other comparable measures subcomponent, the locally selected measures of student achievement subcomponent and the other measures of teacher and principal effectiveness subcomponent, determined in accordance with the applicable provisions of Education Law § 3012-c and this Subpart, for the school year for which the teacher's or principal's performance is measured.

Section 30-2.4 addresses the APPR requirements for the 2011-2012 school year. This section is revised to prohibit a school district or BOCES from using the same measure of student growth on the State assessment or other comparable measures subcomponent and the locally selected measures subcomponent. It also clarifies that the selection of the local measure for the locally selected measures subcomponent shall be determined through collective bargaining and changes the amount of points that must be based on classroom observations from 40 to 31 points for teachers, and the points for the broad assessment of a principal's leadership from 40 to 31 points and allows a principal to be assessed by another trained administrator as well as his/her supervisor or a trained independent evaluator.

Section 30-2.5 addresses the APPR requirements for the 2012-2013 school year. This section is revised to conform to the statute in several respects. In addition to the amendments made in 30-2.4, which are reiterated in this section for the 2012-2013 school year and beyond, for the State assessment or other comparable measures subcomponent, the revised rule amends the options for the "other comparable measures". It also revises and lists the options for the locally selected measures to conform to the statute for teachers and then principals. This section is also revised to require, in addition to the changes made in section 30-2.4, that for the 60 remaining points, at least one

classroom observation for teachers, and at least one visit for principals, must be unannounced. The revised rule also sets forth the options for any remaining points in the other measures of teacher or principal effectiveness subcomponent to conform to the statute.

Section 30-2.6 is revised to conform the scoring ranges for each of the subcomponents to the statute. It also clarifies that for the 2013-2014 school year and thereafter, the Commissioner shall review the scoring ranges for each of the rating categories annually and recommend changes to the Board of Regents for consideration. This section also clarifies that the process by which points are assigned in subcomponents and that the scoring ranges for the subcomponents must be transparent and available to those being rated before the beginning of each school year and that the process for assigning points for the State assessment or other comparable measures subcomponent shall be formulated by the Commissioner, while the process for assigning points to the locally selected measures and the other measures of teacher effectiveness subcomponents shall be established locally through negotiations conducted under Article 14 of the Civil Service Law pursuant to the standards in law and regulations. Such process must ensure that it is possible to obtain each point in the scoring ranges, including 0 for each subcomponent and the overall ratings. This section further clarifies that the superintendent, district superintendent or the Chancellor of the city school district of the City of New York and the collective bargaining representative must certify in the APPR plan that the process for assigning points will use the narrative descriptions for each rating category.

Section 30-2.10 addresses teacher and principal improvement plans and is revised to change the timeframe for developing a teacher or principal improvement plan from no later than 10 days after the date on which teachers are required to report prior to the opening of classes to 10 school days after the opening of classes for the school year.

Section 30-2.11 which addresses the appeal procedures was revised to implement the statute and provide that nothing shall be construed to alter or diminish the authority of the governing body of a school district or BOCES to grant or deny tenure to or terminate probationary teachers or probationary building principals during the pendency of an appeal for statutorily and constitutionally permissible reasons other than a teacher's or principal's performance that is the subject of the appeal. It also reiterates that nothing shall be construed to trigger the appeal process prior to receipt of their composite effectiveness score and rating from the district or BOCES.

Section 30-2.12 which addresses monitoring and consequences for non-compliance was revised to clarify that a school district or BOCES that does not comply with the law or regulations may be highlighted in public reports and/or the Commissioner may order a corrective action plan which may include that the district or BOCES arrange for additional professional development, provide additional in-service training and/or utilize independent trained evaluators to review the efficacy of the evaluation system.

The above changes require that the "Statutory Authority" section of the previously published Regulatory Impact Statement be revised to add the following:

A Chapter of the Laws of 2012 (S. 6732/A.9554) amended Education Law section 3012-c to revise the requirements and criteria for annual professional performance reviews of classroom teachers and building principals and the teacher evaluation appeal process for the city school district of the City of New York.

The above changes require that the "costs to local government" paragraph of the "Costs" section of the previously published Regulatory Impact Statement be revised to read as follows:

b. Costs to local government:

Education Law section 3012-c, as added by Chapter 103 of the Laws of 2010 and as amended by a chapter of the laws of 2012 as proposed by S.6732/A.9554, establishes requirements for the conduct of annual professional performance reviews (APPR) of classroom teachers and building principals employed by school districts and boards of cooperative educational services (BOCES).

The estimated value of staff time discussed here are based on the following: (1) an estimated hourly rate for teachers of \$46.46 (based on an average annual teacher salary of \$66,902 divided by 1,440 hours

per school year); (2) an estimated hourly rate for principals of \$71.90 (based on an average annual principal salary of \$126,544 divided by 1,760 hours per school year); and (3) an estimated hourly rate for superintendents of \$85.71 (based on a median annual superintendent of schools salary of \$150,850 divided by 1,760 hours per school year). The Department anticipates that the proposed rule will require the estimated value of staff time of school districts/BOCES employees. The estimated value of staff time below assume that school districts and BOCES employees will need to dedicate extra time to accomplish the duties required by the statute and/or the proposed rule. However, most districts and BOCES are or should be performing these activities currently, but the State does not have data on the amount of hours currently dedicated to these activities. Moreover, in 2010, the Department was awarded a nearly \$700 million in Race to the Top grant award, of which it is estimated that approximately \$460 million of these funds have been or will be made available to school districts and BOCES and portions of those monies will be available to offset some of the estimated value of staff time.

State assessments or Other Comparable Measures

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

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

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

Locally Selected Measures

An additional 20% of the evaluation must be based on locally selected measures. The statute provides districts/BOCES with several options for this component in the 2012-2013 school year (decreases to 15% upon implementation of a value-added growth model). For teacher evaluations in the 2012-2013 school year and thereafter, the statute provides the following options: approved third-party assessments; district-, regional- or BOCES-developed assessments; a school-wide measure of student growth or achieved based on prescribed options; student achievement or growth on State assessments, Regents examinations and/or Department approved alternative examinations based on prescribed options listed in the statute, using a measure that is different from the growth score used for purposes of the state assessment or other comparable measures component; and

where applicable, for teachers in any grade or subject where there is no growth or value-added growth model approved by the board of regents at that grade level or in that subject, a structured district-wide student growth goal-setting process to be used with any State assessment, or an approved student assessment or a district, regional or BOCES developed assessment. The proposed amendment does not impose costs beyond those costs imposed by the statute. If districts/BOCES select the State assessment option or use of the group or team metric, the Department estimates that there are no additional costs or estimated value of staff time. If the district/BOCES uses the goal-setting process, the estimated value of staff time is the same as those described above for a goal-setting process. If the district/BOCES already uses a student assessment from the State's approved list, which the Department expects will be the case in many instances, there will be no additional costs imposed by the proposed amendment. If a district/BOCES does not already use an approved local assessment and does not opt to use a measure based on a State assessment, the Department estimates the cost of purchasing a third-party student assessment will cost approximately \$10-\$20 per student, depending on the particular assessment selected.

For principals, the statute provides many options for the locally selected measures subcomponent for the 2012-2013 school year, which include, but are not limited to, student achievement on State assessments in grades 4-8 ELA and/or math for certain subgroups and/or based on the percentage of students in the school at certain performance levels and/or for students in each of the performance levels on the State assessments (proficient or advanced), student performance on district-wide locally selected measures approved for use in teacher evaluations, graduation and drop out rates for high school grades, progress toward graduation, etc. The proposed amendment does not impose costs or staff time beyond those imposed by the statute. As described above, if the district/BOCES selects a locally selected measure based on State assessments, Regents examinations, graduation rates, the percent of students who earn a Regents diploma, Department approved alternative examination or progress toward graduation rates, the Department expects these costs and staff time to be negligible and to be absorbed by existing staff. If the district/BOCES selects student performance on any or all of the district-wide locally selected measures for teachers, the Department expects that there will be no additional cost or estimated value of staff time for principals if the costs or estimated value of staff time were already incurred for teachers.

Other Measures

For the remaining 60% of the evaluation, the statute requires that a majority (31) of a teacher's 60 points be based on multiple classroom observations for teachers by a principal or other trained administrator, at least one of which must be unannounced in the 2012-2013 school year and a majority (31) of a principal's 60 points be based on a broad assessment of the principal's leadership and management actions by the building principal's supervisor, a trained administrator or a trained independent evaluator which incorporates multiple school visits, with at least one visit by the supervisor, and at least one unannounced visit in the 2012-2013 school year. The statute also prescribes specific requirements for the remaining portion of the 60 points for teachers and principals and the proposed amendment merely reiterates those requirements. Therefore, the proposed amendment does not impose any additional estimated value of staff time beyond that staff time imposed by statute.

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

providers do not require a user to receive training through the rubric provider.

Reporting and Data Collection

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

The proposed amendment also requires that every teacher and principal be provided an opportunity to verify the subjects and/or student rosters assigned to them. The Department estimates that it will take a teacher 4 hours to review his/her student roster. This will require an estimated value of staff time of \$185.84 per teacher. For principals, the Department estimates that it will take a principal 8 hours to review his/her student roster. This will require an estimated value of staff time of \$575.20 per principal.

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

Vested Interest

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

Scoring

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

Training

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

Teacher and Principal Improvement Plans and Appeal Procedures

The statute also requires school districts/BOCES to develop teacher and principal improvement plans (TIP or PIP) for teachers rated ineffective or developing and to develop an appeals procedure through which a teacher or principal may challenge their APPR. The proposed amendment reiterates these statutory requirements and does not require any additional staff time on districts/BOCES relating to the

development of TIP/PIPs or an appeal procedure, beyond those imposed by statute.

The above changes require that the "Paperwork" section of the previously published Regulatory Impact Statement be revised to read as follows:

6. PAPERWORK

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

Section 30-2.3 of the proposed amendment requires that by September 1, 2011, each school district shall adopt an APPR plan for its classroom teachers in the common branch subjects or English language arts or mathematics in grades 4-8 and its building principals of schools in which such teachers are employed. By July 1, 2012, each school district/BOCES shall adopt an APPR plan, on a form prescribed by the Commissioner, which may be an annual or multi-year plan, for all of its classroom teachers and building principals and shall submit the plan to the Commissioner for approval. The Commissioner shall approve or reject the plan by September 1, 2012, or as soon as practicable thereafter. The Commissioner may reject a plan that does not rigorously adhere to the regulations and the law. Should any plan be rejected, the Commissioner shall describe each deficiency in the submitted plan and direct that each such deficiency be resolved through collective bargaining to the extent required under article 14 of the Civil Service Law.

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

The proposed amendment also requires a school district or BOCES that selected certain locally selected measures to certify, in its annual professional performance review plan, that the measure is rigorous and comparable across classrooms and explain how the locally selected measure meets these requirements. For school districts or BOCES that use more than one locally selected measure for a grade/subject, they must certify in their APPR plan that the measures are comparable, in accordance with the Testing Standards.

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

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

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

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

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

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

The regulations also require the Commissioner to annually monitor and analyze trends and patterns in teacher and principal evaluation results and data to identify districts, BOCES and/or schools where evidence suggests a more rigorous evaluation system is needed to improve educator effectiveness and student learning outcomes. A school district or BOCES identified by the Department in one of the categories enumerated above may be highlighted in public reports and/or the Commissioner may order a corrective action plan, which may include, but not be limited to, requirements that the district or BOCES arrange for additional professional development, provide additional in-service training and/or utilize independent trained evaluators to review the efficacy of the evaluation system.

The above changes require that the "Compliance Schedule" section of the previously published Regulatory Impact Statement" be revised to read as follows:

10. COMPLIANCE SCHEDULE:

The proposed amendment will become effective on its stated effective date. No further time is needed to comply. By September 1, 2011, each school district shall adopt a plan for the APPR of its classroom teachers in the common branch subjects or English language arts or mathematics in grades 4-8 and its building principals of schools in which such teachers are employed, and by July 1, 2012, each school district and BOCES shall adopt a plan, on a form prescribed by the Commissioner, which may be an annual or multi-year plan, for the APPR of all classroom teachers and building principals and submit such plan to the Commissioner for approval.

Revised Regulatory Flexibility Analysis

Since publication of a Notice of Emergency Adoption and Proposed Rule Making in the State Register on June 8, 2011, the proposed rule has been substantially revised as set forth in the Revised Regulatory Impact Statement filed herewith.

