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

EMERGENCY RULE MAKING

Captive Cervids

I.D. No. AAM-32-13-00001-E
Filing No. 766
Filing Date: 2013-07-17
Effective Date: 2013-07-17

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

Action taken: Amendment of section 68.1(g) of Title 1 NYCRR.

Statutory authority: Agriculture and Markets Law, sections 18, 72 and 74

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

Specific reasons underlying the finding of necessity: The rule amends section 68.1(g) of 1 NYCRR to prohibit the importation of captive cervids (deer, elk and moose) into New York State from entities within states where CWD has been detected within the past 60 months or from any part of a state which is within 50 miles of a site in another state where CWD has been detected within the past 60 months.

CWD, Chronic Wasting Disease, is a progressive, fatal, degenerative neurological disease of captive and free-ranging deer, elk, and moose (cervids) that was first recognized in 1967 as a clinical wasting syndrome of unknown cause in captive mule deer in Colorado. CWD belongs to the family of diseases known as transmissible spongiform encephalopathies (TSEs). The name derives from the pin-point size holes in brain tissue of infected animals which gives the tissue a sponge-like appearance. TSEs include a number of different diseases affecting animals and humans including bovine spongiform encephalopathy (BSE) in cattle, scrapie in sheep and goats and Creutzfeldt-Jacob disease (CJD) in humans. Although CWD shares certain features with other TSEs, it is a distinct disease affecting only deer, elk and moose. There is no known treatment or vaccine for CWD.

The origin of CWD is unknown. The agent that causes CWD and other TSEs has not been completely characterized. However, the theory supported by most scientists is that TSE diseases are caused by proteins called prions. The exact mechanism of transmission is unclear. However, evidence suggests that as an infectious and communicable disease, CWD is transmitted directly from one animal to another through saliva, feces, and urine containing abnormal prions shed in those body fluids and excretions. The species known to be susceptible to CWD are Rocky Mountain elk (Cervus canadensis), red deer (Cervus elaphus), mule deer (Odocoileus hemionus), black-tailed deer (Odocoileus hemionus), white-tailed deer (Odocoileus virginianus), sika deer (Cervus nippon), and moose (Alces alces).

CWD is a slow and progressive disease. Because the disease has a long incubation period (1 1/2 to 5 years), deer, elk and moose infected with CWD may not manifest any symptoms for a number of years after they become infected. As the disease progresses, deer, elk and moose with CWD show changes in behavior and appearance. These clinical signs may include progressive weight loss, stumbling, tremors, lack of coordination, excessive salivation and drooling, loss of appetite, excessive thirst and urination, listlessness, teeth grinding, abnormal head posture and drooping ears.

The United States Secretary of Agriculture declared CWD to be an emergency that threatens the livestock industry of the United States and authorized the United States Department of Agriculture to establish a CWD eradication program. This prompted the Department in 2004 to adopt regulations which allow for importation of captive cervids from states with confirmed cases of CWD under a health standard and permit system.

Nonetheless, 22 states, including New York, as well as two provinces in Canada have either CWD detections in free ranging deer or have cases of CWD diagnosed in captive deer. Most recently, this past fall, CWD was diagnosed in captive deer in Pennsylvania. Department regulations currently prohibit the importation of CWD susceptible cervids from a CWD infected zone, which is defined as a geographic area, irrespective of state boundaries, in which CWD is present, whether in wild or captive cervids. This rule would amend the definition of CWD infected zone in section 68.1(g) of 1 NYCRR to include (1) any state which has had a diagnosed case of CWD in captive or wild cervids within the past 60 months; (2) any part of a state which is within 50 miles of a site in another state where CWD was diagnosed in a captive or wild cervids within the past 60 months; or (3) any area designated by the Commissioner as having a high risk of CWD contamination.

The regulations are necessary to protect the general welfare. By establishing a five-year look-back for CWD affliction in cervids, the rule would help protect animal health as well as New York's 14 to 21 million dollar captive deer industry and the 750-million dollar wild deer hunting industry.

Based on the facts and circumstances set forth above, the Department has determined that the immediate adoption of this rule is necessary for the preservation of the general welfare and that compliance with subdivision one of section 202 of the State Administrative Procedure Act would be contrary to the public interest.

