

RULE MAKING ACTIVITIES

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

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

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

Department of Agriculture and Markets

NOTICE OF ADOPTION

Cuisine Trail

I.D. No. AAM-26-12-00008-A

Filing No. 943

Filing Date: 2012-09-14

Effective Date: 2012-10-03

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

Action taken: Amendment of Part 206 of Title 1 NYCRR.

Statutory authority: Agriculture and Markets Law, section 284-a

Subject: Cuisine Trail.

Purpose: To amend the Cooperstown Cuisine Trail description to add two new producers.

Text of final rule: 1 NYCRR Section 206.1 is amended to read as follows:
§ 206.1 Cooperstown Cuisine Trail.

The Cooperstown Cuisine Trail, promoted as the Cooperstown Beverage Trail, is hereby described as: beginning at exit 17 of Interstate 88, northerly on NY Route 28 to Cooperstown, (approximately 17.3 miles); westerly on NY Route 28/NY Route 80 to the junction of NY Route [28 and NY Route 80 west of Oakville] 51; southerly on NY Route 51 to Gar rattsville (approximately [5.3] 19.7 miles) for an overall length of [22.6] 37 miles.

Final rule as compared with last published rule: Nonsubstantive changes were made in section 206.1.

Text of rule and any required statements and analyses may be obtained from: Sue Santamarina, New York State Department of Agriculture and Markets, 10B Airline Drive, Albany, NY 12235, (518) 457-7229, email: Sue.Santamarina@agriculture.ny.gov

Revised Job Impact Statement

The proposed amendment of 1 NYCRR Part 206 will modify the Cooperstown Cuisine Trail description. The rule would not have a substantial adverse impact on jobs and employment activities. The rule amends the Cuisine Trail designation and modifies the trail route to add approximately fourteen miles and two new producers and increase tourism and marketing opportunities for all of the participating producers located on or near the trail. The amendment will benefit agricultural producers and the local economy and could help create jobs by attracting more patrons to area businesses.

Assessment of Public Comment

The agency received no public comment.

Education Department

EMERGENCY RULE MAKING

Policy and Guidelines Prohibiting Discrimination and Harassment of Students

I.D. No. EDU-07-12-00011-E

Filing No. 942

Filing Date: 2012-09-14

Effective Date: 2012-09-15

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

Action taken: Addition of section 100.2(jj) to Title 8 NYCRR.

Statutory authority: Education Law, sections 11(1-7), 12(1) and (2), 13(1-3), 14(1-3), 101 (not subdivided), 207 (not subdivided), 305(1), (2) and 2854(1)(b); and L. 2010, ch. 482

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

Specific reasons underlying the finding of necessity: The proposed rule is necessary to implement provisions of the Dignity Act. The statute added a new Article 2 to the Education Law and new section 13 of Article 2 to require school districts, boards of cooperative educational services (BOCES) and charter schools to create:

(i) policies to create a school environment free from discrimination and harassment;

(ii) guidelines to be used in school training programs to discourage the development of discrimination or harassment and that are designed to raise awareness and sensitivity of school employees to potential discrimination or harassment and enable employees to prevent and respond to discrimination or harassment; and

(iii) guidelines relating to the development of nondiscriminatory instructional and counseling methods, and requiring that at least one staff member of every school be thoroughly trained to handle human relations in the areas of race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender and sex.

The proposed rule establishes standards and criteria for the issuance of such policies and guidelines.

The proposed rule was discussed by the P-12 Education Committee at

the February Regents meeting. A Notice of Proposed Rule Making was published in the State Register on February 15, 2012. The proposed rule was subsequently revised in response to public comment and discussed at the April Regents meeting. A Notice of Revised Rule Making was published in the State Register on April 25, 2012. The proposed rule was subsequently revised and adopted as emergency rules at both the May 21-22, 2012 and the July 16-17, 2012 Regents meetings. Notices of Emergency Adoption and Revised Rule Making were published in the State Register on June 6, 2012 and on August 1, 2012 respectively.

The proposed rule has now been adopted as a permanent rule at the September 10-11, 2012 Regents meeting. Pursuant to SAPA § 203(1), the earliest effective date of the proposed amendment, if adopted at the September Regents meeting, would be September 26, 2012, the date a Notice of Adoption will be published in the State Register. However, the July emergency rule will expire on September 14, 2012, 60 days after its filing with the Department of State on July 17, 2012. A lapse in the effective date of the rule may disrupt the provision of training, policies and guidelines under the Dignity Act to prevent harassment and discrimination. Emergency action is therefore necessary for the preservation of the general welfare to ensure that the emergency rule adopted at the July Regents meeting remains continuously in effect until the effective date of its permanent adoption.

Subject: Policy and guidelines prohibiting discrimination and harassment of students.

Purpose: To establish criteria for issuance of policy and guidelines relating to the Dignity for All Students Act (ch. 482, L. 2010).

Text of emergency rule: Subdivision (j) of section 100.2 of the Regulations of the Commissioner of Education is added, effective September 15, 2012, as follows:

(j) *Dignity For All Students School Employee Training Program.*

(1) *Definitions. As used in 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, including a charter school; or in or on a school bus, as defined in Vehicle and Traffic Law section 142.

(ii) "School function" means a school-sponsored extracurricular 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), including an employee of a charter school.

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

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

(vii) "Discrimination" means discrimination against any student by a student or students and/or an employee or employees on school property or at a school function including, but not limited to, discrimination 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) "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 or 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.

(2) On or before July 1, 2012, each school district and each charter school shall establish guidelines for its school or schools to implement, commencing with the 2012-2013 school year and continuing in each school year thereafter, Dignity for All Students school employee training programs to promote a positive school environment that is free from discrimination and harassment; and to discourage and respond to incidents of discrimination and/or harassment on school property or at a school function. Such guidelines shall be approved by the board of education, trustees or sole trustee of the school district (or by the chancellor of the city school district, in the case of the City School District of the City of New York) or by the board of trustees of the charter school.

(3) The guidelines shall include, but not be limited to, providing employees, including school and district administrators and instructional and non-instructional staff, with:

(i) training to:

(a) raise awareness and sensitivity to potential acts of discrimi-

nation and/or harassment directed at students that are committed by students and/or school employees on school property or at a school function; including, but not limited to, discrimination and/or harassment based on a person's actual or perceived race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender or sex; and

(b) training to enable employees to prevent and respond to incidents of discrimination and/or harassment;

(c) such training may be implemented and conducted in conjunction with existing professional development training pursuant to subparagraph 100.2(dd)(2)(ii) of this Title and/or with any other training for school employees; and

(ii) guidelines relating to the development of nondiscriminatory instructional and counseling methods.

(4) At least one employee in every school shall be designated as a Dignity Act Coordinator and instructed in the provisions of this subdivision and thoroughly trained to handle human relations in the areas of race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender, and sex.

(i) The designation of each Dignity Act Coordinator shall be approved by the board of education, trustees or sole trustee of the school district (or in the case of the City School District of the City of New York, by the principal of the school in which the designated employee is employed) or, in the case of a charter school, by the board of trustees.

(ii) The name(s) and contact information for the Dignity Act Coordinator(s) shall be shared with all school personnel, students, and persons in parental relation, which shall include, but is not limited to, providing the name, designated school and contact information of each Dignity Act Coordinator by:

(a) listing such information in the code of conduct and updates posted on the Internet web site, if available, of the school or school district, or of the board of cooperative educational services, pursuant to subclause 100.2(l)(2)(iii)(b)(1) of this Part;

(b) including such information in the plain language summary of the code of conduct provided to all persons in parental relation to students before the beginning of each school year, pursuant to subclause 100.2(l)(2)(iii)(b)(3);

(c) providing such information to parents and persons in parental relation in at least one per school year district or school mailing or other method of distribution including, but not limited to, sending such information home with each student and, if such information changes, in at least one subsequent district or school mailing or other such method of distribution as soon as practicable thereafter;

(d) posting such information in highly-visible areas of school buildings; and

(e) making such information available at the district and school-level administrative offices.

(iii) In the event a Dignity Act Coordinator vacates his or her position, another school employee shall be immediately designated for an interim appointment as Coordinator, pending approval of a successor Coordinator by the applicable governing body as set forth in subparagraph (i) of this paragraph within 30 days of the date the position was vacated. In the event a Coordinator is unable to perform the duties of his or her position for an extended period of time, another school employee shall be immediately designated for an interim appointment as Coordinator, pending return of the previous Coordinator to his or her duties as Coordinator.

(5) 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.

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-07-12-00011-P, Issue of February 15, 2012. The emergency rule will expire November 12, 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:

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 12(1), as added by section 2 of the Dignity Act, prohibits discrimination and harassment of students by students and school employees on school property or at school functions, on the basis of the student's actual or perceived race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender, or sex. Section 12(2) provides that an age-appropriate version of the policy outlined in section 12(1), written in plain-language, shall be included in the code of conduct adopted pursuant to Education Law section 2801 and a summary of such policy shall be included in any summaries required by such section 2801.

Education Law section 13 requires school districts to create policies to create a school environment that is free from discrimination and harassment, and create guidelines to be used in school training programs to discourage the development of discrimination or harassment, raise the awareness and sensitivity of employees to potential discrimination or harassment, and enable employees to prevent and respond to discrimination or harassment and guidelines relating to the development of nondiscriminatory instructional and counseling methods, and guidelines relating to nondiscriminatory instructional and counseling methods. The statute also requires that at least one staff member at every school be thoroughly trained to handle human relations in the areas of race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender and sex.

Education Law section 14 requires the Commissioner to provide direction, including model policies and, to the extent possible, direct services to school districts in preventing discrimination and harassment and fostering an environment in every school where all children can learn free of manifestations of bias. Section 14(3) authorizes the Commissioner to promulgate regulations to assist school districts in implementing Article 2 of the Education Law.

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.

Chapter 482 of the Laws of 2010 added a new Article 2 to the Education Law, relating to Dignity for All Students. Section 13 of Article 2 of the Education Law requires school districts to create:

(i) policies to create a school environment free from discrimination and harassment;

(ii) guidelines to be used in school training programs to discourage the development of discrimination or harassment and that are designed to raise awareness and sensitivity of school employees to potential discrimination or harassment and enable employees to prevent and respond to discrimination or harassment; and

(iii) guidelines relating to the development of nondiscriminatory instructional and counseling methods, and requiring that at least one staff member of every school be thoroughly trained to handle human relations in the areas of race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender and sex.

2. LEGISLATIVE OBJECTIVES:

Consistent with the above statutory authority, the proposed rule will implement section 13 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. The statute added a new Article 2 to the Education Law and new section 13 of Article 2 requires school districts to create:

(i) policies to create a school environment free from discrimination and harassment;

(ii) guidelines to be used in school training programs to discourage the development of discrimination or harassment and that are designed to raise awareness and sensitivity of school employees to potential discrimination or harassment and enable employees to prevent and respond to discrimination or harassment; and

(iii) guidelines relating to the development of nondiscriminatory

instructional and counseling methods, and requiring that at least one staff member of every school be thoroughly trained to handle human relations in the areas of race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender and sex.

The proposed rule establishes standards and criteria for the issuance of such policies and guidelines.

4. COSTS:

(a) Costs to State government: None.

(b) Costs to local government: None. 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 and BOCES 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 and BOCES. Where possible, the proposed rule has incorporated existing requirements and eliminated redundant requirements to minimize work at the local level and have emphasized local flexibility in meeting statutory requirements.

(c) Costs to private regulated parties: None. The proposed rule applies to public school districts and BOCES and therefore does not fiscally impact private parties in any way.

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

5. LOCAL GOVERNMENT MANDATES:

The proposed rule is necessary to conform the Commissioner's Regulations with the Dignity Act and will not impose any additional program, service, duty or responsibility beyond those by the statute.

Consistent with Education Law section 2801 and section 13 of Article 2, as respectively amended and added by Chapter 482 of the Laws of 2010, the proposed rule requires each school district, BOCES and charter school to create guidelines to provide:

- On or before July 1, 2012, for schools to implement school employee training programs, commencing with the 2012-13 school year and thereafter, to promote a positive school environment that is free from discrimination and harassment and to discourage and respond to incidents of discrimination and/or harassment on school property or at a school function. Employee training guidelines shall be approved by the board of education, trustees or sole trustee of the school district (or by the chancellor of the city school district, in the case of the City School District of the City of New York) or by the board of trustees of the charter school.

- Training for employees, including school and district administrators and instructional and non-instructional staff:

- (i) to raise awareness and understanding of the school district's Code of Conduct pursuant to section 100.2(l) of this Title;

- (ii) to raise awareness and sensitivity to potential acts of discrimination or harassment directed at students that are committed by students or school employees on school property or at school functions; including, but not limited to, discrimination or harassment based on a person's actual or perceived race, color, weight, national origin, ethnic group, religion, religious practices, disability, sexual orientation, gender or sex; and

- (iii) to enable employees to prevent and respond to incidents of harassment and discrimination.

Such training may be implemented and conducted in conjunction with existing professional development training pursuant to 100.2(dd)(2)(ii) of this Title and/or with any other training for school employees.

- guidelines relating to the development of nondiscriminatory instructional and counseling methods.

At least one employee in every school shall be designated as a Dignity Act Coordinator and instructed in the provisions of the proposed rule and thoroughly trained in methods to respond to human relations in the areas of race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender and sex.

(i) The designation of each Dignity Act Coordinator shall be approved by the board of education, trustees or sole trustee of the school district (or in the case of the City School District of the City of New York, by the principal of the school in which the designated employee is employed) and, in the case of a charter school, by the board of trustees.

(ii) The name(s) and contact information for the Dignity Act Coordinator(s) shall be shared with all school personnel, students, and persons in parental relation, which shall include, but is not limited to, providing the name, designated school and contact information of each Dignity Act Coordinator by:

- (a) listing such information in the code of conduct and updates posted on the Internet web site, if available, of the school or school district, or of the board of cooperative educational services, pursuant to subclause 100.2(l)(2)(iii)(b)(1) of this Part;

- (b) including such information in the plain language summary of the code of conduct provided to all persons in parental relation to students before the beginning of each school year, pursuant to subclause 100.2(l)(2)(iii)(b)(3);

- (c) include such information in at least one district or school mailing

per school year to parents and persons of parental relation and, if such information changes, in at least one subsequent district or school mailing as soon as practicable thereafter;

(d) posting such information in highly-visible areas of school buildings; and

(e) making such information available at the district and school-level administrative offices.

(iii) In the event a Dignity Act Coordinator vacates his or her position, another school employee shall be immediately designated for an interim appointment as Coordinator, pending approval of a successor Coordinator by the applicable governing body within 30 days of the date the position was vacated. In the event a Coordinator is unable to perform the duties of his or her position for an extended period of time, another school employee shall be immediately designated for an interim appointment as Coordinator, pending return of the previous Coordinator to his or her duties as Coordinator.

6. PAPERWORK:

Consistent with Education Law section 2801 and section 13 of Article 2, as respectively amended and added by Chapter 482 of the Laws of 2010, the proposed rule requires each school district, BOCES and charter school to create guidelines to provide, on or before July 1, 2012, for schools to implement school employee training programs, commencing with the 2012-13 school year and thereafter, to promote a positive school environment that is free from discrimination and harassment and to discourage and respond to incidents of discrimination and/or harassment on school property or at a school function. Employee training guidelines shall be approved by the board of education, trustees or sole trustee of the school district (or by the chancellor of the city school district, in the case of the City School District of the City of New York) or by the board of trustees of the charter school.

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 and criteria for the issuance of policies and guidelines regarding student harassment and discrimination, 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 school employee training 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:

The proposed rules necessary to conform the Commissioner's Regulations with the Dignity Act and will not impose any additional program, service, duty or responsibility beyond those by the statute.

Consistent with Education Law section 2801 and section 13 of Article 2, as respectively amended and added by Chapter 482 of the Laws of 2010, the proposed rule requires each school district, BOCES and charter school to create guidelines to provide:

- On or before July 1, 2012, for schools to implement school employee training programs, commencing with the 2012-13 school year and thereafter, to promote a positive school environment that is free from discrimination and harassment and to discourage and respond to incidents of discrimination and/or harassment on school property or at a school function. Employee training guidelines shall be approved by the board of education, trustees or sole trustee of the school district (or by the chancellor of the city school district, in the case of the City School District of the City of New York) or by the board of trustees of the charter school.

- Training for employees, including school and district administrators and instructional and non-instructional staff:

- (i) to raise awareness and understanding of the school district's Code of Conduct pursuant to section 100.2(l) of this Title;

- (ii) to raise awareness and sensitivity to potential acts of discrimination or harassment directed at students that are committed by students or school employees on school property or at school functions; including, but not limited to, discrimination or harassment based on a person's actual or perceived race, color, weight, national origin, ethnic group, religion, religious practices, disability, sexual orientation, gender or sex; and

- (iii) to enable employees to prevent and respond to incidents of harassment and discrimination.

Such training may be implemented and conducted in conjunction with existing professional development training pursuant to 100.2(dd)(2)(ii) of this Title and/or with any other training for school employees.

- guidelines relating to the development of nondiscriminatory instructional and counseling methods.

At least one employee in every school shall be designated as a Dignity Act Coordinator and instructed in the provisions of the proposed rule and thoroughly trained in methods to respond to human relations in the areas of race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender and sex.

- (i) The designation of each Dignity Act Coordinator shall be approved by the board of education, trustees or sole trustee of the school district (or in the case of the City School District of the City of New York, by the principal of the school in which the designated employee is employed) and, in the case of a charter school, by the board of trustees.

- (ii) The name(s) and contact information for the Dignity Act Coordinator(s) shall be shared with all school personnel, students, and persons in parental relation, which shall include, but is not limited to, providing the name, designated school and contact information of each Dignity Act Coordinator by:

- (a) listing such information in the code of conduct and updates posted on the Internet web site, if available, of the school or school district, or of the board of cooperative educational services, pursuant to subclause 100.2(l)(2)(iii)(b)(1) of this Part;

- (b) including such information in the plain language summary of the code of conduct provided to all persons in parental relation to students before the beginning of each school year, pursuant to subclause 100.2(l)(2)(iii)(b)(3);

- (c) include such information in at least one district or school mailing per school year to parents and persons of parental relation and, if such information changes, in at least one subsequent district or school mailing as soon as practicable thereafter;

- (d) posting such information in highly-visible areas of school buildings; and

- (e) making such information available at the district and school-level administrative offices.

- (iii) In the event a Dignity Act Coordinator vacates his or her position, another school employee shall be immediately designated for an interim appointment as Coordinator, pending approval of a successor Coordinator by the applicable governing body within 30 days of the date the position was vacated. In the event a Coordinator is unable to perform the duties of his or her position for an extended period of time, another school employee shall be immediately designated for an interim appointment as Coordinator, pending return of the previous Coordinator to his or her duties as Coordinator.

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 and BOCES beyond those imposed by the statute. Because these statutory requirements specifically apply to school districts and BOCES 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 and BOCES. Where possible, the regulations have incorporated existing requirements and eliminated redundant requirements to minimize work at the local level and have emphasized local flexibility in meeting statutory

requirements. For example, the proposed rule provides that training and/or refresher training may be implemented and conducted in conjunction with existing professional development training and/or with any other training for school employees.

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:

The proposed rules necessary to conform the Commissioner's Regulations with the Dignity Act and will not impose any additional program, service, duty or responsibility beyond those by the statute.

Consistent with Education Law section 2801 and section 13 of Article 2, as respectively amended and added by Chapter 482 of the Laws of 2010, the proposed rule requires each school district, BOCES and charter school to create guidelines to provide:

- On or before July 1, 2012, for schools to implement school employee training programs, commencing with the 2012-13 school year and thereafter, to promote a positive school environment that is free from discrimination and harassment and to discourage and respond to incidents of discrimination and/or harassment on school property or at a school function. Employee training guidelines shall be approved by the board of education, trustees or sole trustee of the school district (or by the chancellor of the city school district, in the case of the City School District of the City of New York) or by the board of trustees of the charter school.
- Training for employees, including school and district administrators and instructional and non-instructional staff:

(i) to raise awareness and understanding of the school district's Code of Conduct pursuant to section 100.2(l) of this Title;

(ii) to raise awareness and sensitivity to potential acts of discrimination or harassment directed at students that are committed by students or school employees on school property or at school functions; including, but not limited to, discrimination or harassment based on a person's actual or perceived race, color, weight, national origin, ethnic group, religion, religious practices, disability, sexual orientation, gender or sex; and

(iii) to enable employees to prevent and respond to incidents of harassment and discrimination.

Such training may be implemented and conducted in conjunction with existing professional development training pursuant to 100.2(dd)(2)(ii) of this Title and/or with any other training for school employees.

- guidelines relating to the development of nondiscriminatory instructional and counseling methods.

At least one employee in every school shall be designated as a Dignity Act Coordinator and instructed in the provisions of the proposed rule and thoroughly trained in methods to respond to human relations in the areas of race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender and sex.

(i) The designation of each Dignity Act Coordinator shall be approved by the board of education, trustees or sole trustee of the school district (or in the case of the City School District of the City of New York, by the principal of the school in which the designated employee is employed) and, in the case of a charter school, by the board of trustees.

(ii) The name(s) and contact information for the Dignity Act Coordinator(s) shall be shared with all school personnel, students, and persons in parental relation, which shall include, but is not limited to, providing the name, designated school and contact information of each Dignity Act Coordinator by:

(a) listing such information in the code of conduct and updates posted on the Internet web site, if available, of the school or school district, or of the board of cooperative educational services, pursuant to subclause 100.2(l)(2)(iii)(b)(1) of this Part;

(b) including such information in the plain language summary of the code of conduct provided to all persons in parental relation to students before the beginning of each school year, pursuant to subclause 100.2(l)(2)(iii)(b)(3);

(c) include such information in at least one district or school mailing per school year to parents and persons of parental relation and, if such information changes, in at least one subsequent district or school mailing as soon as practicable thereafter;

(d) posting such information in highly-visible areas of school buildings; and

(e) making such information available at the district and school-level administrative offices.

(iii) In the event a Dignity Act Coordinator vacates his or her position, another school employee shall be immediately designated for an interim appointment as Coordinator, pending approval of a successor Coordinator by the applicable governing body within 30 days of the date the position was vacated. In the event a Coordinator is unable to perform the duties of his or her position for an extended period of time, another school employee shall be immediately designated for an interim appointment as Coordinator, pending return of the previous Coordinator to his or her duties as Coordinator.

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 with 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. Where possible, the regulations have incorporated existing requirements and eliminated redundant requirements to minimize work at the local level and have emphasized local flexibility in meeting statutory requirements. For example, the proposed rule provides that training and/or refresher training may be implemented and conducted in conjunction with existing professional development training and/or with any other training for school employees. 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 school employee training under the Dignity for All Students Act (L. 2010, Ch. 482). 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.

Assessment of Public Comment

The agency received no public comment

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

Administration of Acute Herpes Zoster (Shingles) Vaccinations by Pharmacists

I.D. No. EDU-40-12-00006-EP

Filing No. 947

Filing Date: 2012-09-18

Effective Date: 2012-09-18

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

Proposed Action: Amendment of section 63.9 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207 (not subdivided), 6504 (not subdivided), 6506(1), 6507(2)(a), 6527(7), 6801(5), 6802(23) and 6909(7); and L. 2012, ch. 116

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

Specific reasons underlying the finding of necessity: The proposed amendment to the Regulations of the Commissioner of Education is necessary to implement Chapter 116 of the Laws of 2012, which amends Education Law sections 6527, 6801, 6802 and 6909, to authorize pharmacists who have been certified to administer immunizations to also administer vaccinations to prevent acute herpes zoster.

Because the Board of Regents meets at fixed intervals, the earliest the proposed amendment can be presented for adoption, after expiration of the required 45-day public comment period provided for in State Administrative Procedure Act (SAPA) section 202(1) and (5), would be the December 10-11, 2012 Regents meeting. Furthermore, pursuant to SAPA section 203(1), the earliest effective date of the proposed amendment, if adopted at the December meeting, would be December 26, 2012, the date a Notice of Adoption would be published in the State Register. However, the provisions of Chapter 116 of the Laws of 2012 will become effective on October 16, 2012.

Emergency action is necessary for the preservation of the public health and general welfare in order to enable the State Education Department to immediately establish requirements to timely implement Chapter 116 of the Laws of 2012, so that certified pharmacists can begin to treat patients in need of this vaccination, currently recommended for all patients who have had chicken pox and are now 50 years of age or older. Herpes zoster infection, better known as Shingles, is extremely painful, and only a small number of patients who should be receiving the vaccine have been vaccinated.

It is anticipated that the proposed amendment will be presented for adoption as a permanent rule at the December 10-11, 2012 meeting of the Board of Regents, after publication in the State Register and expiration of the 45-day public comment period on proposed rule makings required by the State Administrative Procedure Act.

Subject: Administration of acute herpes zoster (Shingles) vaccinations by pharmacists.