The revisions require that the following sections of the previously published Regulatory Flexibility Analysis for Small Businesses and Local Government be revised to read as follows:

(b) Local governments:

2. COMPLIANCE REQUIREMENTS:

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

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

- 20% is based on student growth on State assessments or other comparable measures of student growth (increased to 25% upon implementation of a value-added growth model).

- 20% is based on locally-selected measures of student achievement that are determined to be rigorous and comparable across classrooms as defined by the Commissioner (decreased to 15% upon implementation of value-added growth model). The rule provides a list of local options/measures for the evaluation of teachers and principals under this subcomponent.

- The remaining 60% is based on other measures of teacher/principal effectiveness consistent with standards prescribed by the

Commissioner in regulation. The rule requires that, for teachers, at least 31 of the 60 points be based on multiple classroom observations conducted by a principal or other trained administrator and, for principals, at least 31 of the 60 points be based on a broad assessment of leadership and management actions by the supervisor or a trained administrator or other trained evaluator.

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

The proposed amendment also prescribes the following requirements:

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

Section 30-2.3 of the proposed amendment requires that by September 1, 2011, each school district shall adopt an APPR plan for its classroom teachers in the common branch subjects or English language arts or mathematics in grades 4-8 and its building principals of schools in which such teachers are employed. By July 1, 2012, each school district/BOCES shall adopt an APPR plan, on a form prescribed by the Commissioner, which may be an annual or multi-year plan, for all of its classroom teachers and building principals and shall submit the plan to the Commissioner for approval. The Commissioner shall approve or reject the plan by September 1, 2012, or as soon as practicable thereafter. The Commissioner may reject a plan that does not rigorously adhere to the regulations and the law. Should any plan be rejected, the Commissioner shall describe each deficiency in the submitted plan and direct that each such deficiency be resolved through collective bargaining to the extent required under article 14 of the Civil Service Law.

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

The proposed amendment also requires a school district or BOCES that uses certain locally selected measures to certify, in its annual professional performance review plan, that the measure is rigorous and comparable across classrooms and explain how the locally selected measure meets these requirements. For school districts or BOCES that use more than one locally selected measure for a grade/subject, they must certify in their APPR plan that the measures are comparable, in accordance with the Testing Standards.

If a school district or BOCES seeks to use a teacher or principal practice rubric that is either a close adaptation of a rubric on the approved list, or a rubric that was self-developed or developed by a third-

party or a newly developed rubric, the school district or BOCES must seek a variance from the Department for the use of such rubric.

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

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

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

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

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

The regulations also requires the Commissioner to annually monitor and analyze trends and patterns in teacher and principal evaluation results and data to identify districts, BOCES and/or schools where evidence suggests a more rigorous evaluation system is needed to improve educator effectiveness and student learning outcomes. A school district or BOCES identified by the Department in one of the categories enumerated above may be highlighted in public reports and/or the Commissioner may order a corrective action plan, which may include, but not be limited to, requirements that the district or BOCES arrange for additional professional development, provide additional in-service training and/or utilize independent trained evaluators to review the efficacy of the evaluation system.

4. COMPLIANCE COSTS:

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

6. MINIMIZING ADVERSE IMPACT:

The rule is necessary to implement Education Law section 3012-c, as added by Chapter 103 of the Laws of 2010 and as amended by a Chapter of the Laws of 2012 (S.6732/A.9554). The rule has been carefully drafted to meet statutory requirements while providing flexibility to school districts and BOCES.

Revised Rural Area Flexibility Analysis

Since publication of a Notice of Emergency Adoption and Proposed Rule Making in the State Register on June 8, 2011, the proposed rule has been substantially revised as set forth in the Revised Regulatory Impact Statement filed herewith.

The revisions require that the following sections of the previously published Rural Area Flexibility Analysis be revised to read as follows:

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

Education Law section 3012-c, as added by Chapter 103 of the Laws of 2010, and as amended by a Chapter of the Laws of 2012 (S.6732/A.9554) establishes a comprehensive evaluation system for classroom teachers and building principals. The majority of the requirements in the proposed amendment do not impose any program, service, duty or responsibility on school districts and BOCES beyond those imposed by the statute.

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

- 20% is based on student growth on State assessments or other comparable measures of student growth (increased to 25% upon implementation of a value-added growth model).
- 20% is based on locally-selected measures of student achievement that are determined to be rigorous and comparable across classrooms as defined by the Commissioner (decreased to 15% upon implementation of value-added growth model). The rule provides a list of local options/measures for the evaluation of teachers and principals under this subcomponent.
- The remaining 60% is based on other measures of teacher/principal effectiveness consistent with standards prescribed by the Commissioner in regulation. The rule requires that, for teachers, at least 31 of the 60 points be based on multiple classroom observations conducted by a principal or other trained administrator and, for principals, at least 31 of the 60 points be based on a broad assessment of leadership and management actions by the supervisor, a trained administrator or other trained evaluator.

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

The proposed amendment also prescribes the following requirements:

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

Section 30-2.3 of the proposed amendment requires that by September 1, 2011, each school district shall adopt an APPR plan for its classroom teachers in the common branch subjects or English language arts or mathematics in grades 4-8 and its building principals of schools in which such teachers are employed. By July 1, 2012, each school district/BOCES shall adopt an APPR plan, on a form prescribed by the Commissioner, which may be an annual or multi-year plan, for all of its classroom teachers and building principals and shall submit the plan to the Commissioner for approval. The Commissioner shall approve or reject the plan by September 1, 2012, or as soon as practicable thereafter. The Commissioner may reject a plan that does not rigorously adhere to the regulations and the law. Should any plan be rejected, the Commissioner shall describe each deficiency in the submitted plan and direct that each such deficiency be resolved through collective bargaining to the extent required under article 14 of the Civil Service Law.

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

the details of the evaluation system used by the district or BOCES; how the district or BOCES will provide timely and constructive feedback to teachers and building principals and the appeal procedures used by the district or BOCES.

The proposed amendment also requires a school district or BOCES that select certain locally selected measures to certify, in its annual professional performance review plan, that the measure is rigorous and comparable across classrooms and explain how the locally selected measure meets these requirements. For school districts or BOCES that use more than one locally selected measure for a grade/subject, they must certify in their APPR plan that the measures are comparable, in accordance with the Testing Standards.

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

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

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

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

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

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

The regulations also requires the Commissioner to annually monitor and analyze trends and patterns in teacher and principal evaluation results and data to identify districts, BOCES and/or schools where evidence suggests a more rigorous evaluation system is needed to improve educator effectiveness and student learning outcomes. A school district or BOCES identified by the Department in one of the categories enumerated above may be highlighted in public reports and/or the Commissioner may order a corrective action plan, which may include, but not be limited to, requirements that the district or BOCES arrange for additional professional development, provide additional in-service training and/or utilize independent trained evaluators to review the efficacy of the evaluation system.

3. COSTS:

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

4. MINIMIZING ADVERSE IMPACT:

The rule is necessary to implement Education Law section 3012-c. The rule has been carefully drafted to meet statutory requirements while providing flexibility to school districts and BOCES. Since the statute applies to all school districts and BOCES throughout the State, it was not possible to establish different compliance and reporting

requirements for regulated parties in rural areas, or to exempt them from the rule's provisions.

Revised Job Impact Statement

Since publication of a Notice of Emergency Adoption and Proposed Rule Making in the State Register on June 8, 2011, the proposed rule has been substantially revised as set forth in the Revised Regulatory Impact Statement filed herewith.

The purpose of the proposed rule is to implement Education Law section 3012-c, as amended by a Chapter of the Laws of 2012 (as proposed in S.6732/A.9554), by establishing standards and criteria for conducting annual professional performance reviews of classroom teachers and building principals employed by school districts and boards of cooperative educational services. Because it is evident from the nature of the revised proposed rule that it will have no impact on the number of jobs or employment opportunities in New York State, no further steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

Assessment of Public Comment

The agency received no public comment.

Department of Environmental Conservation

EMERGENCY RULE MAKING

Commercial and Recreational Harvest Regulations for Tautog (Blackfish)

I.D. No. ENV-03-12-00008-E

Filing No. 267

Filing Date: 2012-03-27

Effective Date: 2012-03-27

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

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

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

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

Specific reasons underlying the finding of necessity: These regulations are necessary for New York to remain in compliance with the fishery management plan (FMP) for tautog adopted by the Atlantic States Marine Fisheries Commission (ASMFC). Tautog is a popular food fish and is an eagerly sought target species for both recreational anglers and commercial fishermen. Seeking to end overfishing and to allow the tautog stock to rebuild, ASMFC adopted an addendum to the tautog fishery management plan in 2011 that reduced the fishing mortality rate. The member states were required to implement management measures by January 1, 2012 to achieve a 56% coast-wide reduction in species exploitation. On December 30, 2011 DEC submitted a Notice of Emergency Adoption and Proposed Rulemaking to the Department of State and more restrictive tautog harvest regulations became effective that day. This emergency rule will expire on March 28, 2012.

Each member state of ASMFC is expected to promulgate regulations that comply with FMPs adopted by ASMFC. Failure by a state to adopt, in a timely manner, regulations implementing the FMP may result in a determination of non-compliance by ASMFC and the imposition of federal sanctions on the particular fishery in that state. This new emergency rule making is needed to ensure New York State remains in compliance with the FMP and to prevent New York State anglers and commercial fishermen from exceeding the reduced fishing mortality rate identified for tautog by the addendum to the FMP.

The promulgation of this regulation as an emergency rule making is necessary because the first emergency rule will expire before the final rule is adopted. This emergency rule making would ensure that the more restrictive regulations remain in effect and New York remains in compliance with the FMP until the final rule is adopted.

Subject: Commercial and recreational harvest regulations for tautog (blackfish).

Purpose: To reduce harvest of tautog to remain in compliance with ASMFC and allow for the overfished stock to recover.

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

Species Striped bass through Red drum remain the same. Species Tautog is amended to read as follows:

40.1(f) Table A - Recreational Fishing.

Species	Open Season	Minimum Length	Possession Limit
Tautog	[Jan. 17 - April 30 and] Oct. [1]8 - Dec. [20]4	[14]16" TL	4

Species American eel through Oyster toadfish remain the same.

Existing subdivisions 40.1(g) through 40.1(h) remain the same.

Existing subdivision 40.1(i) is amended to read as follows:

Species Striped bass remains the same. Species Tautog is amended to read as follows:

40.1(i) Table B - Commercial Fishing.

Species	Open Season	Minimum Length	Possession Limit
Tautog	April 8 to last day of Feb.	[14]15" TL	25 per vessel (except, 10 per vessel when fishing lobster pot gear and more than six lobsters are in possession)

Species American eel through Oyster toadfish remain the same.

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. ENV-03-12-00008-EP, Issue of January 18, 2012. The emergency rule will expire May 25, 2012.

Text of rule and any required statements and analyses may be obtained from: Stephen W. Heins, New York State Department of Environmental Conservation, 205 North Belle Mead Road, Suite 1, East Setauket, NY 11733, (631) 444-0436, email: swheins@gw.dec.state.ny.us

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

Regulatory Impact Statement

1. Statutory authority:

Environmental Conservation Law (ECL) sections 13-0105 and 13-0340-d authorize the Department of Environmental Conservation (DEC or the department) to establish by regulation the open season, size, catch limits, possession and sale restrictions and manner of taking for tautog.

2. Legislative objectives:

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

3. Needs and benefits:

These regulations are necessary for New York to maintain compliance with the Interstate Fishery Management Plan (FMP) for tautog as adopted by the Atlantic States Marine Fisheries Commission (ASMFC). New York, as a member state of ASMFC, must comply with the provisions of the Interstate Fishery Management Plans adopted by ASMFC. These FMPs are designed to promote the long-term sustainability of coast-wide marine species, preserve the states' marine resources, and protect the interests of both commercial and recreational fishermen. All member states remain in compliance with the FMPs by promulgating any necessary regulations that implement the provisions of the FMPs. If ASMFC determines a state to be in non-compliance with a specific FMP, the state may be subject to a complete prohibition on all fishing for the associated species in the waters of the non-compliant state until the state comes into compliance with the FMP.

Under the FMP for tautog, ASMFC requires New York State to reduce its commercial and recreational harvest of tautog by 48 percent in 2012. Continued fishing under the previous regulations will likely lead to New York fishermen exceeding the now reduced harvest level for tautog in 2012. A Notice of Emergency Adoption and Proposed Rulemaking was submitted to the Department of State on December 30, 2011 and more re-

strictive harvest measures became effective that day. That emergency rule will expire March 28, 2012, before the final rule will be adopted. The promulgation of this rule making is necessary for the current restrictive harvest regulations to remain in effect and DEC to remain in compliance with the FMP for tautog.