Subject: Captive cervids.

Purpose: To prevent the further spread of chronic wasting disease in New York State.

Text of emergency rule: Subdivision (g) of section 68.1 of Title 1 of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended to read as follows:

(g) CWD infected zone means [a defined geographic area, irrespective of state boundaries, in which CWD is present, whether in wild or captive cervids]*:*

(1) any state which has had a diagnosed case of CWD in captive or wild cervids within the past 60 months;

(2) any part of a state which is within 50 miles of a site in another state where CWD has been diagnosed in captive or wild cervids within the past 60 months; or

(3) any area designated by the Commissioner as having a high risk of CWD contamination.

This notice is intended to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires October 14, 2013.

Text of rule and any required statements and analyses may be obtained from: David Smith, DVM, Director, Division of Animal Industry, NYS Department of Agriculture and markets, 10B Airline Drive, Albany, New York 12235, (518) 457-3502, email: david.smith@agriculture.ny.gov

Regulatory Impact Statement

1. Statutory authority:

Section 18(6) of the Agriculture and Markets Law provides, in part, that the Commissioner may enact, amend and repeal necessary rules which shall provide generally for the exercise of the powers and performance of the duties of the Department.

Section 72 of the Law authorizes the Commissioner to adopt and enforce rules and regulations for the control, suppression or eradication of communicable diseases among domestic animals and to prevent the spread of infection and contagion.

Section 72 of the Law also provides that whenever any infectious or communicable disease affecting domestic animals shall exist or have recently existed outside this State, the Commissioner shall take measures to prevent such disease from being brought into the State.

Section 74 of the Law authorizes the Commissioner to adopt rules and regulations relating to the importation of domestic or feral animals into the State.

2. Legislative objectives:

The statutory provisions pursuant to which this rule is being readopted as an emergency measure are aimed at preventing infectious or communicable diseases affecting domestic animals from being brought into the State to control, suppress and eradicate such diseases and prevent the spread of infection and contagion. The rule would further this legislative goal by prohibiting importation of cervids from states or parts of states where CWD has been detected within the past 60 months, thereby protecting animal health and New York's deer industry.

3. Needs and benefits:

The rule prohibits the movement of cervids (deer, elk and moose) from states or parts of states where CWD has been detected within the past 60 months.

CWD, Chronic Wasting Disease, is a progressive, fatal, degenerative neurological disease of captive and free-ranging deer, elk, and moose (cervids) that was first recognized in 1967 as a clinical wasting syndrome of unknown cause in captive mule deer in Colorado. CWD belongs to the family of diseases known as transmissible spongiform encephalopathies (TSEs). The name derives from the pin-point size holes in brain tissue of infected animals which gives the tissue a sponge-like appearance. TSEs include a number of different diseases affecting animals and humans including bovine spongiform encephalopathy (BSE) in cattle, scrapie in sheep and goats and Creutzfeldt-Jacob disease (CJD) in humans. Although CWD shares certain features with other TSEs, it is a distinct disease affecting only deer, elk and moose. There is no known treatment or vaccine for CWD.

The origin of CWD is unknown. The agent that causes CWD and other TSEs has not been completely characterized. However, the theory supported by most scientists is that TSE diseases are caused by proteins called prions. The exact mechanism of transmission is unclear. However, evidence suggests that as an infectious and communicable disease, CWD is transmitted directly from one animal to another through saliva, feces, and urine containing abnormal prions shed in those body fluids and excretions. The species known to be susceptible to CWD are Rocky Mountain elk (Cervus canadensis), red deer (Cervus elaphus), mule deer (Odocoileus hemionus), black-tailed deer (Odocoileus hemionus), white-tailed deer (Odocoileus virginianus), sika deer (Cervus nippon), and moose (Alces alces).

CWD is a slow and progressive disease. Because the disease has a long incubation period (1 ½ to 5 years), deer, elk and moose infected with CWD may not manifest any symptoms of the disease for a number of years after they become infected. As the disease progresses, deer, elk and moose with CWD show changes in behavior and appearance. These clinical signs may include progressive weight loss, stumbling, tremors, lack of coordination, excessive salivation and drooling, loss of appetite, excessive thirst and urination, listlessness, teeth grinding, abnormal head posture and drooping ears.