Purpose: To implement chapter 116 of the Laws of 2012 to authorize qualified pharmacists to administer acute herpes zoster vaccinations.

Text of emergency/proposed rule: Paragraphs (1) and (2) of subdivision (b) of section 63.9 of the Regulations of the Commissioner of Education are amended, effective October 16, 2012, as follows:

(1) Pursuant to section 6801 of the Education Law, a pharmacist with a certificate of administration issued by the department pursuant to paragraph (3) of this subdivision shall be authorized to administer immunization agents prescribed in paragraph (2) of this subdivision to patients therein specified, [pursuant to either a patient specific order or a non-patient specific order and protocol] provided that:

(i) the pharmacist meets the requirements for a certificate of administration prescribed in paragraph (3) of this subdivision and the order and protocol meet the requirements set forth in paragraph (5) of this subdivision; and

(ii) *with respect to non-patient specific orders:*

(a) the immunization is prescribed or ordered by a licensed physician or certified nurse practitioner with a practice site in the county in which the immunization is administered; or

(b) if the immunization is administered in a county with a population of 75,000 or less, the immunization shall be prescribed or ordered by a licensed physician or certified nurse practitioner with a practice site in the county in which the immunization is administered or in an adjoining county.

(2) Authorized immunization agents. A certified pharmacist who meets the requirements of this section shall be authorized to administer:

(i) immunizing agents to prevent influenza or pneumococcal disease to patients 18 years of age or older, *pursuant to a patient specific order or a non-patient specific order;* and

(ii) *immunizing agents to prevent acute herpes zoster, pursuant to a patient specific order.*

This notice is intended: to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire December 16, 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

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

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

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

Section 207 of the Education Law grants general rule-making authority

to the Board of Regents to carry into effect the laws and policies of the State relating to education.

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

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

Paragraph (b) of subdivision (7) of section 6527 of the Education Law, as added by Chapter 116 of the Laws of 2012, authorizes physicians to issue patient-specific orders for herpes zoster vaccine to pharmacists.

Paragraph (b) of subdivision (7) of section 6909 of the Education Law, as added by Chapter 116 of the Laws of 2012, authorizes nurse practitioners to issue patient-specific orders for herpes zoster vaccine to pharmacists.

Subdivision (22) of section 6802 of the Education Law, as amended by Chapter 116 of the Laws of 2012, adds vaccination to prevent acute herpes zoster to the list of immunizations certified pharmacists may administer.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment carries out the intent of the aforementioned statutes that the Department shall supervise the regulation of the practice of the professions for the benefit of the public. The proposed amendment will conform Regulations of the Commissioner of Education to Chapter 116 of the Laws of 2012 which authorizes certain qualified pharmacists to administer vaccinations to prevent herpes zoster pursuant to patient-specific prescriptions.

3. NEEDS AND BENEFITS:

The proposed amendment is necessary to conform the Regulations of the Commissioner of Education to Chapter 116 of the Laws of 2012. Authorizing qualified pharmacists to administer vaccinations to prevent herpes zoster will expand the availability of such vaccinations.

Section 6802(22) of the Education Law provides that non-patient specific immunization orders authorized to be executed by pharmacists may be issued only by physicians and nurse practitioners with a practice site in the county in which the immunization is administered or, if the population of that county is not more than 75,000, in an adjoining county. It is proposed that section 63.9(b)(1)(ii) of the Regulations of the Commissioner be amended to clarify that such restriction applies only to non-patient specific orders. The current regulation imposes the county limitation on all immunizations by pharmacists. The statutory language, however, appears to place that limitation only on immunizations administered pursuant to non-patient specific orders. The proposed amendment is consistent with the statutory language and would enable patients who have a direct relationship with a physician or nurse practitioner to receive the appropriate immunizations pursuant to patient specific orders without regard to the county limitation.

4. COSTS:

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

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

(c) Cost to private regulated parties: The proposed amendment will not increase costs, and may provide cost-savings to patients and the health-care system. Therefore, there will be no additional costs to private regulated parties.

(d) Cost to regulating agency for implementation and continued administration of this rule: There are no additional costs to the regulating agency.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment relates solely to the administration of vaccinations to prevent influenza, pneumococcal disease, and herpes zoster and does not impose any program, service, duty, or responsibility upon local governments.

6. PAPERWORK:

The proposed amendment imposes no new reporting or other paperwork requirements.

7. DUPLICATION:

The proposed amendment does not duplicate other existing state or federal requirements, and is necessary to implement Chapter 116 of the Laws of 2012.

8. ALTERNATIVES:

The proposed amendment is necessary to conform the Regulations of the Commissioner of Education to Chapter 116 of the Laws of 2012. There are no significant alternatives to the proposed amendment and none were considered.

9. FEDERAL STANDARDS:

Since there are no applicable federal standards, the proposed amendment does not exceed any minimum federal standards for the same or similar subject areas.

10. COMPLIANCE SCHEDULE:

The proposed amendment is necessary to conform the Regulations of

the Commissioner of Education to Chapter 116 of the Laws of 2012. The proposed amendment will become effective on October 16, 2012, which is also the effective date of Chapter 116. It is anticipated that licensees certified to administer immunizations will be able to comply with the proposed amendments by the effective date.

Regulatory Flexibility Analysis

The proposed amendment to the Regulations of the Commissioner of Education authorizes pharmacists who are certified to administer immunizations against influenza and pneumococcal disease to also administer vaccinations to prevent acute herpes zoster. The proposed amendment also clarifies that the requirement that the issuer of orders for immunizations to be performed by pharmacists have a practice site in the county in which the immunizations are issued (or, if that county has a population of less than 75,000, in an adjoining county) applies only to non-patient specific orders. The amendment will not impose any new reporting, recordkeeping, or other compliance requirements, or have any adverse economic impact, on small businesses or local governments. Because it is evident from the nature of the proposed amendment that it will not adversely affect small businesses or local governments, no affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses and local governments is not required, and one has not been prepared.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed amendment will apply to the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square mile or less. Of the 23,314 pharmacists registered by the State Education Department, 2,914 pharmacists report their permanent address of record is in a rural county.

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

The proposed amendment is necessary to conform the Commissioner's Regulations with Education Law sections 6527, 6801, 6802 and 6909, as amended by Chapter 116 of the Laws of 2012. These provisions allow pharmacists, certified to administer immunizations, to also be able to administer vaccinations to prevent acute herpes zoster. The proposed amendment does not impose any additional reporting, recordkeeping or other compliance requirements, or professional services requirements, on entities in rural areas.

3. COSTS:

The proposed amendment does not impose any additional costs on regulated parties, including those in rural areas.

4. MINIMIZING ADVERSE IMPACT:

The proposed amendment is necessary to conform the Commissioner's Regulations with Education Law sections 6527, 6801, 6802 and 6909, as amended by Chapter 116 of the Laws of 2012. Following discussions, including obtaining input from practicing professionals, the State Board of Pharmacy has considered the terms of the proposed amendment to Regulations of the Commissioner of Education and has recommended the change. Additionally, the measures have been shared with educational institutions, professional associations, and practitioners representing the profession of pharmacy. The amendments are supported by representatives of these sectors. The proposals make no exception for individuals who live in rural areas. The Department has determined that such requirements should apply to all pharmacists, no matter their geographic location, to ensure a uniform standard of practice across the State. Because of the nature of the proposed rule, alternative approaches for rural areas were not considered.

5. RURAL AREAS PARTICIPATION:

Comments on the proposed amendment were solicited from statewide organizations representing all parties having an interest in the practice of pharmacy. Included in this group were members of the State Board of Pharmacy, educational institutions and professional associations representing the pharmacy profession, such as the Pharmacists Society of the State of New York and the New York State Council of Health System Pharmacists. These groups, which have representation in rural areas, have been provided notice of the proposed rule making and opportunity to comment on the proposed amendment.

Job Impact Statement

The proposed amendment to the Regulations of the Commissioner of Education authorizes pharmacists who are certified to administer immunizations against influenza and pneumococcal disease to also administer vaccinations to prevent acute herpes zoster. The proposed amendment also clarifies that the requirement that the issuer of orders for immunizations to be performed by pharmacists have a practice site in the county in which the immunizations are issued (or, if that county has a population of less than 75,000, in an adjoining county) applies only to non-patient specific orders. The amendment will not have a substantial adverse impact on jobs and employment opportunities. Because it is evident from the

nature of the proposed amendments that they will not affect job and employment opportunities, no affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required, and one has not been prepared.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Teacher and School Building Leader Certification Examinations

I.D. No. EDU-40-12-00007-P

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

Proposed Action: Amendment of sections 80-1.5, 80-3.3, 80-3.4, 80-3.9, 80-3.10, 80-5.13, 80-5.14 and 80-5.22 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207, 305(1), 3001(2), 3006(1)(b) and 3009(1)

Subject: Teacher and school building leader certification examinations.

Purpose: To establish the timeframes and what new certification examinations will be required for each certificate title.

Substance of proposed rule (Full text is posted at the following State website: <http://www.regents.nysed.gov>): Below is a summary of the proposed amendment:

Section 80-1.5 of the Commissioner's regulations provides that a school shall not prohibit an individual who is a current or prospective applicant for certification from videotaping a classroom to meet requirements of the teacher performance assessment (TPA).

Section 80-3.3 requires candidates who have completed all requirements for initial certification on or before April 30, 2014 and who apply for certification on or before April 30, 2014 to shall submit evidence of passing the liberal arts and sciences test (LAST), the academic skills and writing test (ATSW), and the content specialty test (CST) on or before April 30, 2014, except that a candidate seeking an initial certificate in the title of Speech and Language Disabilities (all grades) shall not be required to achieve a satisfactory level of performance on the CST. Instead of meeting the examination requirements of this subdivision, a candidate applying for certification on or before April 30, 2014 may achieve a satisfactory level of performance on the set of certification examinations described in subdivision (b) of this section.

For candidates applying for certification on or after May 1, 2014 or candidates who applied for certification on or before April 30, 2014 but did not meet all the requirements for an initial certificate on or before April 30, 2014, such candidates shall submit evidence of having achieved a satisfactory level of performance on the TPA, the EAS, the ALST and the CST(s), except that a candidate seeking an initial certificate in the title of Speech and Language Disabilities (all grades) shall not be required to pass the CST.

For candidates with a graduate degree in STEM and two years of post-secondary teaching experience in the area of the certificate sought who are seeking an initial certificate in earth science, biology, chemistry, physics, mathematics or in a closely related field and who is applying for an initial certificate through individual evaluation on or before April 30, 2014 and who has completed all other requirements for initial certification under such section on or before April 30, 2014 shall only be required to pass the LAST. Candidates applying on or after May 1, 2014 or candidates who applied for certification on or before April 30, 2014 but did not meet all the requirements for an initial certificate through individual evaluation on or before April 30, 2014, shall only be required to pass the EAS and the ALST.

A candidate applying for a career and technical certificate through Option A (completion of an associate degree program or its equivalent) who has completed all requirements for initial certification on or before April 30, 2014 and who applies for certification on or before April 30, 2014, shall submit evidence of passing the ATSW on or before April 30, 2014 or passing the TPA and the EAS. A candidate who applies for certification on or after May 1, 2014 or a candidate who applies for certification on or before April 30, 2014 but does not meet all the requirements for an initial certificate on or before April 30, 2014, shall submit evidence of passing the TPA and the EAS.

A candidate applying for a career and technical certificate under Option B (through completion of a program of coursework that does not lead to an associate or higher degree) who has completed all requirements for initial certification on or before April 30, 2014 and who applies for certification on or before April 30, 2014, shall submit evidence of passing the CQST and the ATSW on or before April 30, 2014 or evidence of passing the CQST, the TPA and the EAS. A candidate who applies for certification on or after May 1, 2014 or a candidate who applies for certification on

or before April 30, 2014 but does not meet all the requirements for an initial certificate on or before April 30, 2014, shall submit evidence of passing the CQST, the TPA and the EAS.

Section 80-3.4 is amended to require candidates seeking a professional certificate, except in certain career and technical subject areas, who hold a transitional C certificate for career changers and others holding a graduate academic or graduate professional degree and who have completed all requirements for professional certification on or before April 30, 2014, or have completed all requirements for professional certification with the exception of completion of their registered Transitional C program, and who apply for certification on or before April 30, 2014 to submit evidence of passing the ATSW on or before April 30, 2014 or the TPA. Candidates apply for certification on or after May 1, 2014 or candidates who apply for professional certification on or before April 30, 2014 but do not meet all the requirements for a professional certificate on or before April 30, 2014 shall submit evidence of passing the TPA.

Candidates who seek a professional certificate in a specific career and technical subject through Option A (candidates hold an associate degree or its equivalent) and who apply for certification on or before April 30, 2014, shall submit evidence of passing the LAST on or before April 30, 2014 or the ALST. A candidate who applies for certification on or after May 1, 2014 or who applies for certification on or before April 30, 2014 but does not meet all the requirements for a professional certificate on or before April 30, 2014, shall submit evidence of passing the ALST.

Candidates who seek a professional certificate in a specific career and technical subject through Option B (do not possess an associate degree or its equivalent) and who have completed all other requirements for a professional certificate and who apply for certification on or before April 30, 2014, shall submit evidence of passing the LAST on or before April 30, 2014 or the ALST. A candidate who applies for certification on or after May 1, 2014 or who applies for certification on or before April 30, 2014 but does not meet all the requirements for a professional certificate on or before April 30, 2014, shall submit evidence of passing the ALST.

Section 80-3.9 requires a candidate issued an initial certificate under the requirements of subdivision (a) of this section to meet the following requirements for a professional certificate as a teacher of speech and language disabilities (all grades): a candidate who has completed all other requirements for the professional certificate on or before April 30, 2014 and who applies for certification on or before April 30, 2014, must pass the LAST on or before April 30, 2014 or pass the ALST. A candidate who applies for certification on or after May 1, 2014 or a candidate who applies for certification on or before April 30, 2014 but does not meet all the requirements for a professional certificate on or before April 30, 2014 must pass the ALST.

Section 80-3.10 requires a candidate seeking a certificate in the educational leadership service to pass the assessment for school building leadership. In addition, for candidates applying for certification on or after May 1, 2014 or candidates who apply for certification on or before April 30, 2014 but do not meet all the requirements for an initial certificate on or before April 30, 2014, the candidate shall also achieve a satisfactory level of performance on the EAS.

Section 80-5.13 requires a candidate who applies for a Transitional B certificate on or before April 30, 2014 and who meets all the requirements for a Transitional B certificate on or before April 30, 2014 to submit evidence of having achieved a satisfactory level of performance on the LAST, and the CST(s) in the area of the certificate, where such CST is required for the certificate title on or before April 30, 2014. Successful completion of the CST in the area of the certificate shall not be required for certain certificate holders. A candidate who applies for a Transitional B certificate on or after May 1, 2014 or a candidate who applies for a Transitional B certificate on or before April 30, 2014 but does not meet all the requirements for a Transitional B certificate on or before April 30, 2014 shall submit evidence of having achieved a satisfactory level of performance on the ALST, the EAS and the CST(s) in the area of the certificate, where such CST is required for the certificate title. Successful completion of the CST in the area of the certificate shall not be required for certain certificate holders. Instead, the candidate shall submit evidence of having achieved a satisfactory level of performance on a New York State teacher certification examination CST prescribed by the Commissioner or a teaching certificate in the classroom teaching service.

Section 80-5.13 requires a candidate who applies for an initial certificate on or before April 30, 2014, and who has completed all other requirements for an initial certificate or who has completed all requirements for an initial certificate except completion of their registered Transitional B program, on or before April 30, 2014 shall submit evidence of having achieved a satisfactory level of performance on the ATSW, and any other required examinations on or before April 30, 2014 or a satisfactory level of performance on the TPA, and any other required examinations. A candidate who applies for an initial certificate on or after May 1, 2014 or who applies for an initial certificate on or before April 30, 2014 but does

not meet all the requirements for an initial certificate on or before April 30, 2014, shall submit evidence of having achieved a satisfactory level of performance on the TPA, and any other required exam.

Section 80-5.14 requires a candidate who applies for a Transitional C certificate on or before April 30, 2014 and who has completed all other requirements for a Transitional C certificate on or before April 30, 2014, to submit evidence of passing the LAST, and CST(s) in the area of the certificate on or before April 30, 2014, or a satisfactory level of performance on the ALST, the EAS and the CST(s) in the area of the certificate. Candidates who apply for a Transitional C certificate on or after May 1, 2014 or who apply for a Transitional C certificate on or before April 30, 2014 but do not meet all the requirements for an initial certificate on or before April 30, 2014, shall submit evidence of passing the ALST, the EAS and the CST.

Section 80-5.22 is amended to require a candidate who applies for a Transitional G certificate on or before April 30, 2014 and who meets all the requirements for a Transitional G certificate on or before April 30, 2014 to submit evidence of having achieved a satisfactory level of performance on the LAST on or before April 30, 2014 or achieve a satisfactory level of performance on the ALST. A candidate who applies for a Transitional G certificate on or after May 1, 2014 or who applies for a Transitional G certificate on or before April 30, 2014 but does not meet all the requirements for a Transitional G certificate on or before April 30, 2014 shall submit evidence of having achieved a satisfactory level of performance on the ALST.

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) 474-6400, email: legal@mail.nysed.gov

Data, views or arguments may be submitted to: Peg Rivers, New York State Education Department, 89 Washington Avenue, Room 979, Albany, New York 12234, (518) 418-1189, email: privers@mail.nysed.gov

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

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

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

Subdivision (2) of section 3001 of the Education Law establishes certification by the State Education Department as a qualification to teach in the State's public schools.

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

Subdivision (1) of section 3009 of the Education Law provides that no part of the school moneys apportioned to a district shall be applied to the payment of the salary of an unqualified teacher.

2. LEGISLATIVE OBJECTIVES:

The amendment carries out the legislative objectives of the above-referenced statutes by establishing the timeframes for implementation of the new certification examinations for teachers and school building leaders.

3. NEEDS AND BENEFITS:

The proposed amendment makes the following major changes to the certification examinations for teachers and school building leaders.

Timeline for Initial Certificates for Teachers in all fields other than Career and Technical Education (CTE)

Candidates who have completed all requirements for initial certification on or before April 30, 2014 and who apply for certification on or before April 30, 2014, will need to pass the LAST (Liberal Arts and Sciences Test), ATS-W (Assessment of Teaching Skills-Written), and CST (Content Specialty Test) in the area of the certificate on or before April 30, 2014. Instead of meeting the old examination requirements, a candidate applying for certification on or before April 30, 2014 may achieve a satisfactory level of performance on the new set of examinations (edTPA, EAS, ALST, CST). Candidates will not be permitted to mix and match examinations from the old and new tests.

Candidates applying for certification on or after May 1, 2014 or candidates who applied for certification on or before April 30, 2014 but did not meet all the requirements for an initial certificate on or before April 30, 2014, will be required to pass the edTPA (Teacher Performance Assessment), EAS (Educating All Students test), ALST (Academic Literacy Skills Test), and CST.

Timeline for STEM Certification Candidates

Any candidate seeking an initial certificate in earth science, biology,

chemistry, physics, mathematics or in a closely related field as determined by the Department in grades 5-9 or grades 7-12 and who is applying for an initial certificate on or before April 30, 2014 and who has completed all other requirements for initial certification under such section on or before April 30, 2014 is only required to achieve a satisfactory level of performance on the LAST.

Any candidate seeking an initial certificate in earth science, biology, chemistry, physics, mathematics or in a closely related field as determined by the Department in grades 5-9 or grades 7-12 and who is applying for an initial certificate on or after May 1, 2014 or candidates who applied for certification on or before April 30, 2014 but did not meet all the requirements for an initial certificate on or before April 30, 2014, shall only be required to pass the EAS and ALST.

Timeline for Initial Certificates in CTE Fields - Option A

Candidates who have completed an associate's degree and have two years work experience in a field related to their certification are eligible to apply for certification under the Option A pathway. A candidate who has completed all requirements for initial certification on or before April 30, 2014 and who applies for certification on or before April 30, 2014, is required to pass the ATS-W on or before April 30, 2014 or achieve a satisfactory level of performance on the edTPA and EAS.

A candidate who applies for certification on or after May 1, 2014 or a candidate who applies for certification on or before April 30, 2014 but does not meet all the requirements for an initial certificate on or before April 30, 2014, is required to pass the edTPA and EAS.

Timeline for Initial Certificates in CTE Fields - Option B

Candidates who have a high school diploma and four years work experience in a field related to their certificate are eligible to apply for certification under the Option B pathway. A candidate who has completed all requirements for initial certification on or before April 30, 2014 and who applies for certification on or before April 30, 2014, is required to pass the Communication and Quantitative Skills Test (CQST) and ATS-W on or before April 30, 2014 or submit evidence of having achieved a satisfactory level of performance on the CQST, edTPA and EAS.

A candidate who applies for certification on or after May 1, 2014 or a candidate who applies for certification on or before April 30, 2014 but does not meet all the requirements for an initial certificate on or before April 30, 2014, is required to pass the CQST, edTPA and EAS.

Timeline for Candidates Applying for Transitional B or C Certificates

A candidate who applies for a Transitional B or C certificate on or before April 30, 2014 and who meets all the requirements for a Transitional B or C certificate on or before April 30, 2014, is required to take the LAST and the CST in the area of the certificate, where such CST is required for the certificate title on or before April 30, 2014. Successful completion of the CST in the area of the certificate shall not be required for the transitional B certificate authorizing the teaching of English to speakers of other languages, students with disabilities, students who are deaf or hard-of-hearing, students who are blind or visually impaired, or students with speech and language disabilities, or for an extension of a transitional B certificate in bilingual education. Instead, the candidate shall submit evidence of having achieved a satisfactory level of performance on a CST prescribed by the Commissioner.

A candidate who applies for a Transitional B or C certificate on or after May 1, 2014 or a candidate who applies for a Transitional B or C certificate on or before April 30, 2014 but does not meet all the requirements for a Transitional B or C certificate on April 30, 2014 is required to pass the ALST, EAS, and the CST in the area of the certificate, where such CST is required for the certificate title. Successful completion of the CST in the area of the certificate shall not be required for the Transitional B certificate authorizing the teaching of English to speakers of other languages, students with disabilities, students who are deaf or hard-of-hearing, students who are blind or visually impaired, or students with speech and language disabilities, or for an extension of a Transitional B certificate in bilingual education. Instead, the candidate shall submit evidence of having achieved a satisfactory level of performance on a CST prescribed by the Commissioner or a teaching certificate in the classroom teaching service.

Timeline for Transitional B or C Candidates Applying for Certification

Candidates for certification via the Transitional B or C ("alternative") pathways would be subject to the following requirements. A candidate who applies for an initial certificate on or before April 30, 2014, and who has completed all other requirements for an initial certificate or who has completed all requirements for an initial certificate except completion of their registered Transitional B program, on or before April 30, 2014, is required to take the ATS-W and any other examination required for the provisional or initial certificate, as applicable, and/or a bilingual education extension of such certificate, as applicable, on or before April 30, 2014 or a satisfactory level of performance on the edTPA and any other examination required for the provisional or initial certificate, as applicable, and/or a bilingual education extension of such certificate, as applicable.

A candidate who applies for an initial certificate on or after May 1,

2014 or who applies for an initial certificate on or before April 30, 2014 but does not meet all the requirements for an initial certificate on or before April 30, 2014, shall submit evidence of having achieved a satisfactory level of performance on the edTPA and any other examination required for the provisional or initial certificate, as applicable, and/or a bilingual education extension of such certificate, as applicable.

Timeline for Transitional G Candidates

A candidate applying for a Transitional G certificate (only available to individuals who hold a graduate degree and are college professors) on or before April 30, 2014 and who meets all the requirements for a Transitional G certificate on or before April 30, 2014 is required to pass the LAST on or before April 30, 2014 or achieve a satisfactory level of performance on the ALST.

A candidate who applies for a Transitional G certificate on or after May 1, 2014 or who applies for a Transitional G certificate on or before April 30, 2014 but does not meet all the requirements for a Transitional G certificate on or before April 30, 2014 will be required to pass the ALST.

Timeline for School Building Leader Candidates

A candidate applying for a school building leader certificate shall submit evidence of having achieved a satisfactory level of performance on the New York State assessment for school building leadership. In addition, for candidates applying for certification on or after May 1, 2014 or candidates who apply for certification on or before April 30, 2014 but do not meet all the requirements for an initial certificate on or before April 30, 2014, the candidate shall also achieve a satisfactory level of performance on the EAS.

4. COSTS:

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

(b) Costs to local governments: The amendment will not impose any additional costs on local governments.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment does not impose any mandatory program, service, duty, or responsibility upon local government, including school districts or BOCES. However, the proposed amendment provides that a school or school system shall not prohibit an individual who is a current or prospective applicant for certification from videotaping a classroom for the purpose of meeting the requirements of the teacher performance assessment for certification as a teacher in the classroom teaching service.