The proposed regulations decrease the duration of the 2012 recreational tautog season and increase the recreational minimum size limit. In addition, the commercial minimum size limit will also increase. These proposed changes are necessary to prevent New York State recreational anglers and commercial fishermen from overharvesting tautog. According to a report released by National Oceanic and Atmospheric Administration Fisheries, recreational fishing in New York generated \$424 million in total sales in 2006. Tautog is a popular fish taken by recreational harvesters in New York during a time of year when there are fewer other species to fish for. It is also commercially valuable, specifically when sold live in the markets.

The proposed rule will prevent New York State fishermen from over-exploiting tautog while allowing limited harvest. New York State will remain in compliance with the FMP.

Specific amendments to the previous regulations regarding tautog include the following:

1. Recreational: Implement an open season for the tautog fishery from October 8 through December 4, a 16-inch minimum size limit, and a 4-fish possession limit. This represents a loss of 128 days from the fishing season, a 2- inch increase in minimum size, and no change to the bag limit.

2. Commercial: Implement an open season for the tautog fishery from April 8 to the last day of February, a 15.0 inch minimum size limit, and 25 fish per vessel trip limit (except, 10 per vessel when fishing lobster pot gear and more than six lobsters are in possession). This represents a 1.0 inch increase in minimum size and no additional changes to season and trip limit for the commercial fishery.

4. Costs:

(a) Cost to State government:

There are no new costs to state government resulting from this action.

(b) Cost to local government:

There will be no costs to local governments.

(c) Cost to private regulated parties:

There are no new costs to regulated parties resulting from this action.

However, these more restrictive management measures will decrease the number of days in the recreational season for tautog and will reduce angler participation in the recreational fishery. This is likely to decrease revenues for party/charter boat operators and sales at bait and tackle shops. The proposed rule may reduce the number of tautog taken by commercial fishermen and may reduce their income earned from fishing.

(d) Costs to the regulating agency for implementation and continued administration of the rule:

The department will incur limited costs associated with both the implementation and administration of these rules, including the costs relating to notifying commercial and recreational harvesters, party and charter boat operators and other recreational support industries of the new rules.

5. Local government mandates:

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

6. Paperwork:

None.

7. Duplication:

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

8. Alternatives:

The "no action" alternative would allow the current emergency rule to expire before the final rule is adopted. The previous tautog regulations would become effective again. Commercial and recreational fishing effort under those regulations would likely exceed the fishing mortality rate deemed acceptable by the ASMFC's Amendment VI. If New York doesn't take steps to reduce harvest and maintain that reduction, the state could be found out of compliance with the Fishery Management Plan by the Atlantic States Marine Fisheries Commission and subject to federally imposed sanctions. This alternative was rejected.

9. Federal standards:

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

10. Compliance schedule:

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

Regulatory Flexibility Analysis

1. Effect of rule:

The Atlantic State Marine Fisheries Commission (ASMFC) facilitates cooperative management of marine and anadromous fish species among

the fifteen Atlantic Coast member states. The principal mechanism for implementation of cooperative management of migratory fish is the ASMFC's Interstate Fishery Management Plans (FMPs) for individual species or groups of fish. The FMPs are designed to promote the long-term health of these species, preserve resources, and protect the interests of both commercial and recreational fishers.

ASMFC requires New York State to reduce its tautog exploitation by 48 percent and this will impact the State's recreational and commercial fishing industries. Those most affected by the proposed rule are commercial fishermen, recreational anglers, licensed party and charter boat businesses, and retail and wholesale marine bait and tackle shops operating in New York State. In 2010, the State issued 990 food fish licenses to resident commercial fishermen and these individuals may be affected by an increase in their minimum size limit. There may be additional economic effects experienced by the 423 holders of food fish and crustacean dealer/shipper licenses. There were 501 licensed party and charter boats in 2010, and an unknown number of bait and tackle shops. Approximately 230,000 recreational marine fishing licenses were sold in 2010. Local party and charter boat businesses and bait and tackle shops will lose customers who target tautog during the late fall, winter, and early spring or that are discouraged by more restrictive regulations. Party and charter boat businesses and bait and tackle shops may rely on the patronage of recreational anglers who target tautog for the income it provides and may see a reduction in their earnings once the regulations are in place.

There are no local governments involved in the recreational fish harvesting business, nor do any participate in the sale of marine bait fish or tackle. Therefore, no local governments are affected by these proposed regulations.

2. Compliance requirements:

None.

3. Professional services:

None.

4. Compliance costs:

There are no initial capital costs that will be incurred by a regulated business or industry to comply with the proposed rule.

5. Economic and technological feasibility:

The proposed regulations do not require any expenditure on the part of affected businesses in order to comply with the changes. The changes required by the proposed regulations may reduce the income of party and charter businesses and marine bait and tackle shops because of the reduction in the number of days available for recreational fishers to take tautog. Commercial fishermen may experience smaller catches because they will then be required to throw back fish smaller than 15 inches.

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

6. Minimizing adverse impact:

The promulgation of this regulation is necessary for DEC to maintain compliance with the FMPs for tautog and to avoid a punitive closure of the fisheries and the economic hardship that would ensue with such a closure. Since these regulatory amendments are consistent with federal and Interstate FMPs, DEC anticipates that New York State will remain in compliance with the FMPs.

The department consulted with the Marine Resources Advisory Council (MRAC) and other individuals who chose to share their views on tautog recreational and commercial management measures. There was no consensus but a majority was in favor of the proposed regulation.

Ultimately, the maintenance of long-term sustainable fisheries will have a positive effect on employment for the fisheries in question, including party and charter boat fisheries as well as wholesale and retail bait and tackle shops, commercial fishing operations and other fishery support industries. Failure to comply with FMPs and take required actions to protect our natural resources could cause the collapse of a stock and have a severe adverse impact on the commercial and recreational fisheries for that species, as well as the supporting industries for those fisheries. These regulations are being proposed in order to provide the appropriate level of protection and allow for harvest consistent with the capacity of the resource to sustain such effort.

7. Small business and local government participation:

The department received recommendations from MRAC, which is comprised of representatives from recreational and commercial fishing interests. The proposed regulations are also based upon comments received from recreational fishing organizations, party and charter boat owners and operators, retail and wholesale bait and tackle shop owners, recreational anglers and state law enforcement personnel. There was no special effort to contact local governments because the proposed rule does not affect them.

8. Cure period or other opportunity for ameliorative action:

Pursuant to SAPA 202-b (1-a)(b), no such cure period is included in the rule because of the potential adverse impact on the resource. Cure periods

for the illegal taking of fish or wildlife are neither desirable nor recommended. Immediate compliance is required to ensure the general welfare of the public and the resource is protected.

Rural Area Flexibility Analysis

The Department of Environmental Conservation has determined that this rule will not impose an adverse impact on rural areas. There are no rural areas within the marine and coastal district. The tautog fishery is located entirely within the marine and coastal district, and is not located adjacent to any rural areas of the state. Further, the proposed rule does not impose any reporting, record-keeping, or other compliance requirements on public or private entities in rural areas. Since no rural areas will be affected by the proposed amendments of 6 NYCRR Part 40, a Rural Area Flexibility Analysis is not required.

Job Impact Statement

1. Nature of impact:

The promulgation of this regulation is necessary for the Department of Environmental Conservation (DEC) to maintain compliance with the Fishery Management Plan for tautog, to avoid potential Federal sanctions for lack of compliance with such plan, and to optimize recreational and commercial fishing opportunities available to New Yorkers. The proposed rule will reduce the recreational season for tautog by 128 days and decrease the opportunities commercial and recreational fishermen will have to take fish home because of changes to minimum size limits.

Many currently licensed party and charter boat owners and operators, commercial fishermen, as well as bait and tackle businesses, will be affected by these regulations. Due to the reduction in the number and appeal of fishing days for tautog, there may be a corresponding reduction of the number of fishing trips and bait and tackle sales during the upcoming fishing season.

2. Categories and numbers affected:

In 2011, there were 978 people licensed to harvest finfish commercially, another 53 person issued finfish landing licenses, 451 licensed shipper/dealers and 503 licensed party and charter businesses in New York State. There were also a number of retail and wholesale marine bait and tackle shop businesses operating in New York; however, DEC does not have a record of the actual number. The number of recreational fishers in New York has been estimated by the National Marine Fisheries Service to be just under 740,000 in 2010 (an estimate for 2011 is not yet available). However, this Job Impact Statement does not include them in this analysis, since fishing is recreational for them and not related to employment.

3. Regions of adverse impact:

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

4. Minimizing adverse impact:

In the development of the proposed rule making, DEC consulted with the Marine Resources Advisory Council and many individuals who chose to share their views on tautog fishery management measures to the DEC. In the long-term, the maintenance of sustainable fisheries will have a positive affect on employment for the fisheries in question, including commercial participants, party and charter boat owners and operators, wholesale and retail bait and tackle outlets and other support industries for recreational fisheries. Any short-term losses in participation and sales will be offset by the restoration of fishery stocks and an increase in yield from well-managed resources. Protection of the tautog resource is essential to the survival of the party and charter boat businesses and bait and tackle shops that are sustained by these fisheries. In addition, sale of tautog may be a significant portion of some commercial fishermen's income. These regulations are designed to protect stocks while allowing appropriate harvest, to prevent over-harvest and to continue to rebuild stocks and maintain them for future utilization.

Department of Financial Services

NOTICE OF ADOPTION

Special Risk Insurance

I.D. No. DFS-52-11-00018-A

Filing No. 251

Filing Date: 2012-03-21

Effective Date: 2012-04-11

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

Action taken: Amendment of Part 16 (Regulation 86) of Title 11 NYCRR.

Statutory authority: Financial Services Law, sections 202 and 302; and Insurance Law, sections 301, 307, 308 and art. 63

Subject: Special Risk Insurance.

Purpose: To revise the regulation to comply with chapter 490 of the Laws of 2011.

Text or summary was published in the December 28, 2011 issue of the Register, I.D. No. DFS-52-11-00018-P.

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

Text of rule and any required statements and analyses may be obtained from: David Neustadt, NYS Department of Financial Services, One State Street, New York, NY 10004, (212) 709-1690, email: david.neustadt@dfs.ny.gov

Assessment of Public Comment

The purpose of the proposed amendment is to amend Part 16 (Regulation 86), which implements Insurance Law Article 63, governing special risk insurance, to carry out Chapter 490 of the Laws of 2011, which amended Article 63. Chapter 490 exempted insurers from certain rate and policy form approval requirements with respect to policies issued to "large commercial insureds". Section 6304 requires the Superintendent to promulgate rules and regulations implementing the provisions of Article 63 by establishing methods, procedures and reports for licensing and for facilitating, monitoring and verifying compliance with Article 63.

The rule establishes a new Class 3 with respect to large commercial insureds. Chapter 490 requires the insurer to submit a certificate of insurance to the Superintendent with respect to each Class 3 policy. The rule fleshes out this requirement and requires the insurer to submit along with the certificate of insurance a form that includes additional information such as the identity of the insured and the risk manager utilized by the "large commercial insured" (certification form). The Department received several comments from property/casualty insurance trade associations during the public comment period objecting to this provision.

Although the filing of the certification is not mandated by the statute, it is necessary in order for the Department to properly monitor the new Class 3 business submissions. The alternative of not requiring the certification form to be submitted with the certificate of insurance was considered and rejected because the form will expedite the review of the filings, enhance compliance with the statute and rule and enable the Department to more easily monitor the types of Class 3 risks that insurers are writing.

The Department also received a number of comments regarding other aspects of Regulation 86. Since none of the provisions commented on were necessary to implement Chapter 490, the Department did not include them in the emergency rule. Thus, they are not being included in the permanent adoption of the rule, but rather will be addressed in a separate amendment to the regulation.

Therefore, the rule is being adopted as proposed.

NOTICE OF ADOPTION

Valuation of Annuity, Single Premium Life Insurance, Guaranteed Interest Contract and Other Deposit Reserves

I.D. No. DFS-05-12-00010-A

Filing No. 252

Filing Date: 2012-03-21

Effective Date: 2012-04-11

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

Action taken: Amendment of Part 99 (Regulation 151) of Title 11 NYCRR.

Statutory authority: Financial Services Law, sections 202 and 302; and Insurance Law, sections 301, 1304, 4217 and 4517

Subject: Valuation of Annuity, Single Premium Life Insurance, Guaranteed Interest Contract and Other Deposit Reserves.

Purpose: Use of substandard annuity mortality tables in valuing impaired lives under individual single premium immediate annuities.