The United States Secretary of Agriculture declared CWD to be an emergency that threatens the livestock industry of the United States and authorized the United States Department of Agriculture to establish a CWD eradication program. This prompted the Department in 2004 to adopt regulations which allow for importation of captive cervids from states with confirmed cases of CWD under a health standard and permit system. Nonetheless, 22 states, including New York, as well as two provinces in Canada have either CWD detections in free ranging deer or have cases of CWD diagnosed in captive deer. Most recently, this past fall, CWD was diagnosed in captive deer in Pennsylvania.

Department regulations currently prohibit the importation of CWD susceptible cervids from a CWD infected zone, which is defined as a geographic area, irrespective of state boundaries, in which CWD is present, whether in wild or captive cervids. This rule would amend the definition of CWD infected zone in section 68.1(g) of 1 NYCRR to include (1) any state which has had a diagnosed case of CWD in captive or wild cervids within the past 60 months; (2) any part of a state which is within 50 miles of a site in another state where CWD has been diagnosed in captive or wild cervids within the past 60 months; or (3) any area designated by the Commissioner as having a high risk of CWD contamination. By establishing a five-year look-back for CWD affliction in cervids, the rule would help protect animal health as well as New York's 14 to 21 million dollar captive deer industry and 750-million dollar wild deer hunting industry.

4. Costs:

(a) Costs to regulated parties:

There are approximately 433 entities raising a total of approximately 9,600 captive deer in New York State. Of these entities, approximately 25 purchase deer from out of state. Last year, 38 head of deer were purchased out of state by these entities at a cost of $19,000 to $190,000 ($500 to $5,000 per head). The rule will exclude approximately 50 deer per year from importation, requiring New York entities to purchase deer from entities within New York State, entities within states where CWD has not been detected within the past 60 months or from any part of a state which is within 50 miles of a site in another state where CWD has not been detected within the past 60 months. Sourcing approximately 50 deer from these other locations could increase costs an average of $500 to $2,000 per deer, or $25,000 to $100,000 total. It is anticipated that most of these deer (approximately 40 head) would be purchased in New York State rather than out of state. At $1,000 to $5,000 per deer, New York entities could realize $40,000 to $200,000 in additional income.

(b) Costs to the agency, state and local governments:

There will be no cost to the Department, State or local governments.

(c) Source:

Costs are based upon data from the records of the Department's Division of Animal Industry as well as observations of the deer industry in New York State.

5. Local government mandates:

The amendments would not impose any program, service, duty or other responsibility upon any county, city, town, village, school district, fire district or other special district.

6. Paperwork:

It is anticipated that the rule will not result in any additional paperwork for regulated parties.

7. Duplication:

The rule does not duplicate any State or federal requirements.

8. Alternatives:

Three alternatives were considered.

The first alternative was to leave the current regulatory scheme in place which allows for importation of captive cervids from states with known cases of CWD if the states meet certain health standards and comply with a permitting system under the current regulations. However, this approach was determined to be inadequate given the apparent further spread of CWD in the country. Additionally, deer owners could circumvent New York's current regulation by accessing New York markets through movement of deer through states not subject to the current requirements.

The second alternative was to implement a total ban on importation. Due to the spread of CWD to other states and the threat that this disease poses to the State's captive and wild deer populations, it is clear a total ban on importation of CWD susceptible species would be the best method of preventing another introduction of this disease into New York State. Furthermore, by permitting the disease to be detected and controlled in a more efficient manner, a complete ban on importation would greatly simplify an epidemiologic investigation if a new case of CWD were to occur in New York State at some future date.

The third alternative and the one ultimately implemented in this rule is the prohibition of movement of CWD susceptible species into New York from states which have had a diagnosed case of CWD in captive or wild cervids in the past 60 months or any part of a state which is within 50 miles of a site in another state where CWD has been diagnosed in the past

60 months. It was determined that absent notice and an opportunity for a regulatory hearing, this alternative was the best one to pursue on an emergency basis. However, since a total ban on imports is likely to be the best method to help prohibit the further introduction of CWD in New York, it is anticipated that the total ban set forth in the second alternative will be pursued as a permanent measure at a later date.