6. PAPERWORK:

There are no additional paperwork requirements beyond those currently imposed.

7. DUPLICATION:

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

8. ALTERNATIVES:

At the November and December 2009 Board of Regents meetings, the Board approved a number of initiatives for the purpose of transforming teaching and learning and school leadership in New York State. One of those initiatives was to strengthen the assessments for the certification of teachers and school leaders, by creation of a teacher performance assessment and increased rigor of the content specialty exams. The new exams were described in New York's Race to the Top (RTTT) application and are part of New York's RTTT scope of work and were scheduled to be implemented in May 2013. At the Board's September 2011 meeting, Department staff presented background information on the exams and proposed revisions to the content of the examinations based on research and developments in educational policy. At the February 2012 meeting, the Board of Regents approved a shift in the implementation date of the new certification examinations (the Teacher Performance Assessment, the Academic Literacy Skills Test, the Educating All Students test and the School Building Leader assessment) based on input from the field. These new examinations would be required for all candidates applying for teacher or school building leader certification and/or completing all certification requirements on or after May 1, 2014.

The rule is necessary to implement the provisions of New York State's RTTT application. Therefore, no alternatives were considered.

9. FEDERAL STANDARDS:

There are no Federal standards that establish requirements for the certification of teachers for service in the State's public schools.

10. COMPLIANCE SCHEDULE:

It is anticipated that the proposed amendment will be adopted at the December Regents meeting and will become effective on January 3, 2013.

Regulatory Flexibility Analysis

(a) Small businesses:

The purpose of the proposed rule is to establish the timeframes for the new teacher and school building leader certification examinations. The proposed rule does not impose any reporting, recordkeeping or other compliance requirements, and will not have an adverse economic impact,

on small business. Because it is evident from the nature of the amendment that it does not affect small businesses, no further steps were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses is not required and one has not been prepared.

(b) Local governments:

1. EFFECT OF RULE:

The rule changes the examination requirements for all teachers and school building leaders applying for certification on or after May 1, 2014 in certain certificate titles and to school districts that employ prospective applicants for certification.

2. COMPLIANCE REQUIREMENTS:

The proposed amendment makes the following major changes to the teacher and school building leader certification examinations:

Timeline for Initial Certificates for Teachers in all fields other than Career and Technical Education (CTE)

Candidates who have completed all requirements for initial certification on or before April 30, 2014 and who apply for certification on or before April 30, 2014, will need to pass the LAST (Liberal Arts and Sciences Test), ATS-W (Assessment of Teaching Skills-Written), and CST (Content Specialty Test) in the area of the certificate on or before April 30, 2014. Instead of meeting the old examination requirements, a candidate applying for certification on or before April 30, 2014 may achieve a satisfactory level of performance on the new set of examinations (edTPA (Teacher Performance Assessment), EAS (Educating All Students test), ALST (Academic Literacy Skills Test), CST). Candidates will not be permitted to mix and match examinations from the old and new tests.

Candidates applying for certification on or after May 1, 2014 or candidates who applied for certification on or before April 30, 2014 but did not meet all the requirements for an initial certificate on or before April 30, 2014, will be required to pass the edTPA, EAS, ALST, and CST.

Timeline for STEM Certification Candidates

Any candidate seeking an initial certificate in earth science, biology, chemistry, physics, mathematics or in a closely related field as determined by the Department in grades 5-9 or grades 7-12 and who is applying for an initial certificate on or before April 30, 2014 and who has completed all other requirements for initial certification under such section on or before April 30, 2014 is only required to achieve a satisfactory level of performance on the LAST.

Any candidate seeking an initial certificate in earth science, biology, chemistry, physics, mathematics or in a closely related field as determined by the Department in grades 5-9 or grades 7-12 and who is applying for an initial certificate on or after May 1, 2014 or candidates who applied for certification on or before April 30, 2014 but did not meet all the requirements for an initial certificate on or before April 30, 2014, shall only be required to pass the EAS and ALST.

Timeline for Initial Certificates in CTE Fields - Option A

Candidates who have completed an associate's degree and have two years work experience in a field related to their certification are eligible to apply for certification under the Option A pathway. A candidate who has completed all requirements for initial certification on or before April 30, 2014 and who applies for certification on or before April 30, 2014, is required to pass the ATS-W on or before April 30, 2014 or achieve a satisfactory level of performance on the edTPA and EAS.

A candidate who applies for certification on or after May 1, 2014 or a candidate who applies for certification on or before April 30, 2014 but does not meet all the requirements for an initial certificate on or before April 30, 2014, is required to pass the edTPA and EAS.

Timeline for Initial Certificates in CTE Fields - Option B

Candidates who have a high school diploma and four years work experience in a field related to their certificate are eligible to apply for certification under the Option B pathway. A candidate who has completed all requirements for initial certification on or before April 30, 2014 and who applies for certification on or before April 30, 2014, is required to pass the Communication and Quantitative Skills Test (CQST) and ATS-W on or before April 30, 2014 or submit evidence of having achieved a satisfactory level of performance on the CQST, edTPA and EAS.

A candidate who applies for certification on or after May 1, 2014 or a candidate who applies for certification on or before April 30, 2014 but does not meet all the requirements for an initial certificate on or before April 30, 2014, is required to pass the CQST, edTPA and EAS.

Timeline for Candidates Applying for Transitional B or C Certificates

A candidate who applies for a Transitional B or C certificate on or before April 30, 2014 and who meets all the requirements for a Transitional B or C certificate on or before April 30, 2014, is required to take the LAST and the CST in the area of the certificate, where such CST is required for the certificate title on or before April 30, 2014. Successful completion of the CST in the area of the certificate shall not be required for the transitional B certificate authorizing the teaching of English to speakers of other languages, students with disabilities, students who are deaf or hard-

of-hearing, students who are blind or visually impaired, or students with speech and language disabilities, or for an extension of a transitional B certificate in bilingual education. Instead, the candidate shall submit evidence of having achieved a satisfactory level of performance on a CST prescribed by the Commissioner.

A candidate who applies for a Transitional B or C certificate on or after May 1, 2014 or a candidate who applies for a Transitional B or C certificate on or before April 30, 2014 but does not meet all the requirements for a Transitional B or C certificate on April 30, 2014 is required to pass the ALST, EAS, and the CST in the area of the certificate, where such CST is required for the certificate title. Successful completion of the CST in the area of the certificate shall not be required for the Transitional B certificate authorizing the teaching of English to speakers of other languages, students with disabilities, students who are deaf or hard-of-hearing, students who are blind or visually impaired, or students with speech and language disabilities, or for an extension of a Transitional B certificate in bilingual education. Instead, the candidate shall submit evidence of having achieved a satisfactory level of performance on a CST prescribed by the Commissioner or a teaching certificate in the classroom teaching service.

Timeline for Transitional B or C Candidates Applying for Certification

Candidates for certification via the Transitional B or C ("alternative") pathways would be subject to the following requirements. A candidate who applies for an initial certificate on or before April 30, 2014, and who has completed all other requirements for an initial certificate or who has completed all requirements for an initial certificate except completion of their registered Transitional B program, on or before April 30, 2014, is required to take the ATS-W and any other examination required for the provisional or initial certificate, as applicable, and/or a bilingual education extension of such certificate, as applicable, on or before April 30, 2014 or a satisfactory level of performance on the edTPA and any other examination required for the provisional or initial certificate, as applicable, and/or a bilingual education extension of such certificate, as applicable.

A candidate who applies for an initial certificate on or after May 1, 2014 or who applies for an initial certificate on or before April 30, 2014 but does not meet all the requirements for an initial certificate on or before April 30, 2014, shall submit evidence of having achieved a satisfactory level of performance on the edTPA and any other examination required for the provisional or initial certificate, as applicable, and/or a bilingual education extension of such certificate, as applicable.

Timeline for Transitional G Candidates

A candidate applying for a Transitional G certificate (only available to individuals who hold a graduate degree and are college professors) on or before April 30, 2014 and who meets all the requirements for a Transitional G certificate on or before April 30, 2014 is required to pass the LAST on or before April 30, 2014 or achieve a satisfactory level of performance on the ALST.

A candidate who applies for a Transitional G certificate on or after May 1, 2014 or who applies for a Transitional G certificate on or before April 30, 2014 but does not meet all the requirements for a Transitional G certificate on or before April 30, 2014 will be required to pass the ALST.

Timeline for School Building Leader Candidates

A candidate applying for a school building leader certificate shall submit evidence of having achieved a satisfactory level of performance on the New York State assessment for school building leadership. In addition, for candidates applying for certification on or after May 1, 2014 or candidates who apply for certification on or before April 30, 2014 but do not meet all the requirements for an initial certificate on or before April 30, 2014, the candidate shall also achieve a satisfactory level of performance on the EAS.

The proposed amendment also provides that a school or school system shall not prohibit an individual who is a current or prospective applicant for certification from videotaping a classroom for the purpose of meeting the requirements of the teacher performance assessment for certification as a teacher in the classroom teaching service.

3. PROFESSIONAL SERVICES:

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

4. COMPLIANCE COSTS:

There will be additional costs imposed on teacher or school building leader candidates taking the new set of examinations. As soon as the fee schedules are finalized and available, they will be posted on our website at www.nysed.gov.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The rule does not impose any additional technological requirements on school districts or BOCES.

6. MINIMIZING ADVERSE IMPACT:

At the November and December 2009 Board of Regents meetings, the Board approved a number of initiatives for the purpose of transforming teaching and learning and school leadership in New York State. One of those initiatives was to strengthen the assessments for the certification of

teachers and school leaders, by creation of a teacher performance assessment and increased rigor of the content specialty exams. The new exams were described in New York's Race to the Top (RTTT) application and are part of New York's RTTT scope of work and were scheduled to be implemented in May 2013. At the Board's September 2011 meeting, Department staff presented background information on the exams and proposed revisions to the content of the examinations based on research and developments in educational policy. At the February 2012 meeting, the Board of Regents approved a shift in the implementation date of the new certification examinations (the Teacher Performance Assessment, the Academic Literacy Skills Test, the Educating All Students test and the School Building Leader assessment) based on input from the field. These new examinations would be required for all candidates applying for teacher or school building leader certification and/or completing all certification requirements on or after May 1, 2014.

The rule is necessary to implement the provisions of New York State's RTTT application. Therefore, no alternatives were considered.

7. LOCAL GOVERNMENT PARTICIPATION:

Comments on the development of the proposed amendment have been solicited from district superintendents across the State and the Big 5 city school districts.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed amendment will affect certified teachers that apply for a teaching or school building leader certificate in all parts of the State, including those located in the 44 rural counties with fewer than 200,000 inhabitants and the 71 towns and urban counties with a population density of 150 square miles or less.

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

The proposed amendment makes the following major changes to the teacher and school building leader certification examinations:

Timeline for Initial Certificates for Teachers in all fields other than Career and Technical Education (CTE)

Candidates who have completed all requirements for initial certification on or before April 30, 2014 and who apply for certification on or before April 30, 2014, will need to pass the LAST (Liberal Arts and Sciences Test), ATS-W (Assessment of Teaching Skills-Written), and CST (Content Specialty Test) in the area of the certificate on or before April 30, 2014. Instead of meeting the old examination requirements, a candidate applying for certification on or before April 30, 2014 may achieve a satisfactory level of performance on the new set of examinations (edTPA (Teacher Performance Assessment), EAS (Educating All Students test), ALST Academic Literacy Skills Test), CST). Candidates will not be permitted to mix and match examinations from the old and new tests.

Candidates applying for certification on or after May 1, 2014 or candidates who applied for certification on or before April 30, 2014 but did not meet all the requirements for an initial certificate on or before April 30, 2014, will be required to pass the edTPA, EAS, ALST, and CST.

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Any candidate seeking an initial certificate in earth science, biology, chemistry, physics, mathematics or in a closely related field as determined by the Department in grades 5-9 or grades 7-12 and who is applying for an initial certificate on or before April 30, 2014 and who has completed all other requirements for initial certification under such section on or before April 30, 2014 is only required to achieve a satisfactory level of performance on the LAST.

Any candidate seeking an initial certificate in earth science, biology, chemistry, physics, mathematics or in a closely related field as determined by the Department in grades 5-9 or grades 7-12 and who is applying for an initial certificate on or after May 1, 2014 or candidates who applied for certification on or before April 30, 2014 but did not meet all the requirements for an initial certificate on or before April 30, 2014, shall only be required to pass the EAS and ALST.

Timeline for Initial Certificates in CTE Fields - Option A

Candidates who have completed an associate's degree and have two years work experience in a field related to their certification are eligible to apply for certification under the Option A pathway. A candidate who has completed all requirements for initial certification on or before April 30, 2014 and who applies for certification on or before April 30, 2014, is required to pass the ATS-W on or before April 30, 2014 or achieve a satisfactory level of performance on the edTPA and EAS.

A candidate who applies for certification on or after May 1, 2014 or a candidate who applies for certification on or before April 30, 2014 but does not meet all the requirements for an initial certificate on or before April 30, 2014, is required to pass the edTPA and EAS.

Timeline for Initial Certificates in CTE Fields - Option B

Candidates who have a high school diploma and four years work experience in a field related to their certificate are eligible to apply for certification under the Option B pathway. A candidate who has completed all

requirements for initial certification on or before April 30, 2014 and who applies for certification on or before April 30, 2014, is required to pass the Communication and Quantitative Skills Test (CQST) and ATS-W on or before April 30, 2014 or submit evidence of having achieved a satisfactory level of performance on the CQST, edTPA and EAS.

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A candidate applying for a Transitional G certificate (only available to individuals who hold a graduate degree and are college professors) on or before April 30, 2014 and who meets all the requirements for a Transitional G certificate on or before April 30, 2014 is required to pass the LAST on or before April 30, 2014 or achieve a satisfactory level of performance on the ALST.

A candidate who applies for a Transitional G certificate on or after May 1, 2014 or who applies for a Transitional G certificate on or before April 30, 2014 but does not meet all the requirements for a Transitional G certificate on or before April 30, 2014 will be required to pass the ALST.

Timeline for School Building Leader Candidates

A candidate applying for a school building leader certificate shall submit evidence of having achieved a satisfactory level of performance on the New York State assessment for school building leadership. In addition, for candidates applying for certification on or after May 1, 2014 or candidates who apply for certification on or before April 30, 2014 but do not meet all the requirements for an initial certificate on or before April 30, 2014, the candidate shall also achieve a satisfactory level of performance on the EAS.

3. COSTS:

There will be additional costs imposed on teacher or school building leader candidates taking the new set of examinations. As soon as the fee

schedules are finalized and available, they will be posted on our website at www.nysed.gov.

4. MINIMIZING ADVERSE IMPACT:

At the November and December 2009 Board of Regents meetings, the Board approved a number of initiatives for the purpose of transforming teaching and learning and school leadership in New York State. One of those initiatives was to strengthen the assessments for the certification of teachers and school leaders, by creation of a teacher performance assessment and increased rigor of the content specialty exams. The new exams were described in New York's Race to the Top (RTTT) application and are part of New York's RTTT scope of work and were scheduled to be implemented in May 2013. At the Board's September 2011 meeting, Department staff presented background information on the exams and proposed revisions to the content of the examinations based on research and developments in educational policy. At the February 2012 meeting, the Board of Regents approved a shift in the implementation date of the new certification examinations (the Teacher Performance Assessment, the Academic Literacy Skills Test, the Educating All Students test and the School Building Leader assessment) based on input from the field. These new examinations would be required for all candidates applying for teacher or school building leader certification and/or completing all certification requirements on or after May 1, 2014.

The rule is necessary to implement the provisions of New York State's RTTT application. Therefore, no alternatives were considered.

5. RURAL AREA PARTICIPATION:

The State Education Department has sent the proposed amendment to the Rural Advisory Committee, which has members who live or work in rural areas across the State.

Job Impact Statement

The purpose of the proposed rule is to establish the timeframes for the new teacher and school building leader certification examinations. Because it is evident from the nature of the proposed rule that it will have no impact on the number of jobs or employment opportunities in New York State, no further steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

State Board of Elections

NOTICE OF ADOPTION

Repeal of Regulations Requiring Disclosure of Political Contributions by Vendors Certification and Requiring Cover Page Colors

I.D. No. SBE-28-12-00007-A

Filing No. 941

Filing Date: 2012-09-13

Effective Date: 2012-10-03

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

Action taken: Amendment of sections 6204.2 and 6209.4 of Title 9 NYCRR.

Statutory authority: Election Law, sections 3-100, 3-102, 3-103, 3-104, 3-105 and 3-106

Subject: Repeal of Regulations requiring disclosure of political contributions by vendors certification and requiring cover page colors.

Purpose: To comply with Public Officers Law 73 which forbids asking vendors about political contributions and to conform with amendments.

Text or summary was published in the July 11, 2012 issue of the Register, I.D. No. SBE-28-12-00007-P.

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

Text of rule and any required statements and analyses may be obtained from: Paul M. Collins Deputy Special Counsel, State Board of Elections, 40 N. Pearl Street, Suite 5, Albany, NY 12207-2729, (518) 473-5088, email: paul.collins@elections.ny.gov

Assessment of Public Comment

The agency received no public comment.

Department of Environmental Conservation

EMERGENCY RULE MAKING

Special Fishing Regulations for the Salmon River Known as the "Lower Fly Fishing Area"

I.D. No. ENV-40-12-00002-E

Filing No. 944

Filing Date: 2012-09-13

Effective Date: 2012-09-13

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

Action taken: Amendment of Part 10 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 11-0303, 11-0305, 11-1301 and 11-1303

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

Specific reasons underlying the finding of necessity: The lower fly fishing catch and release area on the Salmon River is scheduled to open to fishing on September 15, 2012. This same portion of the Salmon River is a staging area for various species of fish, including Chinook and coho salmon as they prepare to enter the hatchery. In light of the drought conditions, the department has several concerns. First, the fish mortality rate associated with catch and release fishing, which is normally low, will increase during drought conditions. Warmer water temperatures and lower water levels place additional stress on fish and increase the likelihood that fish will not survive after catch and release. An increase in the fish mortality rate would be contrary to the purpose of catch and release fishing. Second, the low water levels and high concentrations of fish, conditions currently present in this portion of the Salmon River are not conducive to ethical fly fishing and would likely result in numerous fish being illegally hooked (snagged). Third, and most importantly, the department is responsible for ensuring that adequate numbers of fish will enter the department's hatchery on the Salmon River in order to provide eggs for the hatchery operations that support the Lake Ontario and tributaries fishery. If the fishery were to remain open, the first two concerns noted above could interfere with the department's ability to obtain sufficient numbers of fish at the hatchery.

In response to this situation, the department is delaying the opening of the lower fly fishing area until October 31, 2012. The egg take at the Salmon River Hatchery is scheduled to begin on or around October 9, 2012, so delaying the opening should help get adequate numbers of fish to enter the hatchery. In addition, water temperatures should be lower and, with some precipitation, base flows may be higher. If, prior to October 31, 2012, precipitation in the Salmon River system is sufficient to restore the base flow back to "normal" levels the department reserves the right to rescind this emergency regulation and reopen the lower fly fishing area.

Subject: Special fishing regulations for the Salmon River known as the "Lower Fly Fishing Area".

Purpose: To prevent salmon mortality due to drought conditions and to improve returns to the Salmon R. Hatchery to meet egg quota.

Text of emergency rule: Section 10.2 of Title 6 of the Official Compilation of New York Codes, Rules and Regulations, entitled Boundary water fishing regulations, is amended to read as follows:

Subdivision 10.2(g) of 6 NYCRR is amended to read as follows:

(g) Additional special fishing regulations for the Salmon River, Oswego County, from County Route 52 bridge upstream to Lighthouse Hill Reservoir. No person may fish at any time except from County Route 52 bridge in Altmar upstream to a marked boundary at Beaverdam Brook from [September 15] *October 31* through May 15, and from a marked boundary upstream of the New York State Salmon River Fish Hatchery property upstream approximately 0.6 mile to a marked boundary at the Lighthouse Hill Reservoir tailrace from April 1 through November 30. No person, while fishing in these places during these times, shall:

- (1) fish from one-half hour after sunset to one-half hour before sunrise;
- (2) use fishing tackle other than a traditional fly fishing rod, reel and line;
- (3) use other than single artificial flies, including weighted flies, which are permitted;

- (4) use a weighted fly with more than a one-eighth ounce added weight;
- (5) add weight to the line, leader, swivels or artificial fly in any manner such that the weight hangs lower than the attached fly when the line or leader is suspended vertically from the rod;
- (6) use less than 20 feet of floating, sinking, or combination floating/sinking flyline, or shooting head immediately behind the leader and in front of any running line or other backing;
- (7) use supplemental weight such that the weight is the primary means of propelling the cast rather than the fly line or shooting head;
- (8) use a hook with more than one hook point or with a gap of greater than one-half inch;
- (9) use a leader, including tippet, measuring in excess of 15 feet;
- (10) place additional weight on the line or leader, whether fixed or sliding at a distance exceeding four feet from the fly; and
- (11) fail to immediately release all fish without unnecessary injury.

This notice is intended to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires December 11, 2012.

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

Additional matter required by statute: A programmatic environmental impact statement is on file with the Department of Environmental Conservation.

Regulatory Impact Statement

1. Statutory authority: Sections 11-0303 and 11-0305 of the Environmental Conservation Law (ECL) authorize the Department of Environmental Conservation (department) to provide for the management and protection of the State's fisheries resources, taking into consideration ecological factors, public safety, and the safety and protection of private property. Sections 11-1301 and 11-1303 of the ECL empower the department to fix by regulation open seasons, size and catch limits, and the manner of taking of all species of fish, except certain species of marine fish (listed in section 13-0339 of the ECL), in all waters of the State.

2. Legislative objectives: Open seasons, size restrictions, daily creel limits, and restrictions regarding the manner of taking fish are the basic tools used by the department in achieving the Legislature's intent. The purpose of setting seasons is to prevent the over-exploitation of fish populations during vulnerable periods, such as during spawning, thereby insuring healthy fish populations. Size limits are necessary to maintain quality fisheries and to insure that adequate numbers survive to spawning size. Creel limits are used to distribute the harvest of fish among many anglers and angling days and to optimize resource benefits. Regulations governing the manner of taking fish enhance the quality of the recreational experience, provide for a variety of harvest techniques and angler preferences, and limit exploitation. Catch and release fishing regulations are used in waters capable of sustaining outstanding growth and survival of fish to reduce fishing mortality to the lowest possible level. Reduction of fishing mortality results in a larger population of desirable-sized fish and increases the quality of the recreational opportunities for anglers.

3. Needs and benefits: Subdivision 10.2(g) of 6 NYCRR designates catch and release, fly-fishing only areas on the Salmon River. The lower fly fishing catch and release area, which is 3 miles in length, is located in that portion of the Salmon River that lies immediately downstream of the Salmon River Hatchery and upstream of the County Rt. 52 bridge in Altmar. The upper boundary of the area is just downstream from Beaverdam Brook. Fish gain access to the department's Salmon River Hatchery from the Salmon River through Beaverdam Brook.

The Salmon River Reservoir is managed through a license from the Federal Energy Regulatory Commission (FERC) to provide year round base flows to the lower 18 miles of the Salmon River which is accessible to lake-run trout and salmon. The prescribed base flow for the fall salmon season is 335 cubic feet per second (cfs). The recent drought has left the reservoir at a near historic low level (14 feet below dam crest on 9/05/12) with no significant rain in the forecast. As a result, the executive committee of the Salmon River Flow Management Team recently agreed to conserve water in the reservoir and to keep the base flow in the Salmon River at 185 cfs (summer flow level), instead of raising it to the 335 cfs which is prescribed for this time of year.

The lower fly fishing, catch and release area on the Salmon River is scheduled to open to fishing on September 15, 2012. This same portion of the River is a staging area for various species of fish, including Chinook and coho salmon as they prepare to enter the hatchery. Salmon are already present in the staging area. In light of the drought conditions noted above, the department has several concerns. First, the fish mortality rate associated with catch and release fishing, which is normally low, will increase during drought conditions. Warmer water temperatures and lower water levels place additional stress on fish and increase the likelihood that fish

will not survive after catch and release. An increase in the fish mortality rate would be contrary to the purpose of catch and release fishing. Second, the low water levels and high concentrations of fish, conditions currently present in this portion of the Salmon River are not conducive to ethical fly fishing and would likely result in numerous fish being illegally hooked (snagged). Third, the department is responsible for ensuring that adequate numbers of fish will enter the department's hatchery on the Salmon River in order to provide eggs for the hatchery operations that support the Lake Ontario and tributaries fishery. If the fishery were to remain open, the first two concerns noted above could interfere with the department's ability to obtain sufficient numbers of fish at the hatchery.