Text or summary was published in the February 1, 2012 issue of the Register, I.D. No. DFS-05-12-00010-P.

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

Text of rule and any required statements and analyses may be obtained from: David Neustadt, New York State Department of Financial Services, One State Street, New York, NY 10004, (212) 709-1690, email: david.neustadt@dfs.ny.gov

Assessment of Public Comment

The agency received no public comment.

Department of Health

EMERGENCY RULE MAKING

Municipal Public Health Services Plan - Radioactive Material and Radiation Equipment

I.D. No. HLT-15-12-00004-E

Filing No. 266

Filing Date: 2012-03-27

Effective Date: 2012-03-27

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

Action taken: Amendment of Part 40 of Title 10 NYCRR.

Statutory authority: Public Health Law, sections 602 and 603

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

Specific reasons underlying the finding of necessity: On July 1, 2011, state funding for municipal programs to conduct inspections of x-ray facilities and regulate and control radioactive material use in New York City ceased to be available because the Legislature repealed the enabling statute. This emergency regulation moves these programs under a new basic State aid environmental health program. See Public Health Law § 602(3)(b)(5). The Commissioner has authority to issue regulations for basic State aid programs under Public Health Law § 602(3)(b).

If the City discontinues its radioactive materials program, the State must take over this work pursuant to its agreement with the federal Nuclear Regulatory Commission. If municipalities discontinue their x-ray inspection programs, the State will be required to take over this work pursuant to the Public Health Law. The fiscal impact to the State of taking over these programs would be significant.

In 2009, the cost to the State to continue to fund the municipalities that that are conducting these programs was approximately \$560,000. It is estimated that the cost to the Department to take over these programs would exceed \$3,000,000. It would be fiscally inefficient for the State to take over programs that are already operational in these municipalities, considering the initial cost of transition and the continuous costs of travel for State employees. Thus, this regulation represents both good public health policy as well as sound fiscal policy.

It is imperative that these local governments continue to operate their radiation protection programs. The proposed regulation ensures that municipalities have the resources to protect the public from the environmental health threat posed by radioactive materials and radiation producing equipment.

Subject: Municipal Public Health Services Plan - Radioactive Material and Radiation Equipment.

Purpose: To establish funding for certified counties to inspect radiation equipment and the NYCDOHMH to conduct licensing and inspections.

Text of emergency rule: Subpart 40-3 is REPEALED, in its entirety. Subpart 40-2 is amended and new subdivisions 40-2.240, 40-2.241, 40-2.250, and 40-2.251 are added to read as follows:

40-2.240. *Radioactive materials licensing and inspection program; performance standard.*

The municipal public health services plan shall include a radioactive materials licensing and inspection program containing those provisions set forth in section 40-2.241 of this Subpart, if the Department has authorized the municipality to conduct such a program.

40-2.241. *Radioactive materials licensing and inspection program; authorization.*

The department shall authorize a municipality's radioactive materials licensing and inspection program if such program includes, at a minimum, provisions for:

- (a) regulating all facilities in the municipality's jurisdiction;*
- (b) ensuring the technical quality of licensing actions by the municipality;*
- (c) assessing licensee compliance with Part 16 of the State Sanitary Code and conditions of the license, and ensuring correction of violations; and*

(d) inspecting regulated facilities at a frequency established by the department.

40-2.250. *Radiation-producing equipment program; performance standard.*

The municipal public health services plan shall include a radiation-producing equipment inspection program containing those provisions set forth in section 40-2.251 of this Subpart, if the department has certified such a program for the municipality.

40-2.251 *Radiation-producing equipment program; authorization.*

The department shall certify a municipality's radiation producing equipment inspection program if such program includes, at a minimum, provisions for:

(a) inspecting all facilities and equipment in the municipality's jurisdiction; and

(b) performing inspections and issuing reports in accordance with Part 16 of the State Sanitary Code and, in particular, reporting as described in section 16.10.

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 24, 2012.

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

Regulatory Impact Statement

Statutory Authority:

Article 6 of the Public Health Law (PHL) provides statutory authority to provide State aid to municipalities for general public health work (GPHW). PHL § 614(3) defines municipality to be a county or city. PHL § 602(3)(b)(5) provides that GPHW must include certain health services, including environmental health services. PHL § 602(3)(a) authorizes the Commissioner to adopt rules and regulations after consulting with the Public Health and Health Planning Council and county commissioners, boards, and the public health directors, to establish standards of performance for environmental health services delivered under the GPHW program.

Legislative Objectives:

The State Legislature recently amended PHL § 605 to eliminate "optional services" as a category of services eligible for State aid reimbursement. These optional services are still described in regulations of the Department of Health (Department) at 10 NYCRR subpart 40-3. Repealing subpart 40-3 will eliminate this superfluous language.

However, two of the optional services that are no longer eligible for State aid are regulation of radioactive materials and regulation of radiation producing equipment. The Department recognizes that radioactive materials and radiation producing equipment present significant environmental health hazards to the public. The Department should encourage counties to protect their citizens from the potentially harmful effects of radioactive materials and radiation producing equipment by providing State aid to offset the cost of these services.

The Department further recognizes that not every county has the technical capability to regulate radioactive materials and radiation producing equipment. Counties without such technical capability should not be precluded from receiving State aid for public health work. Accordingly, the proposed regulation provides that a county that wishes to receive State aid must regulate radioactive materials and equipment only if its programs have the technical capability to do so, as authorized or certified by the Department.

Needs and Benefits:

Pursuant to a New York State agreement with the federal Nuclear Regulatory Commission (NRC), radioactive materials must be regulated throughout the State. Currently, the New York City Department of Health and Mental Hygiene (DOHMH) is the only municipality certified by the Department to regulate radioactive materials; the State provides this service in all other counties. DOHMH licenses and inspects approximately 350 radioactive material facilities in New York City. By protecting the public from the environmental health hazards from these radioactive materials, DOHMH provides a substantial benefit to the public health.

Additionally, pursuant to Part 16 of the State Sanitary Code, the Department has certified DOHMH and four additional counties (Suffolk, Westchester, Dutchess and Niagara) to inspect radiation producing equipment. DOHMH and these additional counties license and inspect nearly 10,000 radiation equipment facilities. Like the radioactive materials program, these municipalities offer a substantial public health benefit by protecting their citizens from the environmental health hazards potentially created by radiation producing equipment.

Failure to conduct timely inspections of any of these facilities could result in equipment failure or technician errors going unnoticed and uncorrected for longer periods of time, resulting in radiation overexposure during diagnostic or therapeutic procedures or misadministration of nuclear medicine for patients who require these life-saving health services. Inspection of facilities that use radioactive materials ensures appropriate handling and minimizes exposure to workers, the public and the environment. A security check of high-risk radiation sources is also conducted during these inspections.

A recent series of New York Times articles indicate the public's concern over radiation medical events and malpractice has significantly and justifiably increased. Recent events in Japan further indicate that the public is highly concerned about radiation exposure. During the week of March 14, 2011, the Department's Bureau of Environmental Radiation Protection received approximately 40 calls every day from concerned citizens with concerns about exposure. The public rightfully expects a robust regulatory program, which DOHMH and other counties currently provide, through their partnership with the Department.

Due to the public health threat presented by radiation, it is imperative that these local governments continue to operate their radiation protection programs. The proposed regulation ensures that municipalities have the resources to protect the public from the environmental health threat posed by radioactive materials and radiation producing equipment.

Costs to Regulated Parties for the Implementation of, and Continuing Compliance with, the Rule:

Because the regulated municipalities are currently performing these programs, there will be no increase in their costs. Rather, regulated municipalities that wish to continue these programs will save money by continuing to receive State aid. However, without this regulatory change, the costs to municipalities that wish to continue these programs will increase substantially.

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

The municipalities that operate these programs and receive funding have indicated they would discontinue the programs if State aid is not provided. By encouraging counties to continue these programs, the Department will save money. As noted, pursuant to the State's agreement with the federal Nuclear Regulatory Commission, if DOHMH ceases to regulate radioactive materials, the State must do so. This will cost substantially more than the \$370,000 in State aid that was paid to New York City in State aid in 2009, which represented only 26% of DOHMH's total costs for regulating radioactive materials. Although the NRC could theoretically take over regulation of radioactive materials, the burden on local businesses to pay federal fees would be more than five (5) times higher than the costs imposed by programs operated by State or local government. Similarly, and as a matter of sound public policy, if municipalities cease to regulate radiation producing equipment the Department would take over these programs.

In 2009, the cost to the State to fund the municipalities that conduct these programs was approximately \$560,000. Specifically, New York City was reimbursed \$370,000 for its radioactive materials inspection and licensing program and \$119,000 for the radiation producing equipment program, for a total of \$489,000. Two other counties were reimbursed approximately \$71,000 for their radiation producing equipment programs. The remaining two counties recovered enough in fees that year that they exceeded their expenses for their radiation producing equipment programs and did not receive State aid. These costs are not expected to change if the proposed regulations are adopted.

It would be fiscally inefficient for the State to take over programs

that are already operational in these municipalities, considering the initial cost of transition and the continuous costs of travel for State employees. Thus, this regulation represents both good public health policy as well as sound fiscal policy.

The Information, Including the Source(s) of Such Information and the Methodology, upon Which the Cost Analysis is Based:

The cost analysis is based on calendar year 2009 State Aid claims provided by municipalities, as currently required by PHL § 618 and 10 NYCRR § 40-1.20(b). An annual summary of State aid is routinely prepared by the Department.

Local Government Mandates:

This proposed rule does not impose any program, service, duty or responsibility upon the municipalities that has not already been agreed to and certified by the Department.

Paperwork:

The requirements for reporting will remain unchanged.

Duplication:

There are no relevant rules and other legal requirements of the state and federal governments, that duplicate, overlap or conflict with the proposed rule.

Alternatives:

The alternative is for the Department to take over regulation of radioactive materials as well as regulation of radiation producing equipment in those municipalities that discontinue these programs because they are ineligible for State aid. It is estimated that this alternative would cost the State over \$3,000,000, based on the cost of funding the 22 FTEs currently employed by the municipalities to operate these programs. This number does not include clerical, administrative, and management positions that support the municipal programs.

Federal Standards:

There is no federal minimum standard that determines whether the State must supply State aid to municipalities that choose to provide these services. However, the federal government does require that these programs be provided throughout the State.

Compliance Schedule:

The regulations will take effect upon filing with the Department of State.

Regulatory Flexibility Analysis

Effect on Small Business:

This rule will apply to county radiation programs that are certified or become certified in the future. Currently only Dutchess, Niagara, Westchester, Suffolk counties and New York City have such programs. The proposed regulatory change will result in no additional cost to these local governments.

However, without this change, the fees that registered facilities must pay are likely to increase. 10 NYCRR 16.41 (c) and (d) indicate the fees for State inspection programs and county inspection programs, respectively. In all cases, the State fees are higher. Thus, if the State is required to take over these programs, the fee costs will increase. This will result in an increase in costs to small businesses. Further, if the federal NRC were to take over regulation of radioactive materials, the cost to small business would be at least five (5) times higher than it is now.

Compliance Requirements:

The certified county programs already meet the requirements and comply with the regulations. Facilities inspected will still be required to meet the requirements of Part 16, regardless of whether they are inspected by county inspectors or State inspectors.

Professional Services:

Certified counties do not need professional services to establish or maintain certification.

Capital Costs and Annual Costs of Compliance:

There are no capital costs associated with this regulation.

Economic and Technological Feasibility:

The proposed regulatory change will result in no additional cost to local governments or impose any new technology requirements or costs.

However, without this change, the fees that registered facilities must pay are likely to increase. 10 NYCRR 16.41 (c) and (d) indicate the fees for State inspection programs and county inspection programs, respectively. In all cases, the State fees are higher. Thus, if the State is required to take over these programs, the fee costs will increase. This will result in an increase in costs to small businesses. Further, if the federal NRC were to take over regulation of radioactive materials, the economic cost to small business would be at least five (5) times higher than it is now.

Minimizing Adverse Impact:

No adverse impact of implementation has been identified. Failure to implement may result in some county programs dropping certification, which will then require the State DOH to implement these programs.

Small Business Input:

No small businesses were surveyed. The proposed changes do not have any direct effect on small business. Failure to implement these changes may result in fee increases for small business.

Rural Area Flexibility Analysis

Types and Estimated Numbers of Rural Areas:

No affected county programs are classified as rural areas (18 counties with less than 200,000 population and 9 counties with certain townships with a population density less than 150 persons/square mile).

Reporting, Recordkeeping and Other Compliance Requirements and Professional Services:

There are no new reporting requirements contained in the proposed regulations. No additional professional service costs are anticipated.