9. Federal standards:

The proposed regulations do not exceed any minimum standards of the federal government.

10. Compliance schedule:

The rule will be effective upon filing with the Department of State.

Regulatory Flexibility Analysis

1. Effect of rule:

There are approximately 433 small businesses raising a total of approximately 9,600 captive cervids (the family that includes deer and elk) in New York State.

The rule will have no impact on local governments.

2. Compliance requirements:

Under the rule, regulated parties are prohibited from importing cervids into New York State from entities within states where CWD has been detected within the past 60 months or from any part of a state which is within 50 miles of a site in another state where CWD has been detected within the past 60 months.

The rule will have no impact on local governments.

3. Professional services:

It is not anticipated that regulated parties will have to secure any professional services in order to comply with this rule.

The rule will have no impact on local governments.

4. Compliance costs:

There are approximately 433 entities raising a total of approximately 9,600 captive deer in New York State. Of these entities, approximately 25 purchase deer from out of state. Last year, 38 head of deer were purchased out of state by these entities at a cost of $19,000 to $190,000 ($500 to $5,000 per head). The rule will exclude approximately 50 deer per year from importation, requiring New York entities to purchase deer from entities within New York State, entities within states where CWD has not been detected within the past 60 months or from any part of a state which is within 50 miles of a site in another state where CWD has not been detected within the past 60 months. Sourcing approximately 50 deer from these other locations could increase costs an average of $500 to $2,000 per deer, or $25,000 to $100,000 total. It is anticipated that most of these deer (approximately 40 head) would be purchased in New York State rather than out of state. At $1,000 to $5,000 per deer, New York entities could realize $40,000 to $200,000 in additional income.

The rule will have no impact on local governments.

5. Economic and technological feasibility:

The economic and technological feasibility of complying with the rule has been assessed. The rule is economically feasible. Although the regulation may result in deer farmers paying higher prices for deer purchased within the State than they would if they were to purchase deer from out of state, the economic consequences of the infection or exposure to CWD of the approximately 9,600 captive cervids already in the State would be far greater. The rule is technologically feasible. The 10 to 15 deer farmers who have purchased deer from outside New York State would still be able to purchase animals within the State as well as from states and parts of states within 50 miles of other states where there have been no CWD detections in the past 60 months.

The rule will have no impact on local governments.

6. Minimizing adverse impact:

In conformance with State Administrative Procedure Act section 202-b(1), the rule was drafted to minimize economic impact and reporting requirements for all regulated parties, including small businesses. While the rule prohibits approximately 10 to 15 entities from purchasing deer from states with CWD detections within the past 60 months or states within 50 miles of other states with CWD detections within the past 60 months, those entities will still be able to purchase animals from deer farmers within New York as well as from states with no CWD detections within parameters set forth in the rule. Market forces may result in higher prices for these purchasers. However, the economic consequences of the infection or exposure to CWD of the approximately 9,600 captive cervids already in the State would be far greater absent the ban set forth in the rule.

The rule will have no impact on local governments.

7. Small business and local government participation:

The Department and the Department of Environmental Conservation (DEC) reached a tentative agreement that any state which has had a case of CWD in the past five years would be defined as a CWD infected zone within the meaning of Part 68 of 1 NYCRR. However, there has not been any outreach yet regarding this rule with regulated parties, although outreach is planned in the near future.

The rule will have no impact on local governments.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:

The approximately 433 entities raising captive deer in New York State are located throughout the rural areas of New York, as defined by section 481(7) of the Executive Law.

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

Under the rule, regulated parties are prohibited from importing cervids into New York State from entities within states where CWD has been detected within the past 60 months or from any part of a state which is within 50 miles of a site in another state where CWD has been detected within the past 60 months. There are no reporting and record-keeping requirements required under the rule; nor is it anticipated that regulated parties would have to secure any professional services in order to comply with the rule.