In response to this situation, the department is delaying the opening of the lower fly fishing area until October 31, 2012. The egg take at the Salmon River Hatchery is scheduled to begin on or around October 9, 2012, so delaying the opening should help get adequate numbers of fish to enter the hatchery. In addition, water temperatures should be lower and, with some precipitation, base flows may be higher.

Although the department is hopeful that conditions will return to levels that will allow fishing to resume in this area.

4. Costs: Enactment of the emergency regulation described herein governing fishing will not result in increased expenditures by the State, local governments, or the general public.

5. Local government mandates: These amendments of 6 NYCRR will not impose any programs, services, duties or responsibilities upon any county, city, town, village, school district, or fire district.

6. Paperwork: No additional paperwork will be required as a result of these changes in regulations.

7. Duplication: There are no other State or federal regulations which govern the taking of fish.

8. Alternatives: The alternative to the regulation would be to retain the current fishing regulation, which the department does not find acceptable. In the absence of the change, adequate numbers of fish may not reach the Salmon River Hatchery for egg taking operations, fish may be vulnerable to large scale catch and release mortality, and a high concentration of fish would be exposed to conditions not conducive to ethical angling (i.e., snagging). A similar drought scenario played out in 2007 and the department was not able to obtain adequate numbers of fish at the hatchery. As a result the department was forced to travel to remote streamside locations in an effort to get eggs, resulting in significant additional expenditures of both time and money.

9. Federal standards: There are no minimum Federal standards that apply to the regulation of sportfishing.

10. Compliance schedule: This regulation will take effect immediately upon filing with the Department of State. Compliance with the closed period will be required as of September 15, 2012.

Regulatory Flexibility Analysis

1. Effect of rule: The rule is intended to protect brood fish staging below the Salmon River Hatchery and to avoid potential catch and release mortalities that would likely occur due to the low flow, high water temperature situation that currently exists. The rule would also eliminate unscrupulous fishing activity (i.e., snagging) that would likely occur given the current high density of fish in the area and the low flows.

2. Compliance requirements: The area would be closed to fishermen from September 15th (the scheduled opening day) until October 31st.

3. Professional services: NA

4. Compliance costs: NA

5. Economic and technological feasibility: A 2011 creel survey on the Salmon River estimated 112,109 angler trips for the entire river during the September through November time period. The fly fishing catch and release areas (upper and lower sections combined) accounted for about 10 percent of the overall fishing effort.

6. Minimizing adverse impact: The lower fly fishing catch and release fishing area is 1/4 of a mile in length which leaves anglers with approximately 15 miles of river to fish, including the upper fly fishing catch and release fishing area. The upper fly fishing catch and release fishing area is located upstream of the Salmon River Fish Hatchery, is open to fishing from April 1 through November 30, and provides anglers with a similar fishing opportunity as the lower fly fishing catch and release fishing area. The opening of the lower fly fishing catch and release fishing area is delayed only as long as is estimated to be necessary. The delay is intended to ensure sufficient numbers of Chinook salmon and coho salmon enter the Salmon River Fish Hatchery for spawning and egg-take purposes. Providing for an adequate egg take for hatchery operations in support of the Lake Ontario and tributary fisheries will benefit fishing-dependent businesses in future years as the fish resulting from the hatchery operations are available to be caught by anglers for the next four years.

7. Small business and local government participation: The department's outreach efforts on this rule making included notification to the area businesses that we are considering the rule. The department will issue a press release on the regulation change, and notification of the delayed open

season will be posted on the department's website www.dec.ny.gov In addition, department staff will seek to have the rule posted on Brookfield Power's Water line at www.h2oline.com/365123.asp, which is a web site that provides flow levels in the Salmon River and is very popular with anglers.

8. Cure period or other opportunity for ameliorative action: NA

Rural Area Flexibility Analysis

This emergency rule making will delay the open fishing season on a small portion of the Salmon River, 1/4 of a mile in length. Anglers have approximately 15 other miles of river to fish, including the upper fly fishing catch and release fishing area. The additional protection afforded fish destined for the egg take operations at the Salmon River Hatchery will help ensure that subsequent hatchery production resulting from these fish will support the Lake Ontario and Salmon River fisheries into the future. Hatchery operations are beneficial to the rural communities and the businesses in those communities that rely on robust fisheries. Therefore, the Department of Environmental Conservation has determined that this rule will not impose any significant adverse impact on rural areas.

The rule making simply closes an area to fishing for 46 days. Thus, the department has determined that this rule will not impose any reporting, record-keeping, or other compliance requirements on public or private entities in rural areas. Therefore, the department has concluded that a rural area flexibility analysis is not required.

Job Impact Statement

The department has determined that this emergency rule making will not have a substantial adverse impact on jobs and employment opportunities. The only jobs that could potentially be directly affected by this rule are fishing guides. While certain fishing guides may wish to take clients on this portion of the Salmon River, the effects are limited and temporary. This emergency rule making delays the opening for 46 days after the filing, for only a 1/4-mile portion of the Salmon River. There are approximately 15 additional miles of river not impacted by this rule making that are open to anglers and fishing guides.

Protection of the fish in the staging area prior to their entry into the Salmon River Hatchery will benefit angling businesses and jobs by ensuring that sufficient hatchery production will be available to support the fisheries in future years.

Therefore, the department has determined that a job impact statement is not required.

Department of Financial Services

EMERGENCY RULE MAKING

License, Financial Responsibility, Education and Test Requirements for Mortgage Loan Originators

I.D. No. DFS-40-12-00004-E

Filing No. 946

Filing Date: 2012-09-14

Effective Date: 2012-09-17

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

Action taken: Addition of Part 418 and Supervisory Procedures MB 109 and 110 to Title 3 NYCRR.

Statutory authority: Banking Law, art. 12-D

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

Specific reasons underlying the finding of necessity: Chapter 472 of the Laws of 2008, which requires mortgage loan servicers to be registered with the Superintendent of Financial Services (formerly the Superintendent of Banks), went into effect on July 1, 2009. These regulations implement the registration requirement and inform servicers of the details of the registration process so as to permit applicants to prepare, submit and review applications for registrations on a timely basis.

Excluding persons servicing loans made under the Power New York Act from the mortgage loan servicer rules is necessary to facilitate the immediate implementation of such loan program so that the anticipated energy efficiency benefits can be realized without delay.

Subject: License, financial responsibility, education and test requirements for mortgage loan originators.

Purpose: To require that persons or entities which service mortgage loans

on residential real property on or after July 1, 2009 be registered with the Superintendent of Financial Services (formerly the Superintendent of Banks).

Substance of emergency rule: Section 418.1 summarizes the scope and application of Part 418. It notes that Sections 418.2 to 418.11 implement the requirement in Article 12-D of the Banking Law that certain mortgage loan servicers ("servicers") be registered with the Superintendent of Financial Services (formerly the Superintendent of Banks), while Sections 418.12 and 418.13 set forth financial responsibility requirements that are applicable to both registered and exempt servicers. [Section 418.14 sets forth the transitional rules.]

Section 418.2 implements the provisions in Section 590(2)(b-1) of the Banking Law requiring registration of servicers and exempting mortgage bankers, mortgage brokers, and most banking and insurance companies, as well as their employees. Servicing loans made pursuant to the Power New York Act of 2011 is excluded. The Superintendent is authorized to approve other exemptions.

Section 418.3 contains a number of definitions of terms that are used in Part 418, including "Mortgage Loan", "Mortgage Loan Servicer", "Third Party Servicer" and "Exempted Person".

Section 418.4 describes the requirements for applying for registration as a servicer.

Section 418.5 describes the requirements for a servicer applying to open a branch office.

Section 418.6 covers the fees for application for registration as a servicer, including processing fees for applications and fingerprint processing fees.

Section 418.7 sets forth the findings that the Superintendent must make to register a servicer and the procedures to be followed upon approval of an application for registration. It also sets forth the grounds upon which the Superintendent may refuse to register an applicant and the procedure for giving notice of a denial.

Section 418.8 defines what constitutes a "change of control" of a servicer, sets forth the requirements for prior approval of a change of control, the application procedure for such approval and the standards for approval. The section also requires servicers to notify the Superintendent of changes in their directors or executive officers.

Section 418.9 sets forth the grounds for revocation of a servicer registration and authorizes the Superintendent, for good cause or where there is substantial risk of public harm, to suspend a registration for 30 days without a hearing. The section also provides for suspension of a servicer registration without notice or hearing upon non-payment of the required assessment. The Superintendent can also suspend a registration when a servicer fails to file a required report, when its surety bond is cancelled, or when it is the subject of a bankruptcy filing. If the registrant cures the deficiencies its registration can be reinstated. The section further provides that in all other cases, suspension or revocation of a registration requires notice and a hearing.

The section also covers the right of a registrant to surrender its registration, as well as the effect of revocation, termination, suspension or surrender of a registration on the obligations of the registrant. It provides that registrations will remain in effect until surrendered, revoked, terminated or suspended.

Section 418.10 describes the power of the Superintendent to impose fines and penalties on registered servicers.

Section 418.11 sets forth the requirement that applicants demonstrate five years of servicing experience as well as suitable character and fitness.

Section 418.12 covers the financial responsibility and other requirements that apply to applicants for servicer registration, registered servicers and exempted persons (other than insured depository institutions to which Section 418.13 applies). The financial responsibility requirements include a required net worth (as defined in the section) of at least \$250,000 plus 1/4 % of total loans serviced or, for a Third Party Servicer, 1/4 of 1% of New York loans serviced; (2) a corporate surety bond of at least \$250,000 and (3) a Fidelity and E&O bond in an amount that is based on the volume of New York mortgage loans serviced, with a minimum of \$300,000.

The Superintendent is empowered to waive, reduce or modify the financial responsibility requirements for certain servicers who service an aggregate amount of loans not exceeding \$4,000,000.

Section 418.13 exempts from the otherwise applicable net worth and surety bond requirements, but not the Fidelity and E&O bond requirements, entities that are subject to the capital requirements applicable to insured depository institutions and that are considered at least adequately capitalized.

Section 418.14 provides a transitional period for registration of mortgage loan servicers. A servicer doing business in this state on June 30, 2009 which files an application for MLS registration by July 31, 2009 will be deemed in compliance with the registration requirement until notified that its application has been denied. A person who is required to register as a servicer solely because of the changes in the provisions of the

rule regarding use of third party servicers which became effective on August 23, 2011 and who files an application for registration within 30 days thereafter will not be required to register until six months from the effective date of the amendment or until the application is denied, whichever is earlier.

Section 109.1 defines a number of terms that are used in the Supervisory Procedure.

Section 109.2 contains a general description of the process for registering as a mortgage loan servicer ("servicer") and contains information about where the necessary forms and instructions may be found.

Section 109.3 lists the documents to be included in an application for servicer registration, including the required fees. It also sets forth the execution and attestation requirements for applications. The section makes clear that the Superintendent of Financial Services (formerly the Superintendent of Banks) can require additional information or an in person conference, and that the applicant can submit additional pertinent information.

Section 109.4 describes the information and documents required to be submitted as part of an application for registration as a servicer. This includes various items of information about the applicant and its regulatory history, if any, information demonstrating compliance with the applicable financial responsibility and experience requirements, information about the organizational structure of the applicant, and other documents, such as fingerprint cards and background reports.

Section 110.1 defines a number of terms that are used in the Supervisory Procedure.

Section 110.2 contains a general description of the process for applying for approval of a change of control of a mortgage loan servicer ("servicer") and contains information about where the necessary forms and instructions may be found.

Section 110.3 lists the documents to be included in an application for approval of a change of control of a servicer, including the required fees. It sets forth the time within which the Superintendent of Financial Services (formerly the Superintendent of Banks) must approve or disapprove an application. It also sets forth the execution and attestation requirements for applications. The section makes clear that the Superintendent can require additional information or an in person conference, and that the applicant can submit additional pertinent information. Last, the section lists the types of changes in a servicer's operations resulting from a change of control which should be notified to the Department of Financial Services (formerly the Banking Department).

Section 110.4 describes the information and documents required to be submitted as part of an application for approval of a change of control of servicer. This includes various items of information about the applicant and its regulatory history, if any, information demonstrating continuing compliance with the applicable financial responsibility and experience requirements, information about the organizational structure of the applicant, a description of the acquisition and other documents regarding the applicant, such as fingerprint cards and background reports.

This notice is intended to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires December 12, 2012.

Text of rule and any required statements and analyses may be obtained from: Sam L. Abram, New York State Department of Financial Services, One State Street, New York, NY 10004-1417, (212) 709-1658, email: sam.abram@dfs.ny.gov

Regulatory Impact Statement

1. Statutory authority.

Article 12-D of the Banking Law, as amended by the Legislature in the Subprime Lending Reform Law (Ch. 472, Laws of 2008, hereinafter, the "Subprime Law"), creates a framework for the regulation of mortgage loan servicers. Mortgage loan servicers (MLS) are individuals or entities which engage in the business of servicing mortgage loans for residential real property located in New York. That legislation also authorizes the adoption of regulations implementing its provisions. (See, e.g., Banking Law Sections 590(2) (b-1) and 595-b.)

Subsection (1) of Section 590 of the Banking Law was amended by the Subprime Law to add the definitions of "mortgage loan servicer" and "servicing mortgage loans". (Section 590(1)(h) and Section 590(1)(i).)

A new paragraph (b-1) was added to Subdivision (2) of Section 590 of the Banking Law. This new paragraph prohibits a person or entity from engaging in the business of servicing mortgage loans without first being registered with the Superintendent of Financial Services (formerly the Superintendent of Banks). The registration requirements do not apply to an "exempt organization," licensed mortgage banker or registered mortgage broker.

This new paragraph also authorizes the Superintendent to refuse to register an MLS on the same grounds as he or she may refuse to register a mortgage broker under Banking Law Section 592-a(2).

Subsection (3) of Section 590 was amended by the Subprime Law to

clarify the power of the banking board to promulgate rules and regulations and to extend the rulemaking authority regarding regulations for the protection of consumers and regulations to define improper or fraudulent business practices to cover mortgage loan servicers, as well as mortgage bankers, mortgage brokers and exempt organizations. (Note that under Section 89 of Part A of Chapter 62 of the Laws of 2011, the functions and powers of the banking board have been transferred to the Superintendent.)

New Paragraph (d) was added to Subsection (5) of Section 590 by the Subprime Law and requires mortgage loan servicers to engage in the servicing business in conformity with the Banking Law, such rules and regulations as may be prescribed by the Superintendent, and all applicable federal laws, rules and regulations.

New Subsection (1) of Section 595-b was added by the Subprime Law and requires the Superintendent to promulgate regulations and policies governing the grounds to impose a fine or penalty with respect to the activities of a mortgage loan servicer. Also, the Subprime Law amends the penalty provision of Subdivision (1) of Section 598 to apply to mortgage loan servicers as well as to other entities.

New Subdivision (2) of Section 595-b was added by the Subprime Law and authorizes the Superintendent to prescribe regulations relating to disclosure to borrowers of interest rate resets, requirements for providing payoff statements, and governing the timing of crediting of payments made by the borrower.

Section 596 was amended by the Subprime Law to extend the Superintendent's examination authority over licensees and registrants to cover mortgage loan servicers. The provisions of Banking Law Section 36(10) making examination reports confidential are also extended to cover mortgage loan servicers.

Similarly, the books and records requirements in Section 597 covering licensees, registrants and exempt organizations were amended by the Subprime Law to cover servicers and a provision was added authorizing the Superintendent to require that servicers file annual reports or other regular or special reports.

The power of the Superintendent to require regulated entities to appear and explain apparent violations of law and regulations was extended by the Subprime Law to cover mortgage loan servicers (Subdivision (1) of Section 39), as was the power to order the discontinuance of unauthorized or unsafe practices (Subdivision (2) of Section 39) and to order that accounts be kept in a prescribed manner (Subdivision (5) of Section 39).

Finally, mortgage loan servicers were added to the list of entities subject to the Superintendent's power to impose monetary penalties for violations of a law, regulation or order. (Paragraph (a) of Subdivision (1) of Section 44).

The fee amounts for MLS registration applications and for MLS branch applications are established in accordance with Banking Law Section 18-a. 2. Legislative objectives.

The Subprime Law is intended to address various problems related to residential mortgage loans in this State. The Subprime Law reflects the view of the Legislature that consumers would be better protected by the supervision of mortgage loan servicing. Even though mortgage loan servicers perform a central function in the mortgage industry, there had previously been no general regulation of servicers by the state or the Federal government.

The Subprime Law requires that entities be registered with the Superintendent in order to engage in the business of servicing mortgage loans in this state. The law further requires mortgage loan servicers to engage in the business of servicing mortgage loans in conformity with the rules and regulations promulgated by the Superintendent.

The mortgage servicing statute has two main components: (i) the first component addresses the registration requirement for persons engaged in the business of servicing mortgage loans; and (ii) the second authorizes the Superintendent to promulgate appropriate rules and regulations for the regulation of servicers in this state.

The regulations implement the first component of the mortgage servicing statute - the registration of mortgage servicers. In doing so, the rule utilizes the authority provided to the Superintendent to set standards for the registration of such entities. For example, the rule requires that a potential loan servicer would have to provide, under Sections 418.11 to 418.13 of the proposed regulations, evidence of their character and fitness to engage in the servicing business and demonstrate to the Superintendent their financial responsibility. The rule also utilizes the authority provided by the Legislature to revoke, suspend or otherwise terminate a registration or to fine or penalize a registered mortgage loan servicer.

Consistent with this requirement, the rule authorizes the Superintendent to refuse to register an applicant if he/she shall find that the applicant lacks the requisite character and fitness, or any person who is a director, officer, partner, agent, employee, substantial stockholder of the applicant has been convicted of certain felonies. These are the same standards as are applicable to mortgage bankers and mortgage brokers in New York. (See Section 418.7).

Further, in carrying out the Legislature's mandate to regulate the mortgage servicing business, Section 418.8 sets out certain application requirements for prior approval of a change in control of a registered mortgage loan servicer and notification requirements for changes in the entity's executive officers and directors. Collectively, these various provisions implement the intent of the Legislature to register and supervise mortgage loan servicers.

The Department has separately adopted emergency regulations dealing with business conduct and consumer protection requirements for MLSs. (3 NYCRR Part 419).

3. Needs and benefits.

The Subprime Law adopted a multifaceted approach to the lack of supervision of the mortgage loan industry. It affected a variety of areas in the residential mortgage loan industry, including: i. loan originations; ii. loan foreclosures; and iii. the conduct of business by residential mortgage loans servicers.

Previously, the Department of Financial Services (formerly the Banking Department) regulated the brokering and making of mortgage loans, but not the servicing of these mortgage loans. Servicing is vital part of the residential mortgage loan industry; it involves the collection of mortgage payments from borrowers and remittance of the same to owners of mortgage loans; to governmental agencies for taxes; and to insurance companies for insurance premiums. Mortgage servicers also may act as agents for owners of mortgages in negotiations relating to modifications. As "middlemen," moreover, servicers also play an important role when a property is foreclosed upon. For example, the servicer may typically act on behalf of the owner of the loan in the foreclosure proceeding.

Further, unlike in the case of a mortgage broker or a mortgage lender, borrowers cannot "shop around" for loan servicers, and generally have no input in deciding what company services their loans. The absence of the ability to select a servicer obviously raises concerns over the character and viability of these entities given the central part of they play in the mortgage industry. There also is evidence that some servicers may have provided poor customer service. Specific examples of these activities include: pyramiding late fees; misapplying escrow payments; imposing illegal prepayment penalties; not providing timely and clear information to borrowers; and erroneously force-placing insurance when borrowers already have insurance.

While minimum standards for the business conduct of servicers is the subject of another emergency regulation which has been promulgated by the Department. (3 NYCRR Part 419) Section 418.2 makes it clear that persons exempted by from the registration requirement must notify the Department that they are servicing mortgage loans and must otherwise comply with the regulations.

As noted above, these regulations relate to the first component of the mortgage servicing statute - the registration of mortgage loan servicers. It is intended to ensure that only those persons and entities with adequate financial support and sound character and general fitness will be permitted to register as mortgage loan servicers.

Further, consumers in this state will also benefit under these regulations because in the event there is an allegation that a mortgage servicer is involved in wrongdoing and the Superintendent finds that there is good cause, or that there is a substantial risk of public harm, he or she can suspend such mortgage servicer for 30 days without a hearing. And in other cases, he or she can suspend or revoke such mortgage servicer's registration after notice and a hearing. Also, the requirement that servicers meet minimum financial standards and have performance and other bonds will act to ensure that consumers are protected.

As noted above, the MLS regulations are divided into two parts. The Department had separately adopted emergency regulations dealing with business conduct and consumer protection requirements for MLSs. (3 NYCRR Part 419).

All Exempt Organizations, mortgage bankers and mortgage brokers that perform mortgage loan servicing with respect to New York mortgages must notify the Superintendent that they do so, and will be required to comply with the conduct of business and consumer protection rules applicable to MLSs.

Under Section 418.2, a person servicing loans made under the Power New York Act of 2011 will not thereby be considered to be engaging in the business of servicing mortgage loans. Consequently, a person would not be subject to the rules applicable to MLSs by reason of servicing such loans.

4. Costs.

The mortgage business will experience some increased costs as a result of the fees associated with MLS registration. The amount of the application fee for MLS registration and for an MLS branch application is \$3,000.

The amount of the fingerprint fee is set by the State Division of Criminal Justice Services and the processing fees of the National Mortgage Licensing System are set by that body. MLSs will also incur administrative costs associated with preparing applications for registration.

The ability by the Department to regulate mortgage loan servicers is expected to reduce costs associated with responding to consumers' complaints, decrease unnecessary expenses borne by mortgagors, and, through the timely response to consumers' inquiries, should assist in decreasing the number of foreclosures in this state.

The regulations will not result in any fiscal implications to the State. The Department is funded by the regulated financial services industry. Fees charged to the industry will be adjusted periodically to cover Department expenses incurred in carrying out this regulatory responsibility.

5. Local government mandates.

None.

6. Paperwork.

An application process has been established for potential mortgage loan servicers to apply for registration electronically through the National Mortgage Licensing System and Registry (NMLSR) - a national system, which currently facilitates the application process for mortgage brokers, bankers and loan originators. Therefore, the application process is virtually paperless; however, a limited number of documents, including fingerprints where necessary, would have to be submitted to the Department in paper form.

The specific procedures that are to be followed in order to apply for registration as a mortgage loan servicer are detailed in Supervisory Procedure MB 109.

7. Duplication.

The regulation does not duplicate, overlap or conflict with any other regulations.

An exemption was created under Section 418.13, from the otherwise applicable net worth and surety bond requirements, for entities that are subject to the capital requirements applicable to insured depository institutions and are considered adequately capitalized.

8. Alternatives.

The purpose of the regulation is to carry out the statutory mandate to register mortgage loan servicers while at the same time avoiding overly complex and restrictive rules that would have imposed unnecessary burdens on the industry. The Department is not aware of any alternative that is available to the instant regulations. The Department also has been cognizant of the possible burdens of this regulation, and it has accordingly concluded that an exemption from the registration requirement for persons or entities that are involved in a de minimis amount of servicing would address the intent of the statute without imposing undue burdens those persons or entities.

The procedure for suspending servicers that violate certain financial responsibility or customer protection requirements, which provides a 90-day period for corrective action, during which there can be an investigation and hearing on the existence of other violations, provides flexibility to the process of enforcing compliance with the statutory requirements.

9. Federal standards.

Currently, mortgage loan servicers are not required to be registered by any federal agencies. However, although not a registration process, in order for any mortgage loan servicer to service loans on behalf of certain federal instrumentalities such servicers have to demonstrate that they have specific amounts of net worth and have in place Fidelity and E&O bonds.

These regulations exceed those minimum standards, in that, a mortgage loan servicer will now have to demonstrate character and general fitness in order to be registered as a mortgage loan servicer. In light of the important role of a servicer - collecting consumers' money and acting as agents for mortgagees in foreclosure transactions - the Department believes that it is imperative that servicers be required to meet this heightened standard.

10. Compliance schedule.

The emergency regulations will become effective on September 17, 2012. Similar emergency regulations have been in effect since July 1, 2009.

The Department expects to approve or deny applications within 90 days of the Department's receipt (through NMLSR) of a completed application.

A transitional period is provided for mortgage loan servicers which were doing business in this state on June 30, 2009 and which filed an application for registration by July 31, 2009. Such servicers will be deemed in compliance with the registration requirement until notified by the Superintendent that their application has been denied.

Additionally, the version of Part 418 adopted on an emergency basis effective August 5, 2011 requires holders of mortgage servicing rights to register as mortgage loans servicers even where they have sub-contracted servicing responsibilities to a third-party servicer. Such servicers were given until October 15, 2011 to file an application for registration.

Regulatory Flexibility Analysis

1. Effect of the Rule:

The emergency rule will not have any impact on local governments. It is estimated that there are approximately 120 mortgage loan servicers in the state which are not mortgage bankers, mortgage brokers or exempt organizations, and which are therefore required to register under the

Subprime Lending Reform Law (Ch. 472, Laws of 2008) (the “Subprime Law”) Of these, it is estimated that a very few of the remaining entities will be deemed to be small businesses.