Costs:

No rural counties affected.

Minimizing Adverse Impact:

No rural counties are affected by this regulation.

Rural Area Participation:

No communications were made with rural counties.

Job Impact Statement

Nature of Impact:

No jobs will be adversely affected by adoption of these regulations. The proposal does not change the regulatory requirements on regulated entities.

Categories and Numbers Affected:

The certified counties include Dutchess, Niagara, Westchester, Suffolk and New York City.

Regions of Adverse Impact:

No regions will be adversely impacted by the adoption of these regulations.

Minimizing Adverse Impact:

As stated, no jobs will be adversely affected by the adoption of the proposed changes in the regulations.

Department of Labor

NOTICE OF EXPIRATION

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

Child Performers

I.D. No.	Proposed	Expiration Date
LAB-45-10-00020-RP	November 10, 2010	March 26, 2012

Public Service Commission

NOTICE OF ADOPTION

Petition for the Submetering of Electricity

I.D. No. PSC-52-10-00006-A

Filing Date: 2012-03-23

Effective Date: 2012-03-23

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

Action taken: On 3/15/12, the PSC adopted an order approving the petition of GAIR 1-2, LLC to submeter electricity at 30 Washington Street, Brooklyn, New York, located in the territory of Consolidated Edison Company of New York, Inc.

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

Subject: Petition for the submetering of electricity.

Purpose: To approve the petition of GAIR 1-2, LLC to submeter electricity at 30 Washington Street, Brooklyn, New York.

Substance of final rule: The Commission, on March 15, 2012 adopted an order approving the petition of GAIR 1-2, LLC to submeter electricity at 30 Washington Street, Brooklyn, New York, located in the territory of Consolidated Edison Company of New York, Inc., subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (10-E-0611SA1)

NOTICE OF ADOPTION

Petition for the Submetering of Electricity

I.D. No. PSC-52-10-00010-A

Filing Date: 2012-03-23

Effective Date: 2012-03-23

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

Action taken: On 3/15/12, the PSC adopted an order approving the petition of GAIR 1-2, LLC to submeter electricity at 25 Washington Street, Brooklyn, New York, located in the territory of Consolidated Edison Company of New York, Inc.

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

Subject: Petition for the submetering of electricity.

Purpose: To approve the petition of GAIR 1-2, LLC to submeter electricity at 25 Washington Street, Brooklyn, New York.

Substance of final rule: The Commission, on March 15, 2012 adopted an order approving the petition of GAIR 1-2, LLC to submeter electricity at 25 Washington Street, Brooklyn, New York, located in the territory of Consolidated Edison Company of New York, Inc., subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(10-E-0612SA1)

NOTICE OF ADOPTION**Major Water Rate Filing****I.D. No.** PSC-15-11-00015-A**Filing Date:** 2012-03-21**Effective Date:** 2012-03-21

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

Action taken: On 3/15/12, the PSC adopted an order approving a Joint Proposal filed by United Water Owego-Nichols, Inc. and Staff for an increase in rate revenues by approximately \$469,133, or 31.8%, over a three-year term starting 1/26/12 and running through 1/31/15.

Statutory authority: Public Service Law, section 89-c(1) and (10)

Subject: Major water rate filing.

Purpose: To approve an increase in rate revenues by approximately \$469,133, or 31.8%, over a three-year term.

Substance of final rule: The Commission, on March 15, 2012 adopted an order approving a Joint Proposal filed by United Water Owego-Nichols, Inc. (UWON or the Company) and Department of Public Service Staff, and in an Addendum to the Joint Proposal agreed to by UWON, Staff, the Village of Owego, the Village of Nichols, and Sanmina-SCI Corporation (Sanmina). UWON serves approximately 1,669 service connections, 130 fire hydrants, and three wholesale connections in the Village of Owego and the Village of Nichols and parts of the Town of Nichols, Tioga County. Under the Rate Plan the Company's base rate revenues will increase by approximately \$469,133, or 31.8%, over a three-year term starting January 26, 2012 and running through January 31, 2015, 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.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(11-W-0082SA1)

NOTICE OF ADOPTION**Modification of the Commission's 12/20/07 Order to Allow for the Termination of Submetered Electric Service****I.D. No.** PSC-19-11-00006-A**Filing Date:** 2012-03-23**Effective Date:** 2012-03-23

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

Action taken: On 3/15/12, the PSC adopted an order approving the petition of 89 Murray Street Associates LLC & 101 Warren Street Associates LLC for modification of the Commission's December 20, 2007 Order to allow for the termination of submetered electric service.

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: Modification of the Commission's 12/20/07 Order to allow for the termination of submetered electric service.

Purpose: To approve the modification of the Commission's 12/20/07 Order to allow for the termination of submetered electric service.

Substance of final rule: The Commission, on March 15, 2012 adopted an order approving the petition of 89 Murray Street Associates LLC and 101 Warren Street Associates LLC for modification of the Commission's December 20, 2007 Order to allow for the termination of submetered electric service for nonpayment of electric charges, after all of the notifications and protections of the Home Energy Fair Practices Act have been exhausted, 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.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(07-E-1015SA2)

NOTICE OF ADOPTION**Waiver of the Individual Residential Unit Requirements in Opinion No. 76-17****I.D. No.** PSC-23-11-00012-A**Filing Date:** 2012-03-22**Effective Date:** 2012-03-22

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

Action taken: On 3/15/12, the PSC adopted an order granting The Volunteers of America of Western New York, Inc.'s facility, located at 322 Chenango Street, Binghamton, New York, a waiver of the individual residential unit requirements in Opinion No. 76-17.

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

Subject: Waiver of the individual residential unit requirements in Opinion No. 76-17.

Purpose: To approve a waiver of the individual residential unit requirements in Opinion No. 76-17.

Substance of final rule: The Commission, on March 15, 2012 adopted an order granting The Volunteers of America of Western New York, Inc.'s facility, located at 322 Chenango Street, Binghamton, New York, a waiver of the individual residential unit requirements in Opinion No. 76-17, conditioned on the continued use of the facility as a community residence for the provision of living services for members of a special needs population, 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.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(11-E-0248SA1)

NOTICE OF ADOPTION**Petition for the Submetering of Electricity****I.D. No.** PSC-29-11-00014-A**Filing Date:** 2012-03-23**Effective Date:** 2012-03-23

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

Action taken: On 3/15/12, the PSC adopted an order approving the petition of Extell West 57th Street LLC to submeter electricity at 157 West 57th Street, New York, New York, located in the territory of Consolidated Edison Company of New York, Inc.

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

Subject: Petition for the submetering of electricity.

Purpose: To approve the petition of Extell West 57th Street LLC to submeter electricity at 157 West 57th Street, New York, New York.

Substance of final rule: The Commission, on March 15, 2012 adopted an order approving the petition of Extell West 57th Street LLC to submeter electricity at 157 West 57th Street, New York, New York, located in the territory of Consolidated Edison Company of New York, Inc., subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(11-E-0346SA1)

NOTICE OF ADOPTION

Discontinuation of the Commission's July 20, 2007 Order Implementing Outage Recommendations

I.D. No. PSC-42-11-00021-A

Filing Date: 2012-03-21

Effective Date: 2012-03-21

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

Action taken: On 3/15/12, the PSC adopted an order approving, with modifications, the discontinuation of Consolidated Edison Company of New York, Inc.'s reporting requirements set forth in the Commission's July 20, 2007 Order Implementing Outage Recommendations.

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

Subject: Discontinuation of the Commission's July 20, 2007 Order Implementing Outage Recommendations.

Purpose: To approve the discontinuation of the Commission's July 20, 2007 Order Implementing Outage Recommendations.

Substance of final rule: The Commission, on March 15, 2012 adopted an order approving, with modifications, the discontinuation of Consolidated Edison Company of New York, Inc.'s reporting requirements set forth in the Commission's July 20, 2007 Order Implementing Outage Recommendations, 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.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(06-E-0894SA8)

NOTICE OF ADOPTION

Utility Financial Incentives for the Four-Year Period 2012-2015

I.D. No. PSC-47-11-00005-A

Filing Date: 2012-03-22

Effective Date: 2012-03-22

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

Action taken: On 3/15/12, the PSC adopted an order establishing utility financial incentives for the four-year period 2012-2015, for energy efficiency programs resulting from the Energy Efficiency Portfolio Standard.

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

Subject: Utility financial incentives for the four-year period 2012-2015.

Purpose: To establish utility financial incentives for the four-year period 2012-2015.

Substance of final rule: The Commission, on March 15, 2012 adopted an order establishing utility financial incentives for the four-year period 2012-2015, for energy efficiency programs resulting from the Energy Efficiency Portfolio Standard, 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.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

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Assessment of Public Comment

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

(07-M-0548SA45)

NOTICE OF ADOPTION

To Transfer Ownership Interests in the 46.5 MW Hillburn and 41.9 MW Shoemaker Gas Turbine Generation Facilities

I.D. No. PSC-03-12-00016-A

Filing Date: 2012-03-21

Effective Date: 2012-03-21

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

Action taken: On 3/15/12, the PSC adopted an order approving AER NY-Gen LLC's (AER) and Alliance NYGT LLC's (ANYGT) request to transfer ownership interests in the 46.5 MW Hillburn and 41.9 MW Shoemaker gas turbine generation facilities located in Hillburn and Middletown, NY.

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

Subject: To transfer ownership interests in the 46.5 MW Hillburn and 41.9 MW Shoemaker gas turbine generation facilities.

Purpose: To approve the transfer of ownership interests in the 46.5 MW Hillburn and 41.9 MW Shoemaker gas turbine generation facilities.

Substance of final rule: The Commission, on March 15, 2012 adopted an order approving AER NY-Gen LLC's (AER) and Alliance NYGT LLC's (ANYGT) request, pursuant to Public Service Law (PSL) § 70, of an intra-company transfer, from AER to ANYGT, of ownership interests in the 46.5 MW Hillburn and 41.9 MW Shoemaker gas turbine generation facilities located in Hillburn and Middletown, New York, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(11-E-0701SA1)

NOTICE OF ADOPTION

Waiver of a Deadline Established in 16 NYCRR 31.2 for Filing Financial Quarterly Reports

I.D. No. PSC-03-12-00019-A

Filing Date: 2012-03-22

Effective Date: 2012-03-22

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

Action taken: On 3/15/12, the PSC adopted an order approving The Brooklyn Union Gas Company d/b/a National Grid NY & KeySpan Gas East Corporation d/b/a National Grid's request for a limited waiver of a deadline established in 16 NYCRR 31.2 of the PSC regulations.

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

Subject: Waiver of a deadline established in 16 NYCRR 31.2 for filing financial quarterly reports.

Purpose: To approve a waiver of a deadline established in 16 NYCRR 31.2 for filing financial quarterly reports.

Substance of final rule: The Commission, on March 15, 2012 adopted an order approving The Brooklyn Union Gas Company d/b/a National Grid NY and KeySpan Gas East Corporation d/b/a National Grid's request for a limited waiver of a deadline established in 16 NYCRR § 731.2 of the Com-

mission regulations for filing financial quarterly reports, 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.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(11-G-0180SA1)

NOTICE OF ADOPTION

Directing Con Edison to Use \$133.5 Million of Customer Credits to Offset the Surcharge for Rate Year Three

I.D. No. PSC-04-12-00008-A

Filing Date: 2012-03-22

Effective Date: 2012-03-22

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

Action taken: On 3/15/12, the PSC adopted an order directing Consolidated Edison Company of New York, Inc. (Con Edison) to use \$133.5 million of customer credits to fully offset the surcharge for rate year three, ending March 31, 2013.

Statutory authority: Public Service Law, sections 4(1), 5(b), 64, 66(1), (9), (12)(a) and (b)

Subject: Directing Con Edison to use \$133.5 million of customer credits to offset the surcharge for rate year three.

Purpose: To direct Con Edison to use \$133.5 million of customer credits to offset the surcharge for rate year three.

Substance of final rule: The Commission, on March 15, 2012 adopted an order directing Consolidated Edison Company of New York, Inc. to use \$133.5 million of customer credits to fully offset the surcharge for rate year three, ending March 31, 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.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(12-E-0008SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Standby Service Rates

I.D. No. PSC-15-12-00005-P

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

Proposed Action: The Commission is considering a proposed tariff filing by Consolidated Edison Company of New York, Inc. to make revisions to its electric tariff schedules, P.S.C. Nos. 10 and 12 — Electricity.

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

Subject: Standby Service Rates.

Purpose: To expand applicability of SC14-RA Special Provision E to multiple dwellings or campus style buildings and to PASNY customers.

Substance of proposed rule: The Commission is considering whether to approve, modify or reject, in whole or in part, a compliance tariff filing by Consolidated Edison Company of New York, Inc. (Con Edison) pursuant to Commission order issued November 17, 2011 in Case 11-E-0299 regarding standby service rates. The proposed filing expands applicability of Service Classification (SC) No. 14-RA – Standby Service Special Pro-

vision E, to customers that have multiple dwellings or campus style settings. SC No. 14-RA was previously contained in Con Edison's PSC No. 2 – Retail Access tariff schedule which was recently superseded by PSC No. 10 – Electricity. The filing also proposes to expand the provisions of Special Provision E, both as originally developed and as expanded, to customers taking service under its PASNY tariff. The proposed filing has an effective date of June 22, 2012. The Commission may apply aspects of its decision here to the requirements for tariffs of other utilities.

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.ny.gov

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

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

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

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(11-E-0299SP3)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Regulations Implementing PSL Article 10 Governing Applications to Construct Major Electric Generating Facilities

I.D. No. PSC-15-12-00006-P

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

Proposed Action: Repeal of Subchapter A; and addition of new Subchapter A to Title 16 NYCRR.

Statutory authority: Public Service Law, sections 160(8), 161(1), (3), 163(1)(h), (2), (4)(b), 164(1), (2), (3), (4), (6)(b), 165(2), (4)(b), (5), 167(1)(b) and (4)

Subject: Regulations implementing PSL Article 10 governing applications to construct major electric generating facilities.

Purpose: To establish review procedures and the content of applications.

Substance of proposed rule (Full text is posted at the following State website: <http://www.dps.ny.gov/SitingBoard/>): The New York State Board on Electric Generation Siting and the Environment is proposing to add Subchapter A (consisting of Parts 1000-1002) to 16 NYCRR Chapter X in order to implement Article 10 of the Public Service Law (PSL) with respect to the authorization of the construction and operation of major electric generating facilities, and to repeal existing Subchapter A (consisting of Parts 1000-1003) of 16 NYCRR Chapter X, which implemented former Article X. The proposed regulations implement provisions in Article 10 that were not in former Article X but, to the extent the experience gained in proceedings under former Article X remains relevant, the regulations take advantage of such experience by specifying in some detail the applicable procedures and requirements, while still allowing some flexibility in tailoring such requirements to specific cases.

Proposed Part 1000 contains sections on applicability, definitions, adoption of Public Service Commission procedures, public involvement, pre-application procedures, procedures regarding the filing, service and notice of applications, water quality and coastal certification procedures, procedures regarding discovery of additional information, documents and evidence, the fund to assist municipal and local parties in participating in Article 10 proceedings, amendment and dismissal of applications, acceptance, amendment, revocation, suspension and transfer of certificates and designation of counsel. Regarding public involvement, experience has demonstrated that active and adequate public involvement can be critical to the success of an Article 10 review process if it engages stakeholders early enough in the process so that stakeholder concerns can be considered in the design phase of the proposal when the applicant has the most flexibility as to its plans. Early and informative engagement of stakeholders also minimizes later delays in the review process. Well-conducted public involvement programs by applicants tend to minimize misunderstandings and conflicts in Article 10 proceedings whereas poorly-conducted public involvement programs by applicants tend to exacerbate differences and

conflicts. In that regard, it is proposed that applicant public involvement programs, with DPS Staff input, be made a mandatory component of the Article 10 process. The proposed regulation is intended to create a specific process for DPS Staff to provide input into the adequacy of an intended public involvement program without being overly burdensome as to time or iterations. Regarding pre-application procedures, in establishing deadlines, a balance has been struck between the time realistically needed to perform tasks and a desire to keep the process moving. It is difficult to gauge the need for and amount of time that will be needed to negotiate stipulations, but the proposal threads the most workable path through the various competing provisions of the statute. Applicants are encouraged to seek stipulations wherever possible based on DPS Staff experience that stipulations on the methodology and scope of studies creates efficiencies for all parties regardless of perspective. In keeping with the statute, private facility applicants may limit their description and evaluation of alternative locations to parcels owned by, or under option to, such private facility applicants or their affiliates, and private facility applicants may limit their description and evaluation of alternative sources to those that are feasible considering the objectives and capabilities of the sponsor. Review of case history under former Article X demonstrates that many applicants, in the early stages of their projects, tend to focus on electric system and environmental issues and fail to understand and fully consider key issues regarding, among other topics, state laws, local laws, real property rights, and the interplay between the siting statute and other required approvals. Such shortcomings ultimately lead to delays in the review process or the later identification of fatal flaws in a proposal after applicants and the stakeholders have expended considerable time and resources on the review of a proposal. The proposed regulations would require the applicant to address such issues as part of their preliminary planning and will hopefully lead to better proposals. The proposed regulations also require a consideration of environmental justice issues at the earliest stage possible. In addition the proposed regulations provide for funds to be made available to municipalities and local parties (during both the pre-application and post-application phases of proceedings) on an equitable basis in relation to the potential for such funding to make an affective contribution to the proceedings.

Proposed Part 1001 contains sections specifying general application requirements and exhibits concerning overview and public involvement, location of facilities, land use, electric system effects, wind, natural gas and nuclear power facilities, electric system production modeling, alternatives, consistency with energy planning objectives, preliminary design drawings, construction, real property, cost of facilities, public health and safety, pollution control facilities, air pollutant emissions, safety and security, noise and vibration, cultural resources, geology, seismology and soils, terrestrial ecology and wetlands, water resources and aquatic ecology, visual impacts, effects on transportation and communications, socioeconomic effects, environmental justice, site restoration and decommissioning, state and local laws and ordinances, other filings, electric, gas, water, wastewater and telecommunications interconnections, electric and magnetic fields, back-up fuel, and applications to modify or build adjacent to existing facilities. The goal of proposed Part 1001 is to require enough information in applications to allow the board to make the findings and determinations required by PSL Section 168, recognizing that additional information will be provided as the record of the certification proceeding is developed and also that final construction-type details are unnecessary and costly to provide until after generating facilities are authorized.

Proposed Part 1002 contains general procedures and requirements regarding compliance filings, reporting and inspection. Detailed information to enable construction to proceed consistent with certificates is required after certificates are granted.

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

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

Regulatory Impact Statement

Statutory Authority:

The proposed rules and regulations are authorized by Public Service Law (PSL) Sections 160(8), 161(1) and (3), 163(1)(h), (2) and (4)(b), 164(1), (2), (3), (4) and (6)(b), 165(2), (4)(b) and (5), and 167(1)(b) and (4). These provisions give the New York State Board on Electric Generation Siting and the Environment (Board) authority to adopt procedural and substantive regulations applicable to the certification process regarding the construction and operation of major electric generating facilities pursuant to PSL Article 10.

Section 161(1) empowers the Board to adopt regulations relating to the certification procedures to be followed; it is implemented by Parts 1000 and 1002. Section 160(8) provides that the duties of the public information coordinator may be prescribed by the Board; it is implemented by Section 1000.4(b). Section 161(3) allows the Board, under the direction of the chairperson, to provide for its own representation and appearance in actions and proceedings involving questions under PSL Article 10; it is implemented by Section 1000.18. Section 163(2) authorizes the Board to determine the language in which notice of preliminary scoping statements must be given; it is implemented by Section 1000.5(d). Section 163(4)(b) requires the Board to adopt rules providing for an expedited schedule of disbursements from the intervenor account; it is implemented by Section 1000.10(a). Section 164(2) authorizes the Board to prescribe the manner in which service of an application must be proved; it is implemented by Section 1000.6(c)(2). Section 164(3) empowers the Board to adopt regulations for curing the inadvertent failure of service; it is implemented by Section 1000.7(i). Section 164(6)(b) mandates that the Board adopt regulations for the management of the intervenor account; it is implemented by Section 1000.10(b) and (c). Section 165(2) allows the Board to determine what warrants consideration in order to develop an adequate record; it is implemented by Section 1000.9. PSL Section 165(5) requires the Board to adopt regulations regarding determinations as to the holding of hearings on application for certificate amendments; it is implemented by Section 1000.16. Section 167(1)(b) directs the Board to issue regulations providing for prehearing discovery procedures, consolidation of the representation of parties, exclusion of evidence and the review of presiding examiners' rulings; it is implemented by Section 1000.3 (adopting the Commission's rules of procedure at 16 NYCRR Parts 3, 4 and 5) and by Section 1000.12(a)(3). Section 167(4) requires the Board to prescribe the period within which notice of the intent to submit testimony on certain alternatives must be given; it is implemented by Section 1000.7(f).

Section 163(1)(h) empowers the Board to require preliminary scoping statements to include information in addition to that specifically required in Section 163(1)(a) through (g); it is implemented by Section 1000.5(1). Section 164(1) authorizes the Board to prescribe the form of an application and Section 164(1)(m) empowers the Board to require such application to contain information in addition to that required by Section 164(1)(a) through (l); these are implemented by Part 1001. Section 164(4) empowers the Board to prescribe the form and content of applications for certificate amendments; it is implemented by Section 1000.16(b)(1) and (2). Section 165(4)(b) permits the Board to direct owners of existing major electric generating facilities to supply details and supporting information regarding the modification of such facilities or the construction of contiguous facilities; it is implemented by Sections 1002(a) and (v) and 1001.41.

Legislative Objectives:

Chapter 388 of the Laws of 2011 enacted Article 10 of the PSL to streamline the State decision-making process with respect to issuing a certificate for constructing and operating new major electric generating facilities having a nameplate capacity of twenty-five thousand kilowatts or more, and modified or repowered facilities. Sections 168(3)(e) and 172(1) provide that state and local regulatory matters regarding the construction and operation of major electric generating facilities are to be determined in a unified manner. Sections 165(3) and 167(1)(a) require that certification proceedings be conducted expeditiously; a 12-month deadline is imposed generally in Section 165(4). Section 163 mandates a pre-application consultation process to obtain early input from the public regarding proposed facilities and requirements for intervenor funding to promote local participation. The proposed procedural and substantive regulations are carefully crafted, based on significant experience with similar siting statutes to meet these objectives.

Needs and Benefits:

The proposed regulations are necessary for the effective implementation of PSL Article 10 as enacted by Chapter 388 of the Laws of 2011. 16 NYCRR Subchapter A is proposed to be repealed and replaced to meet the new statutory requirements. The goals of the regulations are to accommodate state and local permitting requirements in a single regulatory process and to focus regulatory review on pertinent issues regarding impacts on the environment, health, safety and infrastructure, effects on the State's electric generation capacity, compliance with state and local legal requirements, and to consider available technology, the nature and economics of reasonable alternatives, consistency with the energy policies and objectives, community character, and social, economic, environmental justice and other public interest considerations. Local procedural requirements applicable to the facility are supplanted unless the Board expressly authorizes the exercise of the procedural requirement by the local government. Local substantive requirements apply unless the Board finds them to be unreasonably burdensome in view of the existing technology or the needs of or costs to ratepayers. Additional analyses are required where there may be concerns about environmental justice. The regulations would apply to generating facilities governed by certificates under former PSL

Articles VIII and X regarding certificate amendments, revocations, suspensions, transfers and compliance matters consistent with the pertinent statutory provisions. A proposal to increase the capacity of such generating facilities by more than 25 MW would be considered under Article 10.

Experience demonstrates that well conducted public involvement programs by applicants (including early and informative engagement of stakeholders) tend to minimize misunderstandings and conflicts. The regulations provide for an office of public information coordinator to ensure that the public and interested parties are fully assisted and advised in participating in the Article 10 process, and require applicants to conduct public involvement programs. No less than 90-days before the application is filed, the regulations require the applicant to file a preliminary scoping statement addressing key issues in a preliminary manner and giving interested parties an opportunity to give input and negotiate pre-application stipulations on the scope and methodology of required studies. Upon the filing of the preliminary scoping statement, the regulations allow for a presiding examiner to provide for awards of intervenor funds during the pre-application process to encourage municipal and other local participation at the earliest opportunity. They also provide for later separate fund awards to encourage public participation during the formal review phase of certification proceedings.

The Article 10 hearing process is designed in the regulations to operate efficiently. Most testimony is prepared, filed and distributed well in advance of any cross examination. The applicant has the burden of proof associated with any adjudicable issue. Any issue to be litigated must be relevant and material to assisting the Board in making its required findings. The hearing examiner is authorized to preclude irrelevant, repetitive, redundant or immaterial evidence.