2. Compliance Requirements:

The provisions of the Subprime Law relating to mortgage loan servicers has two main components: it requires the registration by the Department of Financial Services (formerly the Banking Department) of servicers who are not mortgage bankers, mortgage brokers or exempt organizations (the “MLS Registration Regulations”), and it authorizes the Department to promulgate rules and regulations that are necessary and appropriate for the protection of consumers, to define improper or fraudulent business practices, or otherwise appropriate for the effective administration of the provisions of the Subprime Law relating to mortgage loan servicers (the “MLS Business Conduct Regulations”).

The provisions of the Subprime Law requiring registration of mortgage loan servicers which are not mortgage bankers, mortgage brokers or exempt organizations became effective on July 1, 2009. The emergency MLS Registration Regulations here adopted implement that statutory requirement by providing a procedure whereby MLSs can apply to be registered and standards and procedures for the Department to approve or deny such applications. The emergency regulations also set forth financial responsibility standards applicable to applicants for MLS registration, registered MLSs and servicers which are exempted from the registration requirement.

Additionally, the regulations set forth standards and procedures for Department action on applications for approval of change of control of an MLS. Finally, the emergency regulations set forth standards and procedures for, suspension, revocation, expiration, termination and surrender of MLS registrations, as well as for the imposition of fines and penalties on MLSs.

3. Professional Services:

None.

4. Compliance Costs:

Applicants for mortgage loan servicer registration will incur administrative costs associated with preparing applications for registration. Applicants, registered MLSs and mortgage loan servicers exempted from the registration requirement may incur costs in complying with the financial responsibility regulations. Registration fees of \$3000, plus fees for fingerprint processing and participation in the National Mortgage Licensing System and Registry (NMLS) will be required of non-exempt servicers.

5. Economic and Technological Feasibility:

The emergency rule-making should impose no adverse economic or technological burden on mortgage loan servicers who are small businesses. The NMLS is now available. This technology will benefit registrants by saving time and paperwork in submitting applications, and will assist the Department by enabling immediate tracking, monitoring and searching of registration information; thereby protecting consumers.

6. Minimizing Adverse Impacts:

The regulations minimize the costs and burdens of the registration process by utilizing the internet-based NMLS, developed by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators. This system uses an on-line application form for servicer registration. A common form will be accepted by New York and the other participating states.

As noted above, most servicers are not small businesses. As regards servicers that are small businesses and not otherwise exempted, the regulations give the Superintendent of Financial Services (formerly the Superintendent of Banks) the authority to reduce, waive or modify the financial responsibility requirements for entities that do a de minimis amount of servicing.

7. Small Business and Local Government Participation:

Industry representatives have participated in outreach programs regarding regulation of servicers. The Department also maintains continuous contact with large segments of the servicing industry through its regulation of mortgage bankers and brokers. The Department likewise maintains close contact with a variety of consumer groups through its community outreach programs and foreclosure mitigation programs. In response to comments received regarding earlier versions of this regulation, the Department has modified the financial responsibility requirements. The revised requirements should generally be less burdensome for mortgage loan servicers, particularly smaller servicers and those located in rural areas.

Rural Area Flexibility Analysis

Types and Estimated Numbers. Approximately 70 mortgage loan servicers have been registered by the Department of Financial Services or have applied for registration. Very few of these entities operate in rural areas of New York State and of those, most are individuals that do a de minimis business. As discussed below, the Superintendent can modify the requirements of the regulation in such cases.

Compliance Requirements. Mortgage loan servicers in rural areas which are not mortgage bankers, mortgage brokers or exempt organizations must be registered with the Superintendent to engage in the business of mortgage loan servicing. An application process will be established requiring a MLS to apply for registration electronically and to submit additional background information and fingerprints to the Mortgage Banking unit of the Department.

MLSs are required to meet certain financial responsibility requirements based on their level of business. The regulations authorize the Superintendent of Financial Services (formerly the Superintendent of Banks) to reduce or waive the otherwise applicable financial responsibility requirements in the case of MLSs which service not more than \$4,000,000 in aggregate mortgage loans in New York and which do not collect tax or insurance payments. The Superintendent is also authorized to reduce or waive the financial responsibility requirements in other cases for good cause. The Department believes that this will ameliorate any burden which those requirements might otherwise impose on entities operating in rural areas.

Costs. The mortgage business will experience some increased costs as a result of the fees associated with MLS registration. The application fee for MLS registration will be \$3,000. The amount of the fingerprint fee is set by the State Division of Criminal Justice Services and the processing fees of the National Mortgage Licensing System and Registry (“NMLSR”) are set by that body. Applicants for mortgage loan servicer registration will also incur administrative costs associated with preparing applications for registration.

Applicants, registered MLSs and mortgage loan servicers exempted from the registration requirement may incur costs in complying with the financial responsibility regulations.

Minimizing Adverse Impacts. The regulations minimize the costs and burdens of the registration process by utilizing the internet-based NMLSR, developed by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators. This system uses an on-line application form for servicer registration. A common form will be accepted by New York and the other participating states.

Of the servicers which operate in rural areas, it is believed that most are mortgage bankers, mortgage brokers or exempt organizations. Additionally, in the case of servicers that operate in rural areas and are not otherwise exempted, the Superintendent has the authority to reduce, waive or modify the financial responsibility requirements for individuals that do a de minimis amount of servicing.

Rural Area Participation. Industry representatives have participated in outreach programs regarding regulation of servicers. The Department also maintains continuous contact with large segments of the servicing industry through its regulation of mortgage bankers and brokers. The Department likewise maintains close contact with a variety of consumer groups through its community outreach programs and foreclosure mitigation programs. In response to comments received regarding earlier versions of this regulation, the Department has modified the financial responsibility requirements. The revised requirements should generally be less burdensome for mortgage loan servicers, particularly smaller servicers and those located in rural areas.

Job Impact Statement

Article 12-D of the Banking Law, as amended by the Subprime Lending Reform Law (Ch. 472, Laws of 2008), requires persons and entities which engage in the business of servicing mortgage loans to be registered with the Superintendent of Financial Services (formerly the Superintendent of Banks). This emergency regulation sets forth the application, exemption and approval procedures for registration as a Mortgage Loan servicer (MLS), as well as financial responsibility requirements for applicants, registrants and exempted persons. The regulation also establishes requirements with respect to changes of officers, directors and/or control of MLSs and provisions with respect to suspension, revocation, termination, expiration and surrender of MLS registrations.

The requirement to comply with the emergency regulations is not expected to have a significant adverse effect on jobs or employment activities within the mortgage loan servicing industry. Many of the larger entities engaged in the mortgage loan servicing business are already subject to oversight by the Department of Financial Services (formerly the Banking Department) and exempt from the new registration requirement. Additionally, the regulations give the Superintendent the authority to reduce, waive or modify the financial responsibility requirements for entities that do a de minimis amount of servicing.

The registration process itself should not have an adverse effect on employment. The regulations require the use of the internet-based National Mortgage Licensing System and Registry, developed by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators. This system uses a common on-line application for servicer registration in New York and other participating states. It is believed that any remaining adverse impact would be due primarily to the

nature and purpose of the statutory registration requirement rather than the provisions of the emergency regulations.

Department of Health

EMERGENCY RULE MAKING

Nursing Home Sprinklers

I.D. No. HLT-36-12-00005-E

Filing No. 940

Filing Date: 2012-09-12

Effective Date: 2012-09-12

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

Action taken: Addition of section 86-2.41 to Title 10 NYCRR.

Statutory authority: Public Health Law, section 2803(2)

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

Specific reasons underlying the finding of necessity: It is necessary to issue the proposed regulations on an emergency basis in order to ensure financially challenged nursing homes can secure the loans required to finance and perform the necessary work required to purchase and install a Federally compliant sprinkler system on or before August 13, 2013. Providing nursing homes as much time as possible to meet the Federal requirements will protect the health and safety of nursing homes residents by maintaining access to care and ensuring that financially distressed nursing homes avoid penalties for non-compliance (i.e., civil monetary penalties, the denial of Medicare and Medicaid payment for new admissions, and the termination of Medicaid and Medicare provider certifications).

Subject: Nursing Home Sprinklers.

Purpose: To assist eligible nursing homes with accessing credit markets to finance the costs of installing automatic sprinkler systems.

Text of emergency rule: Pursuant to the authority vested in the Public Health and Health Planning Council and the Commissioner of Health by section 2803(2) of the Public Health Law, Subpart 86-2 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York, is amended by adding a new section 86-2.41 to be effective upon filing with the Secretary of State, to read as follows:

86-2.41 Sprinkler systems

(a) Subject to the availability of federal financial participation, the capital cost components of the rates of eligible residential health care facilities for periods on and after the effective date of this regulation shall be adjusted in accordance with the following:

(1) For the purposes of this section, eligible facilities are those facilities which the commissioner determines are financially distressed in terms of their being unable to finance, at terms acceptable to the commissioner, the installation of automatic sprinkler systems, in conformity with the provisions of federal regulations set forth in 42 CFR 483.70(a)(8). In making such determinations of eligibility the commissioner shall consider information obtained from a facility's cost report, other more recent financial information to be provided by the facility, and such other information as may be required by the commissioner, including, but not limited to:

- (i) operating profits and losses;
- (ii) eligibility for funding pursuant to subdivision twenty-one of section 2808 of the Public Health Law;
- (iii) unrestricted fund balances;
- (iv) documentation demonstrating the inability of the facility to obtain credit, at terms acceptable to the commissioner, without the reimbursement treatment accorded pursuant to this section;
- (v) working capital;
- (vi) days of cash expense on hand;
- (vii) days of revenue in accounts receivable;
- (viii) transfers and withdrawals;
- (ix) information related to the health and safety of a facility's residents;
- (x) other financial information as may be required from the facility by the commissioner; and
- (xi) the filing of a Notice pursuant to Subdivision 1-a of Section 2802 of the Public Health Law, or the receipt of required CON approvals, as appropriate.

(2) The capital cost component of the Medicaid rates of each eligible facility shall be adjusted in an amount, as determined by the commissioner, to reflect the costs of the annual debt service related to the financing of equipment and other capital improvements directly related to the financing of an automatic sprinkler system that will be in compliance with applicable federal regulations.

(3) As a condition for receipt of funding pursuant to this section, each eligible facility shall submit to the commissioner the costs of the project, the proposed terms of the financing, including interest rate and term of the financing, and a schedule setting forth by month the estimated debt service payable over the life of the financing. Such schedule, along with such other information as may be required by the commissioner, shall be provided to the commissioner for review and approval at least sixty days prior to the due date of such first debt service payment, or such shorter period as the commissioner may permit.

(4) As a condition for receipt of funding pursuant to this section, Medicaid revenues attributable to the rate adjustments authorized by this section and any other additional facility revenues needed to cover scheduled debt service payments relating to the financing of an automatic sprinkler system that is in compliance with federal regulation as described in this section, shall be deposited into a separate account maintained by the facility and the deposits in such account shall be used solely for the purpose of satisfying such debt service payments.

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. HLT-36-12-00005-P, Issue of September 5, 2012. The emergency rule will expire November 10, 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: regsqa@health.state.ny.us

Regulatory Impact Statement

Statutory Authority:

The statutory authority for this regulation is contained in the authority vested in the Public Health and Health Planning Council and the Commissioner of Health by section 2803(2) of the Public Health Law, which authorizes the Council to "adopt and amend rules and regulations, subject to the approval of the commissioner" and which further provides that such rules may address the "establishment...of rates, payments, reimbursements, grants and other charges..." for medical facilities, including nursing homes.

Legislative Objectives:

Federal regulations require that on or before August 13, 2013, all nursing homes be protected throughout by a supervised automatic sprinkler system. Subpart 86-2 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York, is amended by adding a new section 2.41 to assist eligible nursing homes (i.e., those which are determined to be financially distressed) with accessing the credit markets to finance the costs of equipment and other capital costs directly related to the installation of an automatic sprinkler system that is compliant with the Federal regulations. To provide an immediate source of revenue to financially distressed nursing homes to pay the debt service on loans to finance sprinkler systems, the Medicaid capital rate will be adjusted to accelerate the reimbursement of such costs (e.g., reimbursement will begin in 2012 rather than 2014 – the normal 2 year lag under which capital reimbursement normally occurs). In addition, to provide assurance to prospective lenders that such funds will be available to pay debt service, the proposed regulation also requires eligible facilities to deposit in a separate account Medicaid revenues attributable to the capital rate adjustments for sprinklers, and other facility revenues as may be required to cover 100% of debt service payments due. The funds held in such separate account may only be used for the purpose of paying the debt service on the outstanding sprinkler loans. The Department of Health estimates there are approximately 98 nursing homes that are financially distressed and that do not meet the Federal mandate for sprinklers.

Needs and Benefits:

Federal regulations require that all nursing homes be protected by an automatic sprinkler system. There are roughly 98 nursing homes that are not compliant with the Federal mandate and that are estimated to be financially distressed (as described by the criteria established in the regulation). This regulation will ensure that the health and safety of nursing homes residents is protected and access to care is maintained by ensuring that financially distressed nursing homes avoid penalties for non-compliance (i.e., civil monetary penalties, the denial of Medicare and Medicaid payment for new admissions, the termination of Medicaid and Medicare provider certifications).

Costs to Private Regulated Parties:

There will be no additional costs to private regulated parties.

Costs to State Government:

There is no additional aggregate increase in Medicaid expenditures anticipated as a result of these regulations. The acceleration of the reimbursement of Medicaid capital costs anticipated by this provision will be accommodated in the nursing home appeals cap and in the processing of annual capital rates. Depending on the terms of the financing, it is likely the acceleration of capital costs will reduce over the life debt service costs and result in long term savings for the State.

Costs to Local Government:

Local districts' share of Medicaid costs is statutorily capped; therefore, there will be no additional costs to local governments as a result of this proposed regulation.

Costs to the Department of Health:

There will be no additional costs to the Department of Health as a result of this proposed regulation.

Local Government Mandates:

The regulation does not impose any new programs, services, duties or responsibilities upon any county, city, town, village, school district, fire district or other special district.

Paperwork:

The regulation will require nursing homes to apply to the Department to determine if they meet the financially challenged criteria established by the regulation and to submit a schedule of debt service payments. This additional paperwork is expected to be minimal, as the Department will primarily use information already required to be submitted by nursing homes (i.e., annual cost report data) to determine eligibility and to reimburse capital costs.

Duplication:

These regulations do not duplicate existing state or federal regulations. These regulations will assist financially distressed nursing homes with meeting the requirements of an existing federal regulation for sprinkler systems.

Alternatives:

The regulation is prompted by the requirement that nursing homes comply with the Federal mandate for sprinklers and the lack of alternative financing vehicles for financially distressed homes that cannot, in the absence of this regulation, independently access the credit markets. Absent this regulation, nursing homes that are unable to comply with the Federal mandate are at risk for losing their provider certifications.

Federal Standards:

The regulation will assist nursing homes with meeting an existing Federal mandate which requires nursing homes to be equipped with an automatic sprinkler system.

Compliance Schedule:

This proposed regulation will help nursing homes meet the August 13, 2013 deadline for becoming compliant with Federal regulations that require homes to be equipped with an automatic sprinkler system.

Regulatory Flexibility Analysis

Effect of Rule:

For the purpose of this regulatory flexibility analysis, small businesses were considered to be residential health care facilities with 100 or fewer employees. Based on recent financial and statistical data extracted from Residential Health Care Facility Cost Reports, approximately 60 residential health care facilities (i.e., nursing homes) were identified as employing fewer than 100 employees. It is estimated that 7 of these small business nursing homes are not currently compliant with Federal regulations requiring automatic sprinklers and will meet the financially distressed criteria established by this regulation.

This rule will have no direct effect on local governments.

Compliance Requirements:

There are no new compliance requirements. The regulation will assist financially distressed nursing homes, 7 of which are estimated to be small businesses, with meeting an existing Federal mandate which requires all nursing homes be protected throughout by an automatic sprinkler system.

Professional Services:

No new or additional professional services are required by small business nursing homes to apply to the Department to determine if they are eligible to receive accelerated Medicaid reimbursement of capital costs for sprinklers.

Compliance Costs:

There are no new compliance costs. The regulation will assist financially distressed nursing homes, 7 of which are estimated to be small businesses, with meeting an existing Federal mandate which requires all nursing homes be protected throughout by an automatic sprinkler system.

Economic and Technological Feasibility:

The proposed rule doesn't require additional technological or economic requirements.

Minimizing Adverse Impact:

This regulation will assist homes, some of which will be small businesses as described above, with meeting the requirements of Federal

regulations that mandate all nursing homes be protected by an automatic sprinkler system. Assisting nursing homes (including nursing homes which are small businesses), with meeting this mandate will minimize the adverse implications of failing to comply, which include potentially jeopardizing the health and safety of nursing home residents, civil monetary penalties, the denial of Medicare and Medicaid payment for new admissions, and the termination of Medicaid and Medicare provider certifications.

Small Business and Local Government Participation:

The Department, in collaboration with the Nursing Home Industry Associations (which include representation of small business nursing homes) worked collaboratively to develop the regulation. In addition, a Federal Public Notice, published in the New York State Register invited comments and questions from the general public.

Rural Area Flexibility Analysis

Effect on Rural Areas:

Rural areas are defined as counties with populations less than 200,000 and, for counties with populations greater than 200,000, include towns with population densities of 150 persons or less per square mile. The following 43 counties have populations of less than 200,000:

Allegany	Hamilton	Schenectady
Cattaraugus	Herkimer	Schoharie
Cayuga	Jefferson	Schuyler
Chautauqua	Lewis	Seneca
Chemung	Livingston	Steuben
Chenango	Madison	Sullivan
Clinton	Montgomery	Tioga
Columbia	Ontario	Tompkins
Cortland	Orleans	Ulster
Delaware	Oswego	Warren
Essex	Otsego	Washington
Franklin	Putnam	Wayne
Fulton	Rensselaer	Wyoming
Genesee	St. Lawrence	Yates
Greene		

The following nine counties have certain townships with population densities of 150 persons or less per square mile:

Albany	Erie	Oneida
Broome	Monroe	Onondaga
Dutchess	Niagara	Orange

Compliance Requirements:

There are no new compliance requirements. The regulation will assist approximately 98 financially distressed nursing homes that are located across the State, including in many of the counties listed above, with meeting an existing Federal mandate which requires all nursing homes be protected throughout by an automatic sprinkler system.

Professional Services:

No new or additional professional services are required by nursing homes located in rural areas to apply to the Department to determine if they are eligible to receive accelerated Medicaid reimbursement of capital costs for sprinklers.

Compliance Costs:

No additional compliance costs are anticipated as a result of this regulation. The regulation will assist financially distressed nursing homes located across the State, including in many of the counties listed above, with meeting an existing Federal mandate which requires all nursing homes be protected throughout by an automatic sprinkler system.

Minimizing Adverse Impact:

This regulation will assist nursing homes located across the State, with meeting the requirements of Federal regulations that mandate all nursing homes be protected by an automatic sprinkler system. Assisting nursing homes (including nursing homes located in many of the counties listed above), with meeting this mandate will minimize the adverse implications of failing to comply, which include potentially jeopardizing the health and safety of nursing home residents, civil monetary penalties, the denial of Medicare and Medicaid payment for new admissions, and the termination of Medicaid and Medicare provider certifications.

Rural Area Participation:

The Department, in collaboration with the Nursing Home Industry As-

sociations (which include representation of rural nursing homes) worked collaboratively to develop the regulation. In addition, a Federal Public Notice, published in the New York State Register invited comments and questions from the general public.

Job Impact Statement

A Job Impact Statement is not required pursuant to Section 201-a(2)(a) of the State Administrative Procedure Act. It is not expected that the proposed rule to accelerate capital reimbursement for costs related to the installation of automatic sprinkler systems will have a material impact on jobs or employment opportunities across the Nursing Home industry.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Quality Assurance Requirements for Medical Use of Radioactive Materials and Radiation Therapy

I.D. No. HLT-40-12-00001-P

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

Proposed Action: Amendment of Part 16 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 225

Subject: Quality Assurance Requirements for Medical Use of Radioactive Materials and Radiation Therapy.

Purpose: To update quality assurance requirements for medical use of radioactive materials and radiation therapy equipment.

Substance of proposed rule (Full text is posted at the following State website: www.health.state.ny.us): The regulatory proposal would revise Part 16 of 10 NYCRR as described in more detail below.

Subdivision (c) of section 16.1 is revised to update the address and phone number of the Department of Health's Bureau of Environmental Radiation Protection and to allow certain reports to be filed electronically with the Department.

Paragraph (15) of subdivision (a) of section 16.2 is amended to make the definition of "byproduct material" comparable to the definition of byproduct material in NRC regulations.

Paragraph (134) of subdivision (a) of section 16.2, which contains an outdated definition of the term "tutelage," is repealed.

Subdivision (a) of section 16.24 is repealed and replaced with a new subdivision (a), which includes updated quality assurance standards for licensees or registrants authorized to administer external beam therapy or brachytherapy to human beings. The new subdivision includes quality standards appropriate for newer, more complex radiation therapy treatment systems and also requires additional verification of radiation set-up equipment and treatment plans prior to administering radiation treatments to patients. New subdivision (a) also requires quality assurance programs to cover data communication/transfer between component systems of planning and treatment delivery systems to ensure complete (uncorrupted) data transfer. Additionally, the new section requires licensees and registrants to credential individuals involved in quality assurance testing, treatment planning, and radiation treatment of patients. Finally, new subdivision (a) requires licensees and registrants to be accredited in radiation oncology by the American College of Radiology or the American College of Radiation Oncology, or another equivalent accrediting organization, within 18 months of the effective date of the regulation.

Section 16.100 is repealed and replaced with a new section 16.100 to update the licensing requirements for licensure of radioactive materials.

Sections 16.120 and 16.121 are repealed and replaced with a new section 16.120 which sets forth the licensing requirements for human use of radioactive material.

Section 16.122 is repealed. The requirements for teletherapy units are included in the proposed new section 16.123.

Current section 16.123 is repealed and replaced with a new section 16.123. The new version updates the standards for the medical use of radioactive materials, consistent with the federal Nuclear Regulatory Commission (NRC) regulations governing the medical use of radioactive materials; updates definitions to be consistent with federal regulatory definitions; updates the training and experience requirements for physicians, pharmacists and medical physicists who use radioactive materials for medical purposes; and revises and creates new categories of medical use licenses. The new section 16.123 incorporates certain federal regulatory requirements by reference; it also establishes regulatory requirements specific to New York State that are consistent with the federal regulatory requirements.

The proposed section 16.2 will have a significant impact on physicians who wish to use radiopharmaceuticals for diagnostic nuclear medicine and

nuclear cardiology. The current section requires 200 hours of classroom training. By removing this requirement and incorporating the federal classroom training requirements set forth in 10 CFR Part 35, the required classroom and laboratory training hours will be reduced to 80 hours for physicians applying for authorized user status for diagnostic uses. In addition, these physicians would be allowed to obtain the practical training component in a private medical practice setting. Currently such training can be obtained only at a medical institution (hospital). By incorporating the training requirements established in 10 CFR Part 35, the total number of training hours for physicians who use radioactive materials will remain at 700 hours.

Relative to the new categories of medical use licenses, the new section 16.123 includes a category that covers gamma knife radiosurgery units and high dose rate remote afterloaders. Quality assurance requirements are modified to reflect the revised and new categories. The dose limits for members of the public and occupationally exposed individuals are modified to exclude exposure from individuals administered radioactive material and released in accordance with regulations.

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

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

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

Regulatory Impact Statement

Statutory Authority:

The Public Health and Health Planning Council is authorized by § 225(4) of the Public Health Law (PHL) to establish, amend and repeal provisions of the State Sanitary Code (SSC), subject to the approval of the Commissioner of Health. PHL §§ 225(5)(p) and (q) and 201(1)(r) authorize the Commissioner to promulgate SSC regulations to protect the public from the adverse effects of ionizing radiation. Pursuant to these regulations, as set forth in 10 NYCRR Part 16, the Department of Health (Department), licenses or registers health care providers to use radioactive materials and ionizing radiation emitting equipment on patients.

The federal Atomic Energy Act of 1954 (the Act), codified at 42 USC §§ 2021, et. seq. authorizes the United States Nuclear Regulatory Commission (NRC) to regulate the use of radioactive materials. The Act also authorizes "Agreement States" to regulate the use of radioactive materials in lieu of the NRC, provided that the "Agreement State" promulgates regulations that are comparable to or exceed NRC's regulatory standards. New York State is an "Agreement State" within the meaning of the Act. New York's regulatory standards for the use of radioactive materials in 10 NYCRR Part 16 must therefore meet or exceed comparable NRC regulatory standards. The Act governs only to the use of radioactive materials; it does not apply to x-rays or radiation therapy equipment that emit only x-rays.

Legislative Objectives:

The legislative intent of PHL §§ 225(5) and 201(1)(p) and (q) is to protect the public from the adverse effects of ionizing radiation. Promulgating regulations to ensure safe and effective clinical uses of radioactive material and radiation producing equipment is consistent with this legislative objective.

Needs and Benefits:

The NRC has relinquished its authority to regulate the use of radioactive materials in New York State to the Department. The Act requires New York to adopt and enforce regulatory standards for the use of radioactive materials that are comparable to or exceed federal regulatory standards that apply to the use of radioactive materials. The Department regulates the use of radioactive material at approximately 1100 facilities, including approximately 450 health care facilities. The Department's regulations are designed to require the delivery of quality care while protecting people and the environment from the harmful effects of radiation. In order to ensure that New York retains its authority under federal law to regulate the use of radioactive material, the Department's regulations must be amended to conform more closely to current federal regulatory standards. The proposed regulations incorporate by reference many of the NRC regulatory standards that govern the medical use of radioactive materials. In areas where the NRC regulations are not incorporated, the Department has promulgated comparable regulations.

In recent years, technology and equipment used to deliver radiation therapy to cancer patients, including systems used to plan and execute radiation therapy treatment, have become significantly more complex. Recently developed radiation therapy systems more effectively deliver high dose rate treatments to precisely defined three-dimensional tumor volumes while sparing dose to healthy tissue. Patients benefit significantly when, as is the case in the vast majority of such radiation treatments, the dose is delivered as intended. However, radiation treatment errors can

cause serious consequences for patients and in extreme cases, death. An analysis of the causes of medical adverse events (radiation therapy misadministrations) reported to the Department within the past eight years has identified common errors and causes of errors that may be preventable with the implementation of more comprehensive quality assurance programs. When the current regulations for quality assurance for external beam and brachytherapy were implemented in 1993, radiation therapy equipment was much simpler in design and function, and there were fewer units in service. Most radiation therapy treatments were delivered in a hospital setting. Today there are greater numbers of patients receiving radiation therapy, and more patients are treated in freestanding radiation therapy centers. There are more medical therapy accelerators in use. Newer radiation treatment systems are very complex; these systems rely on computer networks and electronic data storage and movement. DOH regulates approximately 120 medical facilities that provide radiation therapy. The current regulations need to be revised to effectively address quality assurance requirements for newer systems, to ensure implementation of strategies to prevent the occurrence of misadministrations and ensure those facilities meet current standards of care.

Costs:

The Department estimates that regulated parties that use radioactive materials will not incur any additional costs in order to comply with the proposed changes to 10 NYCRR § 16.123. In most instances, the proposed regulatory amendments will reduce costs and regulatory burdens for physicians who are required to qualify as “authorized users” of radioactive materials for diagnostic purposes. The current section requires 200 hours of classroom training. By removing this requirement and incorporating the federal classroom training requirements set forth in 10 CFR Part 35, the required classroom and laboratory training hours will be reduced to 80 hours for physicians applying for authorized user status for diagnostic uses. In addition, these physicians would be allowed to obtain the practical training component in a private medical practice setting. Currently such training can be obtained only at a medical institution (hospital). By incorporating the training requirements established in 10 CFR Part 35, the total number of training hours for physicians who use radioactive materials will remain at 700 hours.

This will result in lower costs for classroom training (tuition/course fee) and associated travel/lodging expenses, and will reduce the time a physician would be away from his/her clinical practice to obtain the required classroom training. The current regulations specify that such training must be obtained at a medical institution, or hospital. However, under the training requirements established in 10 CFR Part 35, which will be incorporated by the new regulation, physicians will have the option to obtain the required work experience portion of the training (620 hours) at non-institutional facilities. Costs associated with complying with the quality assurance testing for therapeutic devices, including high-dose rate brachytherapy and teletherapy should not increase or change, because the current license conditions contain these same quality assurance requirements.

The Department estimates that the cost to regulated parties that use external beam therapy or manual brachytherapy to comply with proposed 10 NYCRR § 16.24 will be limited to the fee to become accredited in radiation oncology by either the American College of Radiology (ACR), the American College of Radiation Oncology (ACRO) or an equivalent organization as approved by the Department. The cost for accreditation is approximately \$9,500 for each three-year period. However, approximately half of the affected regulated parties are either currently accredited or have an application pending with ACR or ACRO on their own accord. Many that are not accredited use the services of outside radiation oncologists and medical physicists to audit their radiation therapy quality assurance program on an annual basis. The costs for annual outside audits are estimated to cost several thousands of dollars. The proposed regulation would remove the need for outside audits, although they could be conducted to meet the requirement for an annual audit. Under the proposed rule, either an internal or an external audit may be used to fulfill the annual audit requirement. Costs saved by elimination of the requirement for outside audits are expected to offset a portion of the costs that will be incurred for accreditation. The other proposed changes to 10 NYCRR § 16.24 will impose very little or no cost to regulated parties since existing facility staff can comply with the new quality assurance requirements.

Local Government Mandates:

These proposed regulations apply to two State University hospitals, a Department operated hospital and hospitals operated by public benefit corporations. These hospitals are currently accredited by the ACR. No other additional costs are associated with implementation of these requirements. Registrants and licensees, including the hospitals operated by state and local governments, are currently required to retain all quality assurance documents for review by the department. The additional records and filing is estimated to be a small incremental amount. Affected parties will need to complete an application for accreditation initially and every

three years thereafter. The radiation oncology accrediting bodies are transitioning to an on-line application process to minimize time and effort for parties seeking accreditation.

Paperwork:

Department regulations (10 NYCRR Part 16) require registrants and licensees to maintain a variety of records relating to the use of ionizing radiation for review by the Department. The Department estimates that licensees and registrants may have a small amount of additional documentation to create, maintain or file. Affected parties will have to complete an application for radiation oncology accreditation. However, the accrediting bodies are transitioning to an online application process to minimize time and effort for regulated parties seeking accreditation.

The proposed regulations will not affect license documents issued by the Department to current licensees, registrants or authorized users. The Department plans to provide updated license guidance to new applicants to facilitate completion of an application based on the new requirements.

Duplication:

There is no duplication of the proposed regulatory requirements by any federal, state or local agency for licensees, registrants or authorized users subject to 10 NYCRR Part 16. New York State entered into an agreement with the federal government on October 15, 1962, by which the federal government discontinued its regulatory authority over the use of radioactive materials and New York assumed such authority. The Atomic Energy Act does not govern use of x-ray emitting equipment.

Alternatives:

There are no suitable alternatives to the revisions to these proposed regulations. As discussed above, the Atomic Energy Act (42 USC § 2021 et. seq.) requires Agreement States such as New York to adopt and implement regulatory standards that meet or exceed comparable federal standards.

Federal Standards:

These proposed revisions to 10 NYCRR § 16.123 incorporate by reference certain federal requirements specified in 10 CFR Part 35.

Compliance Schedule:

The proposed regulatory amendments will be effective upon publication of a Notice of Adoption in the State Register. However, proposed 10 NYCRR § 16.24(a)(6) requires that licensees and registrants apply for accreditation in radiation oncology with the American College of Radiology or the American College of Radiation Oncology or another accrediting organization approved by the Department within 90 days of the regulation’s effective date and to become accredited and maintain such accreditation within 18 months of such effective date.

Regulatory Flexibility Analysis

Effect on Small Business:

The Department has issued radioactive materials licenses to approximately 350 private medical practices. These licensees would be affected by the proposed revisions to 10 NYCRR § 16.123. The Department estimates that there will be no new costs for these licensees and in some instances, regulated parties may save money by complying with the updated standards in proposed 10 NYCRR § 16.123. The Department expects the cost to comply with the new training and experience requirements for physicians who wish to become authorized for certain medical uses will be reduced in most situations. Specifically the required classroom and laboratory training hours will be reduced from 200 to 80 hours for physicians applying for authorized user status for diagnostic uses. The total number or training hours will remain at 700 hours. This will result in lower costs for classroom training (tuition/course fee) and associated travel/lodging expenses, and will reduce the time a physician would be away from his/her clinical practice to obtain the required classroom training. Physicians will have the option to obtain the required work experience portion of the training (620 hours) at non-institutional facilities. The current requirements specify that such training must be obtained at a medical institution (hospital).

The proposed changes to 10 NYCRR § 16.24 would apply to approximately 60 medical private practices. The draft proposed rule was sent to all medical therapy accelerator facilities, including the small businesses (non-institutions) for comments. One facility manager stated that they support the accreditation requirement although it can be a hardship to practices like hers. However the manager’s facility was already accredited and has application pending to maintain accreditation. No other facility expressed any anticipated hardship with the proposed rule.

Compliance Requirements:

Licensees and applicants will need to become familiar with the new requirements and modify their quality assurance policies and procedures accordingly. Those who are not currently accredited will need to do so within 18 months of the effective date of the rule.

Professional Services:

The vast majority of facilities have in-house staff that perform quality assurance testing and operate radiation emitting technology. The Department does not expect that it would be necessary for licensees to use ad-

ditional professional services for completion of applications for accreditation or to implement the quality assurance requirements.

Capital Costs and Annual Costs of Compliance:

The amortized annual cost is estimated to be approximately \$3,200 per year for accreditation (based on a three-year accreditation cost of \$9,500). However, approximately 50 percent of the facilities are either currently accredited or have an application for accreditation pending; therefore, they will not incur any additional costs. There are no capital costs associated with this regulation.

Economic and Technological Feasibility:

There are no capital costs or new technology required to comply with the proposed rule.

Minimizing Adverse Impact:

Facilities will have 90 days to apply and 18 months to become accredited. This will allow a facility adequate time to select the accreditation body of their choice, complete an application and budget funds for the accreditation fee. The Department has held several discussions with the proposed accrediting bodies, and has accompanied their auditors during accreditation surveys. These interactions were conducted to ensure that the bodies have the capacity to handle an influx of applications for accreditation and that the organizations operate in a professional and constructive manner, have an efficient process, and have an overall effect of improving patient safety. Further the requirement for external annual audits was eliminated which would offset the cost of accreditation.

Small Business Input:

A copy of the draft proposed rule was sent to all medical therapy accelerator facilities, which includes both private practices and hospital-based radiation therapy treatment clinics. Seven facilities submitted comments. Only one commenter addressed the cost for accreditation, however, she stated that she supports the accreditation requirement. Several comments were in regard to clarification on a few aspects of the proposed language. Guidance, which will assist the affected facilities in implementation and compliance with the new requirements, will be developed and provided to affected facilities.

Rural Area Flexibility Analysis

Types and Estimated Numbers of Rural Areas:

There are 105 affected facilities located in 46 rural areas (33 counties with a population of less than 200,000 and 13 counties with certain townships with a population density of more than 150 persons per 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. Facilities will be required to maintain records of quality assurance test results and accreditation documents for review by the Department's inspectors. Compliance with the recordkeeping requirements will require only a minor incremental amount of time and effort for affected facilities.

Cost:

The cost to comply with the accreditation requirement will be approximately \$9,500 every three years. This will affect approximately 50 percent of the facilities that will be subject to the proposed 10 NYCRR § 16.24(e), because approximately 50 percent of the facilities are either currently accredited or have an application for accreditation pending. Facilities that are currently accredited or have an application pending have done so in part to satisfy the current audit requirements in section 16.24. Such facilities have selected the option to conduct annual internal audits (by in-house staff) and have periodic audits performed by the ACR or ACRO. Such facilities will not effectively see an increase in their operating budgets to comply with the new accreditation requirement as they have already chosen to become accredited and have budgeted for the associated cost.

Minimizing Adverse Impact:

Facilities will have 18 months to become accredited. This will allow a facility adequate time to select the accreditation body of their choice, complete an application and budget funds for the accreditation fee. The Department has held several discussions with the proposed accrediting bodies, and has accompanied their auditors during accreditation surveys. These interactions were conducted to ensure that the bodies have the capacity to handle an influx of applications for accreditation and that the organizations operate in a professional and constructive manner, have an efficient process, and have an overall effect of improving patient safety.

Rural Area Participation:

A copy of a draft proposed rule was sent to all medical therapy accelerator facilities, which includes both private practices and hospital-based radiation therapy treatment clinics. Seven facilities commented. One commenter addressed the cost for accreditation but indicated they understood the value of accreditation. A few commenters requested minor clarification on a few aspects of the proposed language.

Job Impact Statement

Nature of Impact:

It is anticipated that no jobs will be adversely affected by this rule.

Radiation therapy providers in New York will need to become familiar with and implement the new regulatory requirements set forth in proposed 10 NYCRR § 16.24. The proposed regulations do not significantly change the training or experience requirements of radiation therapy facility staff. Medical providers authorized to use radioactive materials would need to become familiar with and implement the new regulatory requirements set forth in proposed 10 NYCRR § 16.123. The Department anticipates that few if any persons will be adversely affected. Licensee staff, specifically those designated as the radiation safety officer, medical physicist, nuclear pharmacist, and authorized user will need to become familiar with the new requirements.

Categories and Numbers Affected:

There are approximately 120 radiation therapy facilities that would be subject to the rule. Half of these are hospitals or their satellite facilities, and the other half are non-institutional entities. There are approximately 450 medical use of radioactive materials licensees.

Regions of Adverse Impact:

No areas will be adversely affected.

Minimizing Adverse Impact:

There are no alternatives to the proposed regulations. The Department will revise guidance to assist all licensees, including those in rural areas, with implementation of the proposed regulations.

Self-Employment Opportunities:

The rule is expected to have minimal impact on self-employment opportunities since the majority of providers that will be affected by the rule are not sole proprietorships.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Authority to Collect Pharmacy Acquisition Cost

I.D. No. HLT-40-12-00003-P

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

Proposed Action: Amendment of section 505.3 of Title 18 NYCRR.

Statutory authority: Public Health Law, sections 201(1)(v) and 206; and Social Services Law, sections 363-a(2) and 367-a(9)(b)

Subject: Authority to Collect Pharmacy Acquisition Cost.

Purpose: Establishes a requirement that each enrolled pharmacy report actual acquisition cost of a prescription drug to the Department.

Text of proposed rule: Paragraphs (3) through (6) of subdivision (a) of section 505.3 are renumbered as paragraphs (4) through (7) and new paragraph (3) is added to read as follows:

(3) *Drug acquisition cost means the invoice price to the pharmacy of a prescription drug dispensed to a Medicaid recipient, minus the amount of all discounts and other cost reductions attributable to such dispensed drug.*

Paragraph (4) is added to subdivision (f) of section 505.3 to read as follows:

(4) *Each pharmacy enrolled in the Medicaid program shall provide the department, in such manner, for such periods, and at such times as the department may require, with the drug acquisition cost, as defined in paragraph 505.3(a)(3), of prescription drugs.*

Text of proposed 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

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

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

Regulatory Impact Statement

Statutory Authority:

Social Services Law (SSL) section 363-a and Public Health Law section 201(1)(v) provide that the Department is the single state agency responsible for supervising the administration of the State's medical assistance ("Medicaid") program and for adopting such regulations, not inconsistent with law, as may be necessary to implement the State's Medicaid program.

Legislative Objective:

On April 1, 2011, the Legislature and Medicaid Redesign Team adopted a proposal to amend Medicaid drug payment methodology, as defined in SSL section 367-a(9)(b), to include average acquisition cost (AAC), when available. To meet Legislative objectives, a rule is needed to require each enrolled pharmacy to report actual acquisition cost of a prescription drug to the Department in a manner specified by the Department. This rule will

enable the Department to collect actual acquisition cost, analyze the data and establish a statistically valid and transparent AAC.

Needs and Benefits:

The requirement to report acquisition cost is necessary in order to effectuate the inclusion of AAC in the New York State Medicaid drug reimbursement methodology. Under the fee-for-service pharmacy program, Medicaid reimburses pharmacy services based on a "lower of" methodology that includes the pharmacy's usual and customary charge; Estimated Acquisition Cost (EAC); Federal Upper Limit (FUL); State Maximum Allowable Cost (SMAC); Average Wholesale Price (AWP) minus a percentage; Wholesale Acquisition Price (WAC) plus a percentage; or AAC, if available.

Once a valid AAC and appropriate dispensing fee is established, the Department intends to seek approval to replace the "lower of" methodology with AAC as the pricing threshold. The rationale for moving to AAC is to establish a transparent pharmacy reimbursement system and to do so with stakeholder involvement and support. There are numerous rulings in both state and federal courts that solidly establish a pattern of inflated, inaccurate or fraudulent pricing resulting from current standard reimbursement benchmarks supplied by drug manufacturers, such as AWP or WAC. Once established, use of AAC allows the State to set reimbursement rates based on an actual acquisition cost (invoice data) and an appropriate dispensing fee. The comprehensive, statewide data collection resulting from the reporting of acquisition cost will allow for a thorough, statistically valid analysis of pricing, including an evaluation of outliers, and the development of a legitimate AAC. Without this data, AAC cannot be established.

COSTS:

Costs for the Implementation of, and Continuing Compliance with this Regulation to the Regulated Entity:

Regulated entities could potentially incur minimal costs related to this amendment; such costs would be limited to administrative costs of identifying acquisition cost and any system updates needed to report such costs.

Costs to State and Local Government:

This amendment will not increase costs to the State or local governments.

Costs to the Department of Health:

The Department could incur minimal administrative costs related to the collection, analysis and maintenance of acquisition costs.

Local Government Mandates:

The proposed amendment does not impose any new programs, services, duties or responsibilities upon any county, city, town, village, school district, fire district or other special district.

Paperwork:

This amendment could potentially impose additional paperwork for regulated entities if collection of acquisition cost is done through the use of a hard copy survey tool rather than electronic submission.

Duplication:

There are no duplicative or conflicting rules identified.

Alternatives:

The only potential alternative to requiring the reporting of acquisition cost is a voluntary survey, which is not considered feasible as it would not provide a statistically valid sample of costs.

Federal Standards:

The proposed regulations do not exceed any minimum federal standards.

Compliance Schedule:

The Department will work closely with regulated entities to ensure they are able to comply with the proposed regulation when it becomes effective.

Regulatory Flexibility Analysis

Effect of Rule:

This amendment affects the approximately 4,400 pharmacy providers enrolled in the Medicaid program that actively bill Medicaid for drugs. This amendment will require these businesses, some of which are small, to identify and report the acquisition cost of drugs dispensed to fee-for-service Medicaid beneficiaries. Medicaid will ultimately address additional costs with the development of an increased dispensing fee that regulated entities will participate in establishing.

The fifty-eight local social services districts share in the costs of services provided to eligible beneficiaries who receive Medicaid through their districts and would therefore benefit from a more transparent pharmacy reimbursement benchmark.

Compliance Requirements:

Small businesses will be required to identify the acquisition cost of drugs and report that cost to the Department in a manner to be specified by the Department. This amendment does not impose any new reporting, recordkeeping or other compliance requirements on local governments.

Professional Services:

No new professional services are required as a result of this amendment.

Compliance Costs:

No initial capital costs will be imposed as a result of this rule. However, regulated entities, which include small businesses, could potentially incur minimal costs related to this amendment; such costs would be limited to administrative costs of identifying acquisition cost and any system updates needed to report such costs. Initial administrative costs and compliance costs for regulated entities will vary and will be dependent on each entity's product wholesalers and/or software vendors. Medicaid will address compliance costs with the development of an increased dispensing fee that regulated small businesses will participate in establishing.

There are no direct costs associated with this amendment for local governments.

Economic and Technological Feasibility:

The amendment requires regulated entities to submit additional information for drugs billed under the fee-for-service Medicaid program but will not affect the way local districts contribute their local share of Medicaid expenses for drugs. Therefore, there should be no technological difficulties associated with compliance with the proposed regulation for local governments and minimal, if any, technological difficulties for small businesses.

Minimizing Adverse Impact:

By engaging regulated entities in the development of procedures for reporting acquisition cost, the Department will minimize any adverse impact on small businesses. Additionally, the Department will work with small businesses to develop an appropriate dispensing fee that accurately reflects the costs associated with this amendment.

Small Business and Local Government Participation:

The Department meets on a regular basis with provider groups representing regulated entities, such as the Pharmacists Society of the State of New York (PSSNY) and the National Association of Chain Drug Stores (NACDS). Both of these groups have been informed of the proposed changes and have expressed concerns over administrative burdens. However, representatives of regulated entities have also welcomed the opportunity to collaborate with the Department in development of the proposed process. Upon promulgating the regulation, the Department will continue to work with the industry and assist as necessary with implementation of the new requirement.

Local government officials have consistently urged the Department to implement Medicaid cost savings programs.

Rural Area Flexibility Analysis

Effect on Rural Areas:

The proposed amendment will apply to approximately 4,400 Medicaid enrolled pharmacy providers. These regulated entities are located in rural, as well as suburban and metropolitan areas of the State.

Reporting, Recordkeeping and Other Compliance Requirements and Professional Services:

Regulated entities in rural areas will be required to identify the acquisition cost of drugs and report that cost to the Department in a manner to be specified by the Department. No new professional services will be required as a result of this amendment.

Costs:

Regulated entities in rural areas could potentially incur minimal costs related to this amendment; such costs would be limited to administrative costs of identifying acquisition cost and any system updates needed to report such costs. Initial administrative costs and compliance costs will vary and will be dependent on each entity's product wholesalers and software vendors. Medicaid will address compliance costs with the development of an increased dispensing fee that regulated entities in rural areas will participate in establishing.

Minimizing Adverse Impact:

By engaging regulated entities in rural areas in the development of procedures for reporting acquisition cost, the Department will minimize any adverse impact. Additionally, the Department will work with regulated entities in rural areas to develop an appropriate dispensing fee that accurately reflects the costs associated with this amendment.

Rural Area Participation:

The Department meets on a regular basis with provider groups representing regulated entities, such as the Pharmacists Society of the State of New York (PSSNY) and the National Association of Chain Drug Stores (NACDS). While both of these groups have expressed concerns over administrative burdens, representatives of regulated entities have welcomed the opportunity to collaborate with the Department in development of the proposed process and an appropriate dispensing fee. Upon promulgating the regulation, the Department will continue to work with the regulated entities in rural areas and assist as necessary with implementation of the new requirement.

Job Impact Statement

A Job Impact Statement is not required pursuant to Section 201-a(2)(a) of the State Administrative Procedure Act. It is apparent, from the nature and purpose of the proposed regulation, that there will not be a substantial adverse impact on jobs or employment opportunities.

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

Orthodontic Screening

I.D. No. HLT-40-12-00005-P

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

Proposed Action: Repeal of section 85.45 of Title 10 NYCRR; and amendment of section 506.4 of Title 18 NYCRR.

Statutory authority: Public Health Law, sections 201 and 206; and Social Services Law, sections 363-a and 365-a(2)

Subject: Orthodontic Screening.

Purpose: Orthodontic Screening Provider Qualifications and Recipient Eligibility Criteria.

Text of proposed rule: Section 85.45 of Title 10 is repealed.

Section 506.4 of Title 18 is amended to read as follow:

(a) [Authorization of the social services official for orthodontic] *Orthodontic care shall be provided, in accordance with criteria and procedures set forth in the Medicaid Dental Provider Manual, at <https://www.emedny.org/ProviderManuals/Dental/index.aspx>, only:*

(1) for a [child] *person under twenty-one years of age with a severe physically handicapping malocclusion, up to a maximum of three years of active orthodontic care, plus one year of retention care, provided that treatment was approved and active therapy begun prior to the person's twenty-first birthday* [, if such care is approved by the county medical director of the physically handicapped children's program upon the recommendation of an orthodontic screening center approved by the New York State Department of Health]; or

(2) [for a young adult if the malocclusion presents a serious psychological problem, determined from a written report by a qualified psychiatrist and if such care is approved by the dental director upon the recommendation of an orthodontic screening center approved by the New York State Department of Health] *for a person twenty-one years of age or older, in connection with necessary surgical treatment (e.g. approved orthognathic surgery, reconstructive surgery or cleft palate treatment).*

(b) [All cases accepted for orthodontic care shall be reviewed annually for progress to determine the need for continuing care.

(c) Social services districts shall provide and pay for orthodontic care for an eligible recipient of medical assistance, in any one case, for a maximum period of three years of active orthodontic care and one year of retention care. However, for a patient with cleft palate, active care beyond such three-year period may be approved and authorized when supported by adequate justification.

d) (b) Orthodontic care shall be provided only by [orthodontists] *qualified practitioners as determined by the Department.*

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

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.

Regulatory Impact Statement

Statutory Authority:

Social Services Law (SSL) section 363-a and Public Health Law section 201(1)(v) provide that the Department is the single state agency responsible for supervising the administration of the State's medical assistance ("Medicaid") program and for adopting such regulations, not inconsistent with law, as may be necessary to implement the State's Medicaid program.

Legislative Objectives:

Section 365-a of the SSL provides that in addition to care, services, and supplies specifically listed in such section, Medicaid payment will be available for care, services, and supplies authorized in the regulations of the Department.