The regulations would require each factor specified in the statute to be addressed. They would require preliminary design drawings to allow a thorough evaluation of site conditions, facility layout and structural design so the board can make the applicable statutory findings. They would also memorialize due diligence regarding site control and establish the legal basis for conducting site development activities so the board can make the applicable statutory findings. The regulations would require the characterization and quantification of existing natural resources that may be impacted by construction and operation of a proposed facility, consistent with state law and policy. The regulations would provide for a robust consideration of alternatives, but private applicants would be allowed to limit their evaluation of alternative sites to properties they own or control, and alternative sources to those that are reasonable alternatives to the proposed facility and feasible considering their objectives and capabilities, as allowed by equivalent assessments required under the State Environmental Quality Review Act.

The regulations provide the benefit of a reasonable level of detail, while retaining flexibility for interested parties by stipulation to tailor applications to particular circumstances. The overarching aim of the draft regulations is to strike a proper balance by providing a robust body of information up front to enable parties and the public to understand proposed facilities and their impacts so they can effectively and promptly engage in the Article 10 hearing process, while not unduly burdening applicants who bear the cost of preparing applications.

Costs:

The projected costs to regulated persons of complying with the proposed regulations are as follows: for developers of renewable generation, \$1.5 to \$4.5 million; for developers of fossil-fueled generation, \$10 to \$30 million; for developers of nuclear generation, \$30 to \$70 million. The estimates of costs were provided by potential project developers and attorneys familiar with the certification process under similar statutes. Parties participating in a certification proceeding will incur some cost; however, such costs will depend on the degree to which a particular party participates. Moreover, local parties and municipalities may be awarded funds from the intervenor account, which costs are included in the above cost estimate for developers. Similarly, costs for the implementation and continued administration of the proposed regulations to the State, the Board and local governments depend on the circumstances of each proceeding.

Local Government Mandates:

The proposed regulations do not impose any mandates on local governments unless a municipality is an applicant, or as a municipal party participating in a proceeding obtains funding to defray its participation costs.

Paperwork:

The proposed regulations are expected to decrease paperwork requirements because they streamline the process and focus on pertinent issues. Moreover, they provide that, to the maximum extent possible, documents will be filed and served electronically, unless a party certifies to the Secretary that the party is unable to do so and must file and receive paper documents. The rule also requires assistance, when warranted, to municipal and local parties in the reproduction and service of documents, and access to transcripts.

Duplication:

The proposed regulations do not duplicate any other state or federal regulations.

Alternative Approaches:

Input on a draft of the regulations was sought from almost 100 individuals and organizations that volunteered to serve as representative stakeholders representing potential developers of facilities, state agencies and authorities, municipalities, environmental and environmental justice groups, attorneys, consultants and other individuals likely to participate in certification proceedings. In response to stakeholder input, the approach of the draft was significantly altered to eliminate duplication (e.g., energy deliverability study requirement dropped) and to reduce the detail of information to be included in applications (e.g., design drawings, storm water prevention plans, and land surveys) in recognition that construction-level details are more appropriate in the post-certification compliance phase. Some stakeholders recommended that applicants be able to obtain early decision as to which local laws would be overridden by the Board. While the proposed regulations do not provide special procedures for obtaining such early decisions, the Board's general procedures for motion practice and declaratory rulings provide a potential avenue for handling extraordinary requests for such relief if deemed warranted. Numerous alternative methodologies were considered for conducting the requisite noise analysis. A detailed summary and analysis of the stakeholder input and its reflection in the proposed regulations is included in the Memorandum and Resolution Initiating Promulgation Process for Proposed Article 10 Regulations and Adopting Notice of Proposed Rulemaking and is incorporated herein by reference. A copy of the Memorandum and Resolution may be accessed for public viewing at the Siting Board webpage: <http://www.dps.ny.gov/SitingBoard/>.

Federal Standards:

The proposed regulations do not establish performance standards or exceed any Federal Standards.

Compliance Schedule:

Potential applicants are expected to be able to comply with adopted regulations as soon as they become effective because the application requirements implement statutory requirements that have been public for several months, thereby providing ample notice and opportunity to prepare.

Regulatory Flexibility Analysis

Types and Number of Small Businesses and Local Governments:

The rules apply to anyone proposing to construct and operate a major electric generating facility in the State and to any municipal or other party participating in the proceedings. A "small business" is defined as any business that is resident in this state, independently owned and operated, and employs one hundred or less individuals. Some applicants may qualify under the definition of small business if they are not formed as a subsidiary of a larger company or with other companies as the investors. It is expected that most applicants will be formed as limited liability companies with few employees, but with corporate owners and investors, such that they will not be independently owned and operated as small businesses. Small businesses located in the vicinity of a proposed facility site, or otherwise potentially affected by a proposed facility, may participate in Article 10 proceedings as intervenor parties. Affected local governments are likely to participate as intervenor parties in Article 10 proceedings. Municipalities and other local political subdivisions and government agencies that are local governments may also potentially be applicants. Although not directly governed by the rules, many of the professionals to be engaged by applicants and intervenors to assist their participation in the proceedings will likely be small businesses. Applicants that qualify under the definition of small business are likely to be newly-formed entities created for the specific purpose of sponsoring an application. The number of small businesses located in the vicinity of a proposed facility site, or otherwise potentially affected by a proposed facility, cannot be estimated and will differ greatly depending on the location of the proposed site for the facility. There are over 4,200 local governments in the State.

Compliance Requirements:

Small business and local government applicants to construct major electric generating facilities in the State are required to submit public involvement plans, preliminary scoping statements, applications, intervenor fees, and compliance filings. The compliance filings may include periodic reports. Municipal and local parties desiring funding to defray participation costs are required to submit funding requests, and if awarded funds, to submit payment vouchers and quarterly compliance reports. Small business and local government parties participating in proceedings may submit testimony, exhibits, briefs, motions, comments, and other documents common to administrative litigation.

Professional Services:

Small business and local government applicants to construct major electric generating facilities in the State will need the services of professionals in the fields of environmental science, engineering, economics and law in order to comply with the requirements of the regulations. Small

business and local government parties participating in proceedings will likely wish to obtain the services of such professionals as well.

Compliance Costs:

Small business and local government applicants to construct major electric generating facilities in the State will incur initial costs to prepare public involvement plans, preliminary scoping statements, and applications. Upon submitting preliminary scoping statements, applicants will be required to pay an intervenor fee of up to \$200,000. For preliminary scoping statements that are substantially revised, applicants will be required to pay an additional intervenor fee of up to \$25,000. Upon submitting applications, applicants will be required to pay an intervenor fee of up to \$400,000. For applications that are substantially revised, applicants will be required to pay an additional intervenor fee of up to \$75,000. For facilities that will require storage or disposal of fuel waste byproduct, applicants will be required to pay an additional intervenor fee of up to \$50,000. Small business and local government parties participating in certification proceedings will incur initial costs to prepare testimony, exhibits, briefs, motions, comments, and other documents common to administrative litigation. Small business and local government applicants awarded Certificates will incur post-approval costs to prepare compliance filings, which may include periodic reports. Small business and local government parties participating in post-approval compliance phases will incur costs to prepare comments and other documents common to administrative litigation. The cost of complying with the rule is expected to vary depending on the character of the proposed facility and the site on which it is proposed to be located. For those participating in the proceedings, the cost of such participation will depend on the degree of that participation.

Economic and Technological Feasibility:

The rules are economically and technologically feasible for compliance by small businesses and local governments because the requirements are no more onerous on such entities than that those contained in regulations implementing former Article X of the Public Service Law or requirements specified in pre-application stipulations in cases filed pursuant to that article, and small businesses and local governments successfully participated in cases under that Article. Economic feasibility is further enhanced by a fund required to be provided by the applicant in the form of intervenor fees to defray the costs of participation by municipal and local parties. Affected local governments may qualify as a municipal party eligible for intervenor funds. Small businesses located in the vicinity of a proposed facility site, or otherwise potentially affected by a proposed facility, may qualify as a local party eligible for intervenor funds. The only technology required to participate is ordinary software capable of preparing, viewing and transmitting electronic documents. The rule requires assistance, when warranted, to municipal and local parties in the reproduction and service of documents, and access to transcripts.

Minimizing Adverse Impact on Small Businesses and Local Governments:

Application content requirements were carefully crafted to benefit all participating parties, including small businesses and local governments. In particular, the process and specificity required regarding compliance with local laws and ordinances is designed to keep local governments and other parties from having to expend resources litigating unnecessary issues or issues that could have been more easily resolved if there was a dialogue between the applicant and the municipality. The rule provides for intervenor funding at both the pre-application and post-application phases of the proceeding, affording local governments and small businesses the opportunity to obtain resources necessary to participate effectively in siting cases.

Small Business and Local Government Participation:

Representatives of almost 100 individuals and organizations (including small businesses and local governments) reviewed a draft of the regulations and then were contacted to get their input on draft regulatory language. They represented potential developers of nuclear, fossil and renewable generation, state agencies and municipalities, environmental and environmental justice groups, attorneys, consultants and other individuals likely to participate in certification proceedings. Their feedback on both specific and general issues was incorporated into the proposed regulations.

Rural Area Flexibility Analysis

Types and Number of Rural Areas:

The rule applies to all rural areas in the State, since applicants may seek to construct major electric generating facilities throughout the State. Rural areas are defined as counties with populations less than 200,000 and, for counties with populations greater than 200,000, towns within such counties with population densities of 150 persons or less per square mile. Of the State's 62 counties, 43 have populations of less than 200,000. Of the 19 counties with populations greater than 200,000, 9 have towns with population densities of 150 persons or less per square mile.

Compliance Requirements:

Applicants to construct major electric generating facilities in the State are required to submit public involvement plans, preliminary scoping

statements, applications, intervenor fees, and compliance filings. The compliance filings may include periodic reports. Municipal and local parties desiring funding to defray participation costs are required to submit funding requests, and if awarded funds, to submit payment vouchers and quarterly compliance reports. Parties participating in proceedings may submit testimony, exhibits, briefs, motions, comments, and other documents common to administrative litigation. Such requirements are generally the same without regard to whether the facility is to be located in a rural or non-rural area.

Professional Services:

Applicants to construct major electric generating facilities in the State will need the services of professionals in the fields of environmental science, engineering, economics and law in order to comply with the requirements of the regulations. Parties participating in proceedings will likely wish to obtain the services of such professionals as well.

Compliance Costs:

Applicants to construct major electric generating facilities in the State will incur initial costs to prepare public involvement plans, preliminary scoping statements, and applications. Upon submitting preliminary scoping statements, applicants will be required to pay an intervenor fee of up to \$200,000. For preliminary scoping statements that are substantially revised, applicants will be required to pay an additional intervenor fee of up to \$25,000. Upon submitting applications, applicants will be required to pay an intervenor fee of up to \$400,000. For applications that are substantially revised, applicants will be required to pay an additional intervenor fee of up to \$75,000. For facilities that will require storage or disposal of fuel waste byproduct, applicants will be required to pay an additional intervenor fee of up to \$50,000. Parties participating in certification proceedings will incur initial costs to prepare testimony, exhibits, briefs, motions, comments, and other documents common to administrative litigation. Applicants awarded Certificates will incur post-approval costs to prepare compliance filings, which may include periodic reports. Parties participating in post-approval compliance phases will incur costs to prepare comments and other documents common to administrative litigation. The cost of complying with the rule is expected to vary depending on the character of the proposed facility and the site on which it is proposed to be located. For those participating in the proceedings, the cost of such participation will depend on the degree of that participation.

Minimizing Adverse Impact on Rural Areas:

The limited access to financial and technical assistance in rural areas will be minimized by a fund to defray the costs of participation by municipal and local parties required to be provided by the applicant in the form of intervenor fees.

Rural Participation in the Rulemaking:

Representatives of almost 100 individuals and organizations (many of which are located in rural areas) reviewed a draft of the regulations and then were contacted to get their input on draft regulatory language. They represented potential developers of nuclear, fossil and renewable generation, state agencies and municipalities, environmental and environmental justice groups, attorneys, consultants and other individuals likely to participate in certification proceedings. In particular, the specific municipal and individual stakeholders consulted included municipalities and individuals from rural areas. Their feedback on both specific and general issues was incorporated into the proposed regulations.

Job Impact Statement

The agency has determined that the rule will not have an adverse impact on jobs or employment opportunities in the State. The rule will have an indirect positive impact on employment opportunities for economic, engineering, and environmental consultants and lawyers employed to assist applicants and parties in administrative proceedings.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Recharge New York Program

I.D. No. PSC-15-12-00007-P

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

Proposed Action: The Commission is considering a proposed tariff filing by Consolidated Edison Company of New York, Inc. to make revisions to its electric tariff schedule, P.S.C. No. 10 — Electricity.