Needs and Benefits:

The proposed amendments clarify current policy regarding coverage of orthodontic services under the Medicaid program, and eliminate outdated references to the Physically Handicapped Children's Program (PHCP), a county-based public health program that was once, but is no longer, the primary point of access for Medicaid-covered orthodontic services for children.

The proposed amendments also remove from regulation specific

procedures and criteria for Medicaid providers to bill and be reimbursed for orthodontic services, in favor of having such information provided in the Department's Medicaid Dental Provider Manual, which is available online at <https://www.emedny.org/ProviderManuals/Dental/index.aspx>. Including detailed information on these topics in the regulation necessitates amending the regulation whenever a minor change is made to policy, procedures or criteria. This is unwieldy, and prevents the Medicaid program from reacting promptly to evolving clinical standards for orthodontic care.

Specifically, the proposed amendments would repeal 10 NYCRR Section 85.45, an outdated section dealing primarily with the PHCP, and amend 18 NYCRR Section 506.4 to set forth current Medicaid coverage policy regarding orthodontic services. As amended, section 506.4 would provide for Medicaid coverage, with respect to a person under 21 years of age, of up to three years of active orthodontic care, plus one year of retention care, to treat a severe physically handicapping malocclusion. Part of such care could be provided after the person reached the age of 21, provided that the treatment was approved and active therapy begun prior to the person's 21st birthday. In addition, coverage would be provided for persons age 21 and over in connection with necessary surgical treatment (e.g. approved orthognathic surgery, reconstructive surgery or cleft palate treatment).

Costs:

Costs to the State Government:

There will be no additional costs to State Government as a result of the amendments.

Costs to Local Government:

There will be no additional costs to local governments as a result of the amendments.

Costs to Private Regulated Parties:

There will be no additional costs to private regulated parties as a result of the amendments.

Costs to the Regulatory Agency:

There is no anticipated cost to the regulatory agency.

Local Government Mandate:

The proposed regulation does not impose any new programs, services, duties or responsibilities upon any county, city, town, village, school district, fire district or other special district.

Paperwork:

The proposed regulation does not require any additional paperwork to be completed by regulated parties.

Duplication:

This is an amendment to an existing State regulation and does not duplicate any existing federal, state, or local regulation.

Alternatives:

The existing rules contain outdated and vague criteria for the appropriate provision of orthodontic services under the Medicaid program. One alternative would be to update and clarify these criteria and procedures within the regulation. This approach was rejected since, as indicated above, it would maintain in the regulation a level of detail more appropriate to a provider manual. In addition, it would hamper the Department's ability to keep Medicaid criteria in step with advances in orthodontic clinical standards, and potentially allow providers to perform excessive or unnecessary procedures while the Department undertakes the process of promulgating revised regulations.

Federal Standards:

This amendment does not exceed any minimum standards of the federal government for the same or similar subject areas.

Compliance Schedule:

It is anticipated that regulated persons would be able to comply with the rule upon the publication of a Notice of Adoption in the State Register.

Regulatory Flexibility Analysis

Effect on Small Business and Local Governments:

For the purpose of this regulatory flexibility analysis, small businesses were considered to be general hospitals, diagnostic and treatment centers and practitioner offices. Based on recent data extracted from providers' submitted cost reports, seven hospitals, 245 DTCs and most practitioner offices were identified as employing fewer than 100 employees.

Compliance Requirements:

No new reporting, recordkeeping or other compliance requirements are being imposed as a result of these rules.

Professional Services:

No new or additional professional services are required in order to comply with the proposed amendments.

Compliance Costs:

No capital costs will be imposed as a result of this rule, nor is there an annual cost of compliance.

Economic and Technological Feasibility:

Small businesses will be able to comply with the economic and technological aspects of this rule. The proposed amendment is intended to

strengthen the orthodontic care program in New York State so that it is more adaptive to the Medicaid population's evolving clinical needs while ensuring that eligible recipients receive the appropriate level of orthodontic care. It is projected to have little or no impact on health care providers, particularly those with fewer than 100 employees.

Minimizing Adverse Impact:

The proposed amendment applies to orthodontic services and programs provided by hospitals, diagnostic and treatment centers and practitioner offices. The Department meets regularly with these providers in order to proactively address concerns and issues relating to orthodontic services.

Small Business and Local Government Participation:

The proposed amendment clarifies current policy regarding coverage of orthodontic services under the Medicaid program. It will not have an adverse economic impact on small businesses or local governments, and no new reporting, recordkeeping, or other compliance requirements are being imposed as a result of these rules. Small businesses and local governments will have the opportunity to participate in the rulemaking process by submitting comments during the public comment period following the publication of the Notice of Proposed Rulemaking.

Rural Area Flexibility Analysis

Effect on Rural Areas:

Rural areas are defined as counties with a population less than 200,000 and, for counties with a population greater than 200,000, includes towns with population densities of 150 persons or less per square mile. The following 43 counties have a population less than 200,000:

Allegany	Hamilton	Schenectady
Cattaraugus	Herkimer	Schoharie
Cayuga	Jefferson	Schuyler
Chautauqua	Lewis	Seneca
Chemung	Livingston	Steuben
Chenango	Madison	Sullivan
Clinton	Montgomery	Tioga
Columbia	Ontario	Tompkins
Cortland	Orleans	Ulster
Delaware	Oswego	Warren
Essex	Otsego	Washington
Franklin	Putnam	Wayne
Fulton	Rensselaer	Wyoming
Genesee	St. Lawrence	Yates
Greene		

The following 9 counties have certain townships with population densities of 150 persons or less per square mile:

Albany	Erie	Oneida
Broome	Monroe	Onondaga
Dutchess	Niagara	Orange

Compliance Requirements:

No new reporting, recordkeeping, or other compliance requirements are being imposed as a result of this proposal.

Professional Services:

No new additional professional services are required in order for providers in rural areas to comply with the proposed amendments.

Compliance Costs:

No initial capital costs will be imposed as a result of this rule, nor is there an annual cost of compliance.

Minimizing Adverse Impact:

The proposed amendment applies to certain services of general hospitals, diagnostic and treatment centers and freestanding ambulatory surgery centers. The proposed amendment is intended to strengthen the orthodontic care program in New York State and increase its flexibility so that it is more adaptive to the Medicaid population's evolving clinical needs while ensuring that eligible recipients receive the appropriate level of orthodontic care. The existing rule would continue to provide Medicaid reimbursement to providers for delivering clinically unnecessary and excessive orthodontic care.

Opportunity for Rural Area Participation:

The proposed amendment clarifies current policy regarding coverage of orthodontic services under the Medicaid program. It will not have an adverse impact on rural areas, and no new reporting, recordkeeping, or other compliance requirements are being imposed as a result of these rules.

Public and private interests in rural areas will have the opportunity to participate in the rulemaking process by submitting comments during the public comment period following the publication of the Notice of Proposed Rulemaking.

Job Impact Statement

Nature of Impact:

It is not anticipated that there will be any impact of this rule on jobs or employment opportunities.

Categories and Numbers Affected:

This rule will apply to orthodontists that perform orthodontic screenings as well as some downstate hospitals as defined under Article 28 of the Public Health Law.

Regions of Adverse Impact:

This rule will apply to orthodontists that perform orthodontic screenings as well as some downstate hospitals as defined under Article 28 of the Public Health Law, but it will have no adverse impact on those operators or their employees.

Minimizing Adverse Impact:

The rule would not impose any additional requirements upon regulated entities, and therefore there would be no adverse impact on jobs or employment opportunities.

Self-Employment Opportunities:

The rule is expected to have no impact on self-employment opportunities.

Public Service Commission

NOTICE OF WITHDRAWAL

To Increase Customer Enrollment in National Fuel Gas Distribution Corporation's Expanded Low Income Assistance Program

I.D. No. PSC-02-12-00014-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. PSC-02-12-00014-P, has been withdrawn from consideration. The notice of proposed rule making was published in the *State Register* on January 11, 2012.

Subject: To increase customer enrollment in National Fuel Gas Distribution Corporation's Expanded Low Income Assistance Program.

Reason(s) for withdrawal of the proposed rule: Cancellation of a tariff filing by Company.

NOTICE OF ADOPTION

Denying the Petition for Reimbursement of Sales Taxes and Interest

I.D. No. PSC-14-12-00013-A

Filing Date: 2012-09-18

Effective Date: 2012-09-18

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

Action taken: On 9/13/12, the PSC adopted an order denying the petition of Agway Energy Services, LLC for reimbursement by Niagara Mohawk Power Corporation d/b/a National Grid of sales taxes and interest that was not collected from customers under consolidated billing.

Statutory authority: Public Service Law, section 5(1)(b)

Subject: Denying the petition for reimbursement of sales taxes and interest.

Purpose: To deny the petition for reimbursement of sales taxes and interest.

Substance of final rule: The Commission, on September 13, 2012 adopted an order denying the petition of Agway Energy Services, LLC (Agway) for reimbursement by Niagara Mohawk Power Corporation d/b/a National Grid (National Grid) of sales taxes and interest assessed by the New York State Department of Taxation and Finance that was not collected from Agway's customers who were billed by National Grid under its consolidated billing program, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Leann Ayer, Public Service Commission, 3 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-M-702SA1)

NOTICE OF ADOPTION

Water Rates and Charges

I.D. No. PSC-17-12-00016-A

Filing Date: 2012-09-18

Effective Date: 2012-09-18

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

Action taken: On 9/13/12, the PSC adopted an order approving the request of Debora A. Lambert d/b/a Green Meadow Park Water Company to increase its annual revenues by about \$10,060, or 38.7%; implement a surcharge and convert its tariff schedule to electronic format.

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

Subject: Water rates and charges.

Purpose: To approve an increase of annual revenues by about \$10,060, or 38.7%; implement a surcharge and convert its tariff schedule.

Substance of final rule: The Commission, on September 13, 2012 adopted an order approving the request of Debora A. Lambert d/b/a Green Meadow Park Water Company (Green Meadow or the Company) to increase its annual revenues by about \$10,060, or 38.7%; implement a surcharge to recover \$12,035 in extraordinary mandated expenses through a quarterly surcharge of \$33.81 per customer collected over four quarters; and, convert its tariff schedule P.S.C. No. 1 – Water, effective October 1, 2012, to an electronic tariff schedule, 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, 3 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-W-0041SA2)

NOTICE OF ADOPTION

Authorize NYSERDA to Allocate and Expend System Benefit Charge III Funds That Were Not Committed for Expenditure as of 12/31/11

I.D. No. PSC-19-12-00013-A

Filing Date: 2012-09-13

Effective Date: 2012-09-13

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

Action taken: On 9/13/12, the PSC adopted an order authorizing The New York State Energy Research and Development Authority (NYSERDA) to allocate & expend System Benefit Charge III funds in its possession that were not committed for expenditure as of December 31, 2011.

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

Subject: Authorize NYSERDA to allocate and expend System Benefit Charge III funds that were not committed for expenditure as of 12/31/11.

Purpose: To authorize NYSERDA to allocate & expend System Benefit Charge III funds that were not committed for expenditure.

Substance of final rule: The Commission, on September 13, 2012 adopted an order authorizing The New York State Energy Research and Develop-

ment Authority (NYSERDA) to allocate and expend System Benefit Charge III funds in its possession that were not committed for expenditure as of December 31, 2011, for the following purposes: (1) \$10 million for a new initiative within the Advanced Clean Power Program of the Technology and Market Development Portfolio (T&MD Portfolio) focused on reducing the balance-of-system costs for solar photovoltaic installations and the development of priority photovoltaic technology; (2) \$10 million for an energy storage initiative within the Smart Grid Program of the T&MD Portfolio, \$7.5 million of which shall be made available to provide cost-sharing support for an application for U. S. Department of Energy funding to establish an Energy Storage Innovation Hub within New York, and \$2.5 million of which shall be used to support the New York Battery and Energy Storage consortium's Commercialization and Testing Laboratory; (3) \$3.0 million for an Advanced Buildings Consortium within the Technology Development component of the Advanced Buildings program of the T&MD Portfolio; and (4) \$2,760,672 for a deep energy savings in commercial buildings initiative to be established within the Emerging Technology/Accelerated Commercialization – Buildings component of the Advanced Buildings Program of the T&MD Portfolio. NYSERDA is authorized to retain \$1,748,336 of SBC III interest earnings accumulated through December 31, 2011, as reimbursement for New York State Cost Recovery Fee assessments in excess of budgeted amounts that were allocable to SBC III programs through December 31, 2011. NYSERDA is further authorized to retain SBC III interest earnings accumulated after December 31, 2011, to the extent necessary to reimburse it for New York State Cost Recovery Fee assessments in excess of budgeted amounts that are allocable to SBC III programs after December 31, 2011. If interest earnings are inadequate, NYSERDA is authorized to reallocate SBC III program funds to cover the additional cost of such fees, first using any previously committed funds that may become uncommitted after December 31, 2011, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, NY 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-M-0457SA5)

NOTICE OF ADOPTION

Tariff Amendments to Modify the Mandatory Hourly Pricing Incremental Monthly Charge

I.D. No. PSC-19-12-00030-A

Filing Date: 2012-09-17

Effective Date: 2012-09-17

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

Action taken: On 9/13/12, the PSC adopted an order approving, with modifications, Central Hudson Gas & Electric Corporation's amendments to PSC No. 15 — Electricity, effective October 1, 2012, to modify the Mandatory Hourly Pricing incremental monthly charge.

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

Subject: Tariff amendments to modify the Mandatory Hourly Pricing incremental monthly charge.

Purpose: To approve the modifications of the Mandatory Hourly Pricing incremental monthly charge.

Substance of final rule: The Commission, on September 13, 2012 adopted an order approving, with modifications, Central Hudson Gas & Electric Corporation's amendments to PSC No. 15 — Electricity, effective October 1, 2012, to modify the Mandatory Hourly Pricing incremental monthly charge and require the installation of meters using cellular communications, 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, 3 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-0189SA1)

NOTICE OF ADOPTION

Petition to Sell Up to \$250 Million of Securities no Later Than 12/31/15 and Enter into Revolving Credit Agreements**I.D. No.** PSC-19-12-00033-A**Filing Date:** 2012-09-14**Effective Date:** 2012-09-14

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

Action taken: On 9/13/12, the PSC adopted an order approving the petition of Central Hudson Gas & Electric Corporation to sell up to \$250 million of securities no later than 12/31/15 and authorized to enter into Revolving Credit Agreements for funding of \$175 million.

Statutory authority: Public Service Law, section 69

Subject: Petition to sell up to \$250 million of securities no later than 12/31/15 and enter into Revolving Credit Agreements.

Purpose: To approve the petition to sell up to \$250 million of securities no later than 12/31/15 and enter into Revolving Credit Agreements.

Substance of final rule: The Commission, on September 13, 2012 adopted an order approving the petition of Central Hudson Gas & Electric Corporation to sell up to \$250 million of securities in one or more transactions, no later than December 31, 2015 and authorized the Company to enter into Revolving Credit Agreements to provide committed funding of \$175 million over a period not to exceed five years, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, NY 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-M-0172SA1)

NOTICE OF ADOPTION

Exclusions Requested in the 2011 Performance Under the Electric Service Reliability Performance Mechanism**I.D. No.** PSC-20-12-00007-A**Filing Date:** 2012-09-14**Effective Date:** 2012-09-14

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

Action taken: On 9/13/12, the PSC 2012 adopted an order approving, in part, exclusions requested in Consolidated Edison Company of New York Inc.'s Report on 2011 Performance under the Electric Service Reliability Performance Mechanism.

Statutory authority: Public Service Law, sections 65 and 66

Subject: Exclusions requested in the 2011 Performance under the Electric Service Reliability Performance Mechanism.

Purpose: To approve, in part, exclusions requested in the 2011 Performance under the Electric Service Reliability Performance Mechanism.

Substance of final rule: The Commission, on September 13, 2012 adopted an order approving, in part, exclusions requested in Consolidated Edison Company of New York Inc.'s (Company) Report on 2011 Performance under the Electric Service Reliability Performance Mechanism. This results in the Company incurring a revenue adjustment for the benefit of ratepayers of \$5 million.

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

Text of rule may be obtained from: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, NY 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.

(09-E-0428SA4)

NOTICE OF ADOPTION

Waiver of 16 NYCRR 86.3(a)(1), (2) and 86.4(b) and Submit Substitute Data**I.D. No.** PSC-26-12-00016-A**Filing Date:** 2012-09-14**Effective Date:** 2012-09-14

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

Action taken: On 1/19/12, the PSC adopted an order granting in part, granting conditionally and denying in part requests by New York State Electric & Gas Corporation to waive the filing provisions of 16 NYCRR 86.3(a)(1) and 86.3(a)(2) and 86.4(b) and submit substitute data.

Statutory authority: Public Service Law, sections 4, 122(1) and art. VII

Subject: Waiver of 16 NYCRR sections 86.3(a)(1), (2) and 86.4(b) and submit substitute data.

Purpose: To approve in part, granting conditionally and denying in part a waiver of 16 NYCRR sections 86.3(a)(1) and 86.3(a)(2) and 86.4(b).

Substance of final rule: The Commission, on September 13, 2012, adopted an order approving the May 25, 2012 motion of New York State Electric & Gas Corporation to waive certain of the filing provisions set forth in our regulations, specifically as to the requirements of 16 NYCRR §§ 86.3(a)(1) and (a)(2), and 86.4(b), subject to its submission of substitute data, as discussed herein. The motion to waive the requirements of 16 NYCRR § 86.3(b)(1)(iii) is granted in part and denied in part, 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, 3 Empire State Plaza, Albany, NY 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-T-0248SA1)

NOTICE OF ADOPTION

Property Tax Refund Received from the City of New York, Associated with the 2011-2012 Tax Year**I.D. No.** PSC-27-12-00013-A**Filing Date:** 2012-09-14**Effective Date:** 2012-09-14

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

Action taken: On 9/13/12, the PSC adopted an order approving the petition of Verizon New York, Inc. to retain \$6.5 million, the intrastate portion, of a \$10.6 million property tax refund received from the City of New York, associated with the 2011-2012 tax year.

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

Subject: Property tax refund received from the City of New York, associated with the 2011-2012 tax year.

Purpose: To approve a property tax refund received from the City of New York, associated with the 2011-2012 tax year.

Substance of final rule: The Commission, on September 13, 2012 adopted an order approving the petition of Verizon New York, Inc. to retain \$6.5 million, the intrastate portion, of a \$10.6 million property tax refund received from the City of New York, associated with the 2011-2012 tax year, 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, 3 Empire State Plaza, Albany, NY 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-C-0268SA1)

NOTICE OF ADOPTION

Permit the Use of its Escrow Funds for Making Repairs and/or Plant Improvements**I.D. No.** PSC-27-12-00015-A**Filing Date:** 2012-09-13**Effective Date:** 2012-09-13

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

Action taken: On 9/13/12, the PSC adopted an order approving the Windham Ridge Water Corp.'s amended Escrow Account Statement No. 2 to P.S.C. No. 1 – Water, eff. 10/1/12 to permit the use of its escrow funds for making repairs and/or plant improvements.

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

Subject: Permit the use of its escrow funds for making repairs and/or plant improvements.

Purpose: To permit the use of its escrow funds for making repairs and/or plant improvements.

Substance of final rule: The Commission, on September 13, 2012 adopted an order approving the Windham Ridge Water Corp.'s (Windham Ridge or the Company) amended Escrow Account Statement No. 2 to Schedule P.S.C. No. 1 – Water, effective October 1, 2012 to permit the use of its Escrow Account funds for the purpose of making extraordinary repairs and/or plant improvements, 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, 3 Empire State Plaza, Albany, NY 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-W-0278SA1)

NOTICE OF ADOPTION

Petition to Issue and Sell Up to \$1.6 Billion of Securities in One or More Transactions by March 31, 2016**I.D. No.** PSC-28-12-00011-A**Filing Date:** 2012-09-14**Effective Date:** 2012-09-14

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

Action taken: On 9/13/12, the PSC adopted an order approving the petition of Niagara Mohawk Power Corporation to issue and sell up to \$1.6 billion of securities in one or more transactions, no later than March 31, 2016.

Statutory authority: Public Service Law, section 69

Subject: Petition to issue and sell up to \$1.6 billion of securities in one or more transactions by March 31, 2016.

Purpose: To approve the petition to issue and sell up to \$1.6 billion of securities in one or more transactions by March 31, 2016.

Substance of final rule: The Commission, on September 13, 2012 adopted an order approving the petition of Niagara Mohawk Power Corporation to issue and sell up to \$1.6 billion of securities in one or more transactions, no later than March 31, 2016, 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, 3 Empire State Plaza, Albany, NY 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-M-0264SA1)

NOTICE OF ADOPTION

Tariff Amendments Conforming the Installed Capacity Requirement Allocation Methodology Under the RNY Program**I.D. No.** PSC-29-12-00005-A**Filing Date:** 2012-09-13**Effective Date:** 2012-09-13

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

Action taken: On 9/13/12, the PSC adopted an order approving as a permanent rule revisions to Orange and Rockland Utilities, Inc.'s tariff conforming the installed capacity requirement allocation methodology under the Recharge New York Program (RNY).

Statutory authority: Public Service Law, sections 5, 65 and 66; Public Authorities Law, section 1005; Economic Development Law, section 188-a

Subject: Tariff amendments conforming the installed capacity requirement allocation methodology under the RNY Program.

Purpose: To approve tariff revision as a permanent rule.

Substance of final rule: The Commission, on September 13, 2012 adopted an order approving as a permanent rule revisions to Orange and Rockland Utilities, Inc.'s (Company) tariff conforming the installed capacity requirement allocation methodology under the Recharge New York Program.

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

Text of rule may be obtained from: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, NY 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-0176SA7)

NOTICE OF ADOPTION

Revised Language to Recharge New York Power Program**I.D. No.** PSC-29-12-00021-A**Filing Date:** 2012-09-13**Effective Date:** 2012-09-13

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

Action taken: On 9/13/12, the PSC adopted an order approving Central Hudson Gas & Electric Corporation's amendments to PSC No. 15 – Electricity, effective 10/1/12, to revise the definition of Accepted Allocation under Section No. 40 – Recharge New York Power Program.

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

Subject: Revised language to Recharge New York Power Program.

Purpose: To revise the definition of Accepted Allocation to be consistent with New York Power Authority's agreement with the Company.

Substance of final rule: The Commission, on September 13, 2012 adopted an order approving Central Hudson Gas & Electric Corporation's amendments to PSC No. 15 – Electricity, effective October 1, 2012, to revise the definition of Accepted Allocation under Section No. 40 – Recharge New York Power Program.

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

Text of rule may be obtained from: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, NY 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-0176SA8)

NOTICE OF ADOPTION

Financing Under Lightened Regulation

I.D. No. PSC-30-12-00007-A

Filing Date: 2012-09-17

Effective Date: 2012-09-17

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

Action taken: On 9/13/12, the PSC adopted an order approving the petition from affiliates of Alliance Energy Group LLC for authorization to secure two credit facilities in the maximum amounts of \$487,500 and \$11.0 million pursuant to lightened regulation.

Statutory authority: Public Service Law, section 69

Subject: Financing under lightened regulation.

Purpose: To approve financing under lightened regulation.

Substance of final rule: The Commission, on September 13, 2012 adopted an order approving, the petition of Alliance NYGT LLC, Seneca Power Partners, L.P., Sterling Power Partners, L.P., Alliance Energy Transmissions LLC, and Alliance Energy Transmissions-Syracuse LLC's request for authorization to secure two credit facilities in the maximum amounts of \$487,500 and \$11.0 million, pursuant to lightened regulation, 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, 3 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-0294SA1)

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

Whether a Proposed Agreement for the Provision of Water Service by Saratoga Water Services, Inc. is in the Public Interest

I.D. No. PSC-40-12-00008-P

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

Proposed Action: The Public Service Commission is considering whether to approve, deny, or modify, in whole or in part, the petition of Saratoga Water Services, Inc. for a waiver of the company's tariff and approval of the terms of a service agreement.

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

Subject: Whether a proposed agreement for the provision of water service by Saratoga Water Services, Inc. is in the public interest.

Purpose: Whether the Commission should issue an order approving the proposed provision of water service.

Substance of proposed rule: The Commission is considering whether to approve, deny, or modify, in whole or in part a Petition in which Saratoga Water Services, Inc. (Saratoga) seeks issuance of an Order (a) approving the terms and conditions of a certain "Agreement For The Provision of Water Service", dated December 13, 2006 (Agreement) between Saratoga and Malta Crossings, LLC as being in the public interest; (b) determining that the provision of water service by Saratoga in accordance with the terms set forth in the Agreement is in the public interest; (c) waiving Saratoga's tariff provisions to the extent they are inconsistent with the Agreement, and (d) waiving the applicability of the provisions of 16 N.Y.C.R.R. Parts 501 and 502 to the extent they are inconsistent with the Agreement.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.ny.gov/f96dir.htm>. For questions, contact: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, NY 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, NY 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.