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

Subject: Recharge New York Program.

Purpose: To revise priority of benefits under General Rule II allocating demand to the various programs.

Substance of proposed rule: The Commission is considering whether to

approve, modify or reject, in whole or in part, a tariff filing by Consolidated Edison Company of New York, Inc. (Con Edison) to revise the priority of benefits under General Rule II allocating demand to the various programs. Specifically, the New York Power Authority has requested that Con Edison alter the priority of benefits such that the Recharge New York program precedes the World Trade Center program. The proposed filing has an effective date of June 20, 2012. The Commission may apply aspects of its decision here to the requirements for tariffs of other utilities.

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.ny.gov

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.ny.gov

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

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

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(11-E-0176SP3)

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

Waiver of Retirement Requirements for a Generation Facility Located in Dunkirk, New York

I.D. No. PSC-15-12-00008-P

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

Proposed Action: The Commission is considering a petition filed by Dunkirk Power LLC and NRG Energy, Inc. requesting a waiver of retirement requirements for their generation facility located in Dunkirk, New York.

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

Subject: Waiver of retirement requirements for a generation facility located in Dunkirk, New York.

Purpose: Consideration of the waiver of retirement requirements for a generation facility located in Dunkirk, New York.

Substance of proposed rule: The Public Service Commission is considering a petition filed on March 14, 2012 by Dunkirk Power LLC and NRG Energy, Inc. for waiver of generator retirement requirements at their coal-fired generation facility located in Dunkirk, New York. The Commission may adopt, reject or modify, in whole or in part, the relief proposed.

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.ny.gov

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.ny.gov

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

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

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(12-E-0136SP1)

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

Adoption of a Standard Annual Report Form for Companies Subject to Lightened Ratemaking Regulation

I.D. No. PSC-15-12-00009-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 adoption of a standard Annual Report form for companies subject to lightened ratemaking regulation.

Statutory authority: Public Service Law, sections 5(1)(b), 65(1), (2), (3), 66(6) and 80(5)

Subject: Adoption of a standard Annual Report form for companies subject to lightened ratemaking regulation.

Purpose: Consideration of adoption of a standard Annual Report form for companies subject to lightened ratemaking regulation.

Substance of proposed rule: The Public Service Commission is considering adoption of a standard Annual Report form for companies subject to lightened ratemaking regulation, as detailed more fully in an Order On Annual Reporting Under Lightened Ratemaking Regulation And Establishing Further Procedures issued March 23, 2012 in Case 11-M-0294. The Commission may adopt, reject or modify, in whole or in part, the relief proposed.

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.ny.gov

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.ny.gov

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

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

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(11-M-0294SP1)

Department of State

NOTICE OF WITHDRAWAL

Use of Variable Refrigerant Flow (VRF) Air Conditioning Systems

I.D. No. DOS-49-11-00001-W

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

Action taken: Notice of proposed rule making, I.D. No. DOS-49-11-00001-P, has been withdrawn from consideration. The notice of proposed rule making was published in the *State Register* on December 7, 2011.

Subject: Use of Variable Refrigerant Flow (VRF) air conditioning systems.

Reason(s) for withdrawal of the proposed rule: The Department of State received public comment(s) objecting to adoption of the proposed consensus rule.

NOTICE OF ADOPTION

Construction Standards for Summer Camp Cabins Located in Children's Overnight Camps

I.D. No. DOS-47-11-00003-A

Filing No. 269

Filing Date: 2012-03-27

Effective Date: 2012-07-10

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

Action taken: Repeal of section 1228.2; and addition of new section 1228.2 to Title 19 NYCRR.

Statutory authority: Executive Law, section 377

Subject: Construction standards for summer camp cabins located in children's overnight camps.

Purpose: To clarify applicability of the Uniform Code and State Sanitary Code to summer camp cabins.

Text or summary was published in the November 23, 2011 issue of the Register, I.D. No. DOS-47-11-00003-P.

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

Text of rule and any required statements and analyses may be obtained from: Raymond J. Andrews, Department of State, 99 Washington Ave., Albany, NY 12231-0001, (518) 474-4073, email: Raymond.Andrews@dos.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Carbon Monoxide Alarms in Bed and Breakfast Dwellings; Minimum Width of Concrete Footings; and Energy Efficiency Requirements in Connection With Additions to and Alterations of Existing One- and Two-Family Dwellings and Townhouses

I.D. No. DOS-47-11-00004-A

Filing No. 268

Filing Date: 2012-03-27

Effective Date: 2012-07-10

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

Action taken: Amendment of section 1220.1(c) of Title 19 NYCRR.

Statutory authority: Executive Law, section 377

Subject: Carbon monoxide alarms in bed and breakfast dwellings; minimum width of concrete footings; and energy efficiency requirements in connection with additions to and alterations of existing one- and two-family dwellings and townhouses.

Purpose: To make corrections to the 2010 Residential Code of New York State.

Text or summary was published in the November 23, 2011 issue of the Register, I.D. No. DOS-47-11-00004-P.

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

Text of rule and any required statements and analyses may be obtained from: Raymond J. Andrews, Department of State, 99 Washington Ave., Albany, NY 12231-0001, (518) 474-4073, email: Raymond.Andrews@dos.state.ny.us

Assessment of Public Comment

The agency received no public comment.

Workers' Compensation Board

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

Medical, Podiatry, Chiropractic and Psychology Fee Schedules

I.D. No. WCB-15-12-00010-P

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

Proposed Action: This is a consensus rule making to amend sections 329.3, 333.2, 343.2 and 348.2 of Title 12 NYCRR.

Statutory authority: Workers' Compensation Law, sections 13(a), 13-k, 13-l, 13-m and 117(a)

Subject: Medical, Podiatry, Chiropractic and Psychology Fee Schedules.

Purpose: Update the Fee Schedules publication date and publisher contact information.

Text of proposed rule: Section 329.3 of Title 12 NYCRR is amended to read as follows:

(a) The medical fee schedule for medical, physical therapy and occupational therapy services shall be the Official New York Workers' Compensation Medical Fee Schedule, updated [December 1, 2010] *June 1, 2012*, prepared by the Board and published by [Ingenix, Inc.] *OptumInsight*, which is herein incorporated by reference.

(b) The Official New York Workers' Compensation Medical Fee Schedule incorporated by reference herein may be examined at the of-

ice of the Department of State, One Commerce Plaza, 99 Washington Avenue, Albany, NY 12231, the Legislative Library, the libraries of the New York State Supreme Court, and the district offices of the Board. Copies may be purchased from [Ingenix, Inc.] *OptumInsight*, by writing to [New York Workers' Compensation Medical Fee Schedule, c/o Ingenix, Inc., PO Box 27116, Salt Lake City, UT 84127-0116, or by telephone at 1-800-464-3649] *Official New York Workers' Compensation Fee Schedule, PO Box 88050, Chicago, IL 60680-9920; by telephone at 1-800-464-3649, option 1; or online at www.optumcoding.com, Keyword New York or http://www.optumcoding.com/Product/40508/.*

Section 333.2 of Title 12 NYCRR is amended to read as follows:

(a) The psychology fee schedule for psychology services shall be the Official New York Workers' Compensation Psychology Fee Schedule, updated [December 1, 2010] *June 1, 2012*, prepared by the Board and published by [Ingenix, Inc.] *OptumInsight*, which is hereby incorporated herein by reference.

(b) The Official New York Workers' Compensation Psychology Fee Schedule incorporated by reference herein may be examined at the office of the Department of State, One Commerce Plaza, 99 Washington Avenue, Albany, New York 12231, the Legislative Library, the libraries of the New York State Supreme Court, and the district offices of the Board. Copies may be purchased from [Ingenix, Inc.] *OptumInsight*, by writing to [New York Workers' Compensation Medical Fee Schedule, c/o Ingenix, Inc., PO Box 27116, Salt Lake City, UT 84127-0116, or by telephone at 1-800-464-3649] *Official New York Workers' Compensation Fee Schedule, PO Box 88050, Chicago, IL 60680-9920; by telephone at 1-800-464-3649, option 1; or online at www.optumcoding.com, Keyword New York, or http://www.optumcoding.com/Product/40516/.*

Section 343.2 of Title 12 NYCRR is amended to read as follows:

(a) The podiatry fee schedule for podiatry services shall be the Official New York Workers' Compensation Podiatry Fee Schedule, updated [December 1, 2010] *June 1, 2012*, prepared by the Board and published by [Ingenix, Inc.] *OptumInsight*, which is hereby incorporated herein by reference.

(b) The Official New York Workers' Compensation Podiatry Fee Schedule incorporated by reference herein may be examined at the office of the Department of State, One Commerce Plaza, 99 Washington Avenue, Albany, NY 12231, the Legislative Library, the libraries of the New York State Supreme Court, and the district offices of the Board. Copies may be purchased from [Ingenix, Inc.] *OptumInsight*, by writing to [New York Workers' Compensation Medical Fee Schedule, c/o Ingenix, Inc., PO Box 27116, Salt Lake City, UT 84127-0116, or by telephone at 1-800-464-3649] *Official New York Workers' Compensation Fee Schedule, PO Box 88050, Chicago, IL 60680-9920; by telephone at 1-800-464-3649, option 1; or online at www.optumcoding.com, Keyword New York, or http://www.optumcoding.com/Product/40517/.*

Section 348.2 of Title 12 NYCRR is amended to read as follows:

(a) The chiropractic fee schedule for chiropractic services shall be the Official New York Workers' Compensation Chiropractic Fee Schedule, updated [December 1, 2010] *June 1, 2012*, prepared by the Workers' Compensation Board and published by [Ingenix, Inc.] *OptumInsight*, which is herein incorporated by reference.

(b) The Official New York Workers' Compensation Chiropractic Fee Schedule incorporated by reference herein may be examined at the office of the Department of State, One Commerce Plaza, 99 Washington Avenue, Albany, NY 12231, the Legislative Library, the libraries of the New York State Supreme Court, and the district offices of the Workers' Compensation Board. Copies may be purchased from [Ingenix, Inc.] *OptumInsight*, by writing to [New York Workers' Compensation Medical Fee Schedule, c/o Ingenix, Inc., PO Box 27116, Salt Lake City, UT 84127-0116, or by telephone at 1-800-464-3649] *Official New York Workers' Compensation Fee Schedule, PO Box 88050, Chicago, IL 60680-9920; by telephone at 1-800-464-3649, option 1; or online at www.optumcoding.com, Keyword New York, or http://www.optumcoding.com/Product/40515/.*

Text of proposed rule and any required statements and analyses may be obtained from: Heather MacMaster, Esq., NYS Workers' Compensation Board, 20 Park Street, Office of General Counsel, Albany, New York 12207, (518) 486-9564, email: regulations@wcb.ny.gov

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

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

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

Consensus Rule Making Determination

The proposed regulation modifies the publication date and contact information for the publisher of the Official New York Workers' Compensation Medical Fee Schedule, the Official New York Workers' Compensation Psychology Fee Schedule, the Official New York Workers' Compensation Podiatry Fee Schedule, and the Official New York Workers' Compensation Chiropractic Fee Schedule and incorporates by reference the June 1, 2012 publication date of such Fee Schedules. The publisher added to the regulations is a successor corporation to the publisher of the Board's Fee Schedules. The amendment will ensure subscribers have updated and accurate information. The June 1, 2012 Fee Schedules simply update CPT codes and relative values associated to them. The proposed changes are mostly ministerial conforming CPT codes to the most recent version published by the American Medical Society and making adjustments to the relative values assigned to each by the Board. The updating of the CPT codes and relative values associated to them conform these codes to a national standard and update relative values consistent with all prior relative values. It is believed that there is no basis for objecting to the proposed amendments.

Job Impact Statement

The proposed regulation will not have an adverse impact on jobs. The proposed amendments merely modify the publication date and contact information for the publisher of the Official New York Workers' Compensation Medical Fee Schedule, the Official New York Workers' Compensation Psychology Fee Schedule, the Official New York Workers' Compensation Podiatry Fee Schedule, and the Official New York Workers' Compensation Chiropractic Fee Schedule and incorporate by reference the June 1, 2012 publication date of such Fee Schedules. The June 1, 2012 Fee Schedules simply update CPT codes and relative values associated to them. The proposed changes are mostly ministerial conforming CPT codes to the most recent version published by the American Medical Society and making adjustments to the relative values assigned to each by the Board. The updating of the CPT codes and relative values associated to them will have no impact on jobs in New York.