(07-W-0076SP1)

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

Minor Rate Filing

I.D. No. PSC-40-12-00009-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 a filing by Reserve Gas Company, Inc. proposing revisions to the Company's rates, charges, rules and regulations contained in P.S.C. No. 1 — Gas.

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

Subject: Minor Rate Filing.

Purpose: To increase annual revenues by approximately \$116,000 or 7.78%.

Substance of proposed rule: The Commission is considering whether to approve, modify or reject, in whole or in part, a proposal filed by Reserve Gas Company, Inc. (Reserve) to increase its annual gas revenues by approximately \$116,000 or 7.78%. The filing has a proposed effective date of January 1, 2013. The Commission may resolve related matters and may apply its decision here to other companies.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.ny.gov/f96dir.htm>. For questions, contact: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, NY 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, NY 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-G-0404SP1)

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

Issuance of Securities

I.D. No. PSC-40-12-00010-P

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

Proposed Action: The Commission is considering a petition filed by Consolidated Edison Company of New York, Inc. requesting permission to issue and sell securities.

Statutory authority: Public Service Law, section 69

Subject: Issuance of securities.

Purpose: To permit the Company to issue and sell securities.

Substance of proposed rule: On September 7, 2012, Consolidated Edison Company of New York, Inc. (Company) submitted a petition requesting Commission approval to issue and sell securities. The proposed agency action would permit the Company (i) to issue and sell not to exceed \$3.5 billion aggregate principal amount of unsecured debt obligations of the Company having a maturity of more than one year for purposes of reimbursement of the Company's treasury for moneys expended for capital purposes through June 30, 2012; (ii) to enter into or continue one or more revolving credit agreements and to issue and sell not to exceed \$2.25 billion aggregate principal amount at any time outstanding of unsecured debt obligations having a maturity of more than one year pursuant to such

agreement(s), such issuance and sale to be for purposes of reimbursement of the Company's treasury for moneys expended for capital purposes through June 30, 2012; and (iii) to issue and sell unsecured debt obligations having a maturity of more than one year for the purposes of refunding in advance of maturity outstanding debt securities of the Company. The Commission may decide to approve, reject or modify the Petition and may take any action related to the Petition.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.ny.gov/f96dir.htm>. For questions, contact: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, NY 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, NY 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-M-0401SP1)

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

The Approval of the Acquisition of GenOn by NRG Through a Merger

I.D. No. PSC-40-12-00011-P

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

Proposed Action: The Commission is considering the approval of the acquisition of GenOn Energy, Inc. (GenOn) by NRG Energy, Inc. (NRG) through a merger transaction.

Statutory authority: Public Service Law, section 70

Subject: The approval of the acquisition of GenOn by NRG through a merger.

Purpose: To consider the approval of the acquisition of GenOn by NRG through a merger.

Substance of proposed rule: The Public Service Commission is considering a petition filed on August 2, 2012 requesting approval of the acquisition of GenOn Energy, Inc. (GenOn) by NRG Energy, Inc. (NRG) through a merger transaction. GenOn owns, indirectly, the 1,139 MW Bowline Generating Facility located in West Haverstraw and Hudson Valley Gas Corporation (HVGC), which transports gas fuel through its pipeline facilities to Bowline. NRG owns indirectly five generation facilities in New York totaling 3,923 MW in capacity, including the Arthur Kill Facility, an 867 MW facility on Staten Island; Astoria Gas Turbines, a 512 MW facility in Queens; the Dunkirk facility, a 530 MW facility in Dunkirk; the Huntley facility, a 380 MW facility in Huntley; and Oswego Harbor, a 1,634 MW facility in Oswego. After the merger, the combined companies would operate under NRG's name. 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.ny.gov/f96dir.htm>. For questions, contact: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, NY 12223-1350, (518) 486-2655, email: leann.ayer@dps.ny.gov

Data, views or arguments may be submitted to: Jaclyn A. Brillling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530, email: secretary@dps.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-0359SP1)

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

Recharge New York Power Program (RNY)

I.D. No. PSC-40-12-00012-P

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

Proposed Action: The Commission is considering a petition filed by Consumer Power Advocates for clarification regarding the applicability of the Revenue Decoupling Mechanism (RDM) as it applies to Consolidated Edison Company of New York, Inc.'s Recharge New York Program.

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

Subject: Recharge New York Power Program (RNY).

Purpose: To clarify the applicability of the RDM as it applies to Consolidated Edison Company of New York, Inc.'s RNY Program.

Substance of proposed rule: The Commission is considering whether to approve, modify or reject, in whole or in part, a petition filed by Consumer Power Advocates for clarification regarding the applicability of the Revenue Decoupling Mechanism as it applies to Consolidated Edison Company of New York, Inc.'s Recharge New York Power Program customers. The Commission may resolve related matters and may apply its decision here to other companies.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.ny.gov/f96dir.htm>. For questions, contact: 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-0176SP9)

Department of State

NOTICE OF ADOPTION

Children's Product Safety and Recall Effectiveness Act

I.D. No. DOS-02-12-00001-A

Filing No. 948

Filing Date: 2012-09-18

Effective Date: 2013-01-31

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

Action taken: Addition of Part 4607 to Title 21 NYCRR.

Statutory authority: General Business Law, section 490-h

Subject: Children's Product Safety and Recall Effectiveness Act.

Purpose: Implement the Children's Product Safety and Recall Effectiveness Act.

Substance of final rule: Section 4607.1 describes the purpose and scope of Article 28-E of the General Business Law and the adopted regulations.

Section 4607.2 defines the following terms: children's product, commercial dealer, defect, defective, durable juvenile product, initial consumer, knowledge, person, recall, retailer, and secondhand dealer.

Section 4607.3 describes the obligation of durable juvenile product manufacturers to provide owner safety cards and maintain any returned owner safety cards for a period of six years. The regulation also explains the obligation of durable juvenile product manufacturers to file disclosure forms with the Department of State.

Section 4607.4 sets forth the responsibilities of commercial dealers to

properly label products placed for sale or distribution in New York. The regulation also sets forth the notification procedure which must be followed by commercial dealers upon receiving notice that a product is defective and a recall or warning issued. Finally, the regulation explains the procedure to be followed by commercial dealers upon receiving recalled products back from consumers.

Section 4607.5 describes the responsibilities of retailers to not take delivery of, or introduce for sale, any product that is not properly labeled in accordance with the regulations. The regulation further describes the procedure which must be followed by retailers upon receiving notice of the issuance of a recall or warning regarding a children's product or durable juvenile product.

Section 4607.6 describes the responsibilities of persons engaged in non-retail sales of children's products and durable juvenile products including secondhand dealers and those who operate or manage a website that serves as a platform to facilitate competitive bidding between third parties.

Section 4607.7 sets for the penalties which may be imposed for violations of the regulations and the procedure to be followed to adjudicate disciplinary matters.

Final rule as compared with last published rule: Nonsubstantive changes were made in sections 4607.2(e)-(1), 4607.4(b)(4), (c)(2), (4), 4607.3(c)(1), (2) and (3).

Text of rule and any required statements and analyses may be obtained from: Whitney Clark, NYS Department of State, Office of Counsel, 1 Commerce Plaza, 99 Washington Avenue, Albany, NY 12231, (518) 473-2728, email: whitney.clark@dos.ny.gov

Revised Regulatory Impact Statement

The non-substantive revisions made to the text of the proposed rule do not necessitate a revision to the previously published Regulatory Impact Statement. Specifically, as proposed the rule required manufacturers of durable juvenile products to maintain consumer product safety owner cards for a period of six years, after which time the cards and related information had to be destroyed. Based on comments received, the Department eliminated the destruction requirement so as to permit manufacturers to maintain data for longer periods of time, if so desired. This revision does not require a revision to the previously published Regulatory Impact Statement.

Revised Regulatory Flexibility Analysis

1. EFFECT OF RULE:

The proposed amendments will have no effect on local governments and will not impose reporting, record-keeping or other compliance requirements on local governments. The basis of this finding is that these proposed new regulations are directed at businesses that are engaged in the manufacture, remanufacture, retrofitting, importing, distribution or sale of products for children under 12 years of age.

The proposed additions will have an effect on small businesses, which are defined as business which employ 100 or fewer individuals (SAPA § 102(8)). Small businesses within the durable juvenile products and children's products manufacturing, distribution and sales industries are required to comply with Article 28-E of the General Business Law and will also be required to comply with the proposed rules.

The proposed rules impose reporting, record-keeping and other compliance requirements on commercial dealers and sellers of durable juvenile products and children's products. If any such enterprise operates as a small business, the proposed rules require minimal record keeping and reporting to the New York State Department of State Division of Consumer Protection (Department). The minimal requirements include: (1) for durable juvenile products manufacturers to maintain any returned product safety owners card information; (2) for retailers to post recall and warning notices, pull recalled items from the shelves, notify initial customers of a recalled item, for whom the retailer has contact information, that such item has been recalled, and implement a mechanism to prevent the sale of a recalled item; (3) for internet platforms and secondhand stores to provide notice to buyers and sellers of the importance of checking the United States Consumer Product Safety Commission (CPSC) recall website before engaging in the purchase or sale of a durable juvenile product or a children's product; and (4) for all commercial dealers of durable juvenile products or children's products to report to the Department any recall or warning issued on a product sold in the State, and (5) report on the disposition of any such recalled product returned to the manufacturer or importer.

The proposed rules benefit affected individuals and small business by providing guidance about compliance with the Children's Product Safety and Recall Effectiveness Act, Article 28-E of the General Business Law.

2. COMPLIANCE REQUIREMENT:

This regulation requires manufacturers of durable juvenile products to provide a durable juvenile product safety owners card with each durable

juvenile product distributed, sold or made available in the State. If an initial consumer responds to the manufacturer with their contact information, the manufacturer must maintain such information for no less than six years. Manufacturers of durable juvenile products must also file biennially with the Department a durable juvenile product manufacturer's product safety owner's card disclosure form, which will be prescribed by the Department.

This regulation also requires a commercial dealer of children's products or durable juvenile products, which have been subject to a recall and the dealer has accepted the return of such recalled item from the purchaser to complete a Certification of Disposition, as prescribed by the Department, and file with the New York State Department of State Division of Consumer Protection within 90 days of the date of issuance of the recall.

Secondhand dealers are required under this regulation to obtain a copy of the Department prescribed notice instructing consumers on how to obtain recall information and advisory language notifying buyers and sellers of children's products or durable juvenile products of the importance of checking recall lists before purchasing used products, and to post the notice.

3. PROFESSIONAL SERVICES:

It is not anticipated that affected small businesses will need to retain additional professional services to comply with the proposed rule additions.

4. COMPLIANCE COSTS:

(a) Costs to small businesses: There will be a slight cost to small businesses to maintain information, prepare and provide relevant information requested by the Department, and/or post and notify consumers of recalls relating to children's products. The former State Consumer Protection Board, now New York State Department of State Division of Consumer Protection (hereinafter referred to as the Department to articulate the change in law) solicited an estimated cost for implementing the proposed rules from the Toy Industry Association (TIA), the Juvenile Product Manufacturers Association (JPMA), the Retail Council of New York State (Retail Council), and eBay, all of which include small businesses within their membership. The Department was unable to obtain a contact in the secondhand dealer industry, which is comprised of many small businesses.

i. TIA was unable to provide an estimated cost for the implementation of the proposed rules. The Department estimates that the cost will not be significant as many of the requirements that affect the TIA members under the proposed rules are the same as the requirements the members are already responding too under the CPSIA of 2008.

ii. JPMA was unable to provide an estimated cost for the implementation of the proposed rules. The Department estimates the cost will not be significant as many of the requirements that affect the JPMA members under the proposed rules are the same requirements the members are already responding too under the CPSIA of 2008.

iii. The Retail Council was unable to provide an estimated cost for the implementation of the proposed rules. The Department estimates that the costs to retailers should not be significant as the ongoing requirements upon retailers include posting notice, pulling recalled items from the shelves, and if they have contact information, notifying initial consumers of a recalled item that the item has been recalled. A one-time expense will be incurred by retailers to implement a mechanism at the point of sale to prevent the sale of a recalled item.

iv. eBay was responsive and advised that it has just fewer than 3.3 million active eBay users registered in the State. "Active" is defined as one who has bought, sold, or bid on an item on eBay at least once in the last year. 98,000 of the 3.3 million active users in the State are a top seller, which means they sell at least \$1,000 worth of goods per month for three or more consecutive months. Thus, these sellers make all or part of their income from eBay sales, and many of them are small businesses employing 2-4, or more to help list goods and ship to buyers. eBay furthered that for the past two years it has been prominently providing notice to prospective sellers and buyers to advise of the importance of checking the CPSC recall website prior to engaging in a transaction for durable juvenile or children's products. The cost from this undertaking has been minimal. According to eBay, it will continue to be a minimal expense and undertaking to implement prescribed language and develop a filter to flag whether a user is registered in New York State, and if that user is selling or purchasing a durable juvenile product or children's product.

v. The proposed rules seek to require secondhand dealers obtain and post an advisory sign from the New York State Department of State Division of Consumer Protection. While the Department was unable to obtain a contact in the secondhand dealer industry, it estimates that the cost imposed is a de minimis one time labor cost to obtain and post the prescribed sign.

(b) Costs to local governments: No additional costs to local governments.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The proposed additions do not impose new technological changes.

6. MINIMIZING ADVERSE IMPACT:

By working with and seeking input from industry participants in drafting these rules, any adverse impact to small businesses has been minimized, if not completely eliminated. There is no adverse impact to local governments.

In contemplation of the proposed rules, the Department met several times with the Toy Industry Association (TIA), which is based in New York City with 550 members, of which twenty percent are based in New York State. The TIA advocated for, and the Department agreed to provide for, a narrower definition of recall, and passive enforcement of the requirements upon such commercial dealers to provide appropriate tracking labels on the products, and notification to the Department of any recall or warning within twenty-four hours of issuance. The TIA explained that the definition of recall being used was so broad that it may be interpreted to include any items recalled from the distribution chain due to a packaging error or any other concern not related to a defect in the operation of the item. It was clearly not the intention of the Act or the Department to engage in regulating non-dangerous, administrative errors. Likewise, the Department agreed to passive enforcement of the commercial dealer requirements because it was the most efficient and cost-effective means for the Board to enforce the Act.

The Department also met with the Retail Council of New York State, whose membership includes nearly 5,000 stores ranging in size from sole proprietor businesses to national retail chains throughout the Empire State. The Retail Council advocated for the conspicuously posted recall notice requirement to include a computer kiosk where a consumer could find the most recent CPSC recall information. Target stores currently provide for such an electronic recall and warning information portal. In recognizing the advancement of technology in the retail sector, the Department agreed to permit such kiosks. However, any retail outlet utilizing an electronic kiosk shall post signage at each store entrance used by the public and prominently at the customer service area advising consumers that recall information can be found at the electronic kiosk and where such kiosk is located in the store. Any retailer utilizing an electronic kiosk shall provide direct customer assistance for any consumer who needs assistance operating the electronic device.

The Department also considered prescribing the size and color of the recall or warning notification sign, along with the font size used therein. However, upon discussion with the Retail Council, the Department learned that retailers as part of their unique branding are adverse to such requirements. Thus, the Department deferred on this point as to not overburden retailers. However, retailers must use a standard of reasonableness in their conspicuous posting signage and font size.

In addition, the Department met on several occasions with eBay, an international California based third-party internet sales and auction platform that is a fee-based service provider, to discuss the conspicuous internet resale notification advisory language requirement under the Act. eBay provided the advisory language it currently used to inform both bidders and sellers of the importance of checking the United States Consumer Product Safety Commission website for recalls. The parameters of this language is included in the Department's proposed rules, along with an additional requirement that such advisory language be provided before a bidder or seller engages in the actual entering of any personal or financial information to prepare a bid or sale.

While the Department was unable to solicit the input of the secondhand dealer industry, the proposed rules pose no foreseeable adverse impact to secondhand retailers.

7. SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION:

The proposed additions have no unique features which would require the participation of local governments. As indicated previously, the Department solicited participation from affected industry participants.

8. OPPORTUNITY FOR AMELIORATIVE ACTION:

The proposed additions do include the establishment of violations and penalties. The Department did consider including a cure period or other opportunity for ameliorative action to prevent the impositions of penalties on small businesses subject to enforcement. However, it was determined that the current enforcement procedures used at the Department provide for enforcement discretion. And, given the statute's specific requirements for swift 24 hour action to remediate the marketplace from dangerous children's products, it is imperative that the statute's violations and subsequent penalties remain unaltered to ensure a safe marketplace for the State's children.

Revised Rural Area Flexibility Analysis

The non-substantive revisions made to the text of the proposed rule do not necessitate a revision to the previously published Rural Area Flexibility Analysis. Specifically, as proposed the rule required manufacturers of durable juvenile products to maintain consumer product safety owner cards for a period of six years, after which time the cards and related information had to be destroyed. Based on comments received, the Department

eliminated the destruction requirement so as to permit manufacturers to maintain data for longer periods of time, if so desired. This revision does not require a revision to the previously published Rural Area Flexibility Analysis.

Revised Job Impact Statement

The non-substantive revisions made to the text of the proposed rule do not necessitate a revision to the previously published Job Impact Statement. Specifically, as proposed the rule required manufacturers of durable juvenile products to maintain consumer product safety owner cards for a period of six years, after which time the cards and related information had to be destroyed. Based on comments received, the Department eliminated the destruction requirement so as to permit manufacturers to maintain data for longer periods of time, if so desired. This revision does not require a revision to the previously published Job Impact Statement.

Assessment of Public Comment

The Department of State received two comments in response to the Notice of Proposed Rule Making January 11, 2012 publication I.D. No. DOS-02-12-00001-P. The following is a summary of questions/concerns and the Department's response.

The Retail Council of New York State presented the following question and concerns regarding proposed 21 NYCRR 4607.4(b)(4) and 21 NYCRR 4607.4(c)(2).

"Can it possibly be that for every recall of a children's product, every 'dealer' of the product must file this incident form with the Department? Department could be inundated with paper if there is no hierarchy prescribed among the kinds of dealers in the definition, from manufacturer through importer and wholesaler. Many retailers are importers, so there could be hundreds of separate 'dealers' having to fulfill the requirement. It already is duplicating much of what CPSC prescribes; imagine what would happen if more states decided to require the same thing? Besides being unmanageable, how does this advance safety? How can the Department realistically perform follow-up and enforcement here? If they can't, it breeds disregard for their regulations."

The Department explained that "commercial dealer" was a statutorily defined term, which was incorporated into the proposed rulemaking. Accordingly each entity within the "commercial dealer" definition was obligated pursuant to law (General Business Law § 490-d) to provide notification to the Department. Thus, the concerns articulated would need to be addressed by a statutory change.

The Retail Council of New York also shared a concern regarding the one business day action required by retailers upon the receipt of a recall or warning. The commenter advised that it was impossible to accomplish the posting of a recall or warning in the store because "it would take time to create and post the signs."

The Department explained that retailers were obligated to perform these duties under the statute (General Business Law § 490-e) and therefore an amendment to the statute would be necessary to address this concern. The Department also explained that the recall and warning signs are often available on the Consumer Product Safety Commission's website or the manufacturer's website, and thus the retailer is not obligated to take time to create signs; only post them.

The final comments were received by the Administrative Regulations Review Commission. The Commission pointed out that the Regulatory Flexibility Analysis for Small Business and Local Governments submitted failed to provide an opportunity to cure for small businesses and local governments, or any explanation as to why such cure period was not included in the proposed rule making.

The Department explained this was an oversight as the proposed rulemaking was drafted previous to the enactment of the cure period requirement, which became effective on September 23, 2011 pursuant to Chapter 524 of the Laws of 2011. Accordingly, the Department amended the Regulatory Flexibility Analysis for Small Business and Local Governments to explain that a cure period was not being included due to the statutes requirements for swift action which impacts consumer health and safety. In addition, the Department's current enforcement mechanisms allow for discretion in enforcement.

The Commission also noted that in proposed 21 NYCRR § 4607.3(c)(3), manufacturers of durable juvenile products were required to maintain the consumer product safety owner card for a period of six years, after which time the cards and related information shall be adequately destroyed. The Commission explained that this was incongruent to comparable federal regulations adopted by the Consumer Product Safety Commission (CPSC). The CPSC advised that six years of data retention is adequate and that if "manufacturers want to keep the data for a longer period they have that option." The Commission recommended that the Department revise its data retention provisions to be consistent with Federal requirements.

The Department adopted the Commission's suggestion and accordingly deleted from proposed 21 NYCRR 4607.3(c)(3) the language, "after which time the cards and related information shall be adequately

destroyed.” Thereby eliminating the requirement for the product information cards, or any information gleaned from such cards, be destroyed upon the expiration of six years.

State University of New York

NOTICE OF ADOPTION

State University of New York Tuition and Fees Schedule

I.D. No. SUN-30-12-00003-A

Filing No. 945

Filing Date: 2012-09-14

Effective Date: 2012-10-03

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

Action taken: Amendment of section 302.1(b) of Title 8 NYCRR.

Statutory authority: Education Law, section 355(2)(b) and (h)

Subject: State University of New York Tuition and Fees Schedule.

Purpose: To amend the Tuition and Fees Schedule to increase tuition for students in all programs in the State University of New York.

Substance of final rule: This emergency and proposed rulemaking changes the tuition and fee schedule of the State University of New York effective for the Fall 2012 semester.

Since filing the emergency/proposed rule making, nonsubstantive changes were made to footnotes 4 and 5. In footnote 4, the phrase “since their plans were approved for 2011-12” was removed. In the time since filing the emergency/proposed rule making, the University Center at Binghamton’s plan under the NY-SUNY 2020 Challenge Grant Program Act has received approval, therefore, footnote 5 was changed to reflect that the University at Binghamton’s plan is approved, but the University at Albany is still waiting approval for their plan.

The tuition increases on an annual basis proposed by this rulemaking are as follows:

Undergraduate Degree: Tuition would increase by \$300 to \$5,570 for resident students. Tuition would increase by \$1,470 to \$16,190 for out-of-state students at the University Centers at Buffalo and Stony Brook; by \$1,340 to \$14,720 at the University Centers at Albany (pending approval of its submitted plan) and Binghamton; and, by \$500 to \$14,820 for all other campuses.

Graduate Degree Programs: Tuition would increase by \$500 for resident students, to \$9,370. Tuition would increase by \$1,520 for out-of-state students, to \$16,680. For students enrolled in programs leading to a Masters in Business Administration degree, tuition would increase by \$920 to \$11,130 for residents and by \$1,670 to \$18,320 for out-of-state students. For students enrolled in programs leading to a Masters in Architecture degree, tuition would increase by \$830 to \$10,040 for residents and by \$1,520 to \$16,680 for out-of-state students. For students enrolled in programs leading to a Masters in Social Work degree, tuition would increase by \$830 to \$10,000 for residents and by \$1,520 to \$16,680 for out-of-state students.

Medicine: Tuition would increase by \$2,440 to \$29,530 for residents and by \$1,000 to \$54,650 for out-of-state residents.

Law: The tuition at the Law School of the University at Buffalo would be increased by \$1,710 to \$20,730 for residents and by \$3,200 to \$35,220 for out-of-state residents.

Pharmacy: The tuition at the School of Pharmacy at the University at Buffalo would increase by \$1,780 to \$21,530 for residents and by \$3,800 to \$41,750 for out-of-state residents.

Physical Therapy and Doctor of Nursing Practice: Tuition for the Doctor of Physical Therapy and Nursing Practice at the University at Buffalo and the University at Stony Brook would increase by \$1,480 to \$17,940 for residents and by \$2,930 to \$32,220 for out-of-state residents.

Dentistry: Tuition for the D.D.S programs at the Universities at Stony Brook and Buffalo would increase by \$2,100 to \$25,450 for residents and by \$5,200 to \$57,230 for out-of-state residents.

Optometry: Tuition for the Optometry program at the College of Optometry would increase by \$1,300 to \$19,900 for residents and by \$2,500 to \$38,210 for out-of-state residents.

Physician Assistant: Tuition for the Physicians’ Assistant graduate program at Stony Brook and Upstate would increase by \$820 to \$9,940 for residents and by \$1,650 to \$18,190 for out-of-state residents.

Final rule as compared with last published rule: Nonsubstantive changes were made in section 302.1(b)(2).

Text of rule and any required statements and analyses may be obtained from: Lisa S. Campo, State University of New York, Office of General Counsel, University Plaza, Albany, NY 12246, (518) 320-1400, email: Lisa.Campo@SUNY.edu

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

No revised regulatory impact statement, job impact statement, rural area flexibility analysis or regulatory flexibility analysis for small businesses and local governments are submitted with this notice because the changes made to the final text are not substantial and the previously published statements and analyses do not need to be changed.

Assessment of Public Comment

The agency received no public comment.