3. Costs:

There are approximately 433 entities raising a total of approximately 9,600 captive deer in New York State. Of these entities, approximately 25 purchase deer from out of state. Last year, 38 head of deer were purchased out of state by these entities at a cost of $19,000 to $190,000 ($500 to $5,000 per head). The rule will exclude approximately 50 deer per year from importation, requiring New York entities to purchase deer from entities within New York State, entities within states where CWD has not been detected within the past 60 months or from any part of a state which is within 50 miles of a site in another state where CWD has not been detected within the past 60 months. Sourcing approximately 50 deer from these other locations could increase costs an average of $500 to $2,000 per deer, or $25,000 to $100,000 total. It is anticipated that most of these deer (approximately 40 head) would be purchased in New York State rather than out of state. At $1,000 to $5,000 per deer, New York entities could realize $40,000 to $200,000 in additional income.

4. Minimizing adverse impact:

In conformance with State Administrative Procedure Act section 202-bb(2), the rule was drafted to minimize economic impact and reporting requirements for all regulated parties, including those in rural areas. While the rule prohibits approximately 10 to 15 entities from purchasing deer from states with CWD detections within the past 60 months or states within 50 miles of other states with CWD detections within the past 60 months, those entities will still be able to purchase animals from deer farmers within New York as well as from states with no CWD detections within parameters set forth in the rule. Market forces may result in higher prices for these purchasers. However, the economic consequences of the infection or exposure to CWD of the approximately 9,600 captive cervids already in the State would be far greater absent the ban set forth in the rule.

5. Rural area participation:

The Department and the Department of Environmental Conservation (DEC) reached a tentative agreement that any state which has had a case of CWD in the past five years would be defined as a CWD infected zone within the meaning of Part 68 of 1 NYCRR. However, there has not been any outreach yet regarding this rule with regulated parties, although outreach is planned in the near future.

The rule will have no impact on local governments.

Job Impact Statement

1. Nature of Impact:

It is not anticipated that there will be an impact on jobs and employment opportunities.

2. Categories and Numbers Affected:

The number of persons employed by the 433 entities engaged in raising captive deer in New York State is unknown.

3. Regions of Adverse Impact:

The 433 entities in New York State engaged in raising captive deer are located throughout the State.

4. Minimizing Adverse Impact:

By helping to protect the approximately 9,600 captive deer currently raised by approximately 433 New York entities from the further introduction of CWD, this rule will help to preserve the jobs of those employed in this agricultural industry.

Assessment of Public Comment

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

Office of Children and Family Services

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Prohibition of Discrimination on the Basis of Sexual Orientation, Gender Identity or Expression

I.D. No. CFS-32-13-00007-P

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

Proposed Action: Addition of sections 180.5(a)(6), 421.3(d), 423.4(m)(7) and 441.24; amendment of sections 182-1.5(g)(1), 421.16(e) and (h) of Title 18 NYCRR.

Statutory authority: Executive Law, sections 503 and 532-e; Social Services Law, sections 20(3)(d), 462(1), 372-b(3), 372-e(2), 378(5), 409 and 409-a

Subject: Prohibition of discrimination on the basis of sexual orientation, gender identity or expression.

Purpose: Prohibits discrimination on the basis of sexual orientation, gender identity or expression in essential social services.

Text of proposed rule: A new paragraph (6) of subdivision (a) of section 180.5 of title 9 is added to read as follows:

(6) Staff and volunteers of detention providers shall not engage in or condone discrimination or harassment of youth on the basis of race, creed, color, national origin, age, sex, sexual orientation, gender identity or expression, marital status, religion, or disability. Detention providers shall promote and maintain a safe environment, take reasonable steps to prevent discrimination and harassment against youth by other youth, promptly investigate incidents of discrimination and harassment by staff, volunteers and youth, and take reasonable and appropriate corrective or disciplinary action when such incidents occur. For the purposes of this section, "gender identity or expression" shall mean having or being perceived as having a gender identity, self-image, appearance, behavior or expression whether or not that gender identity, self-image, appearance, behavior or expression is different from that traditionally associated with the sex assigned to that person at birth. "Gender identity" refers to a person's internal sense of self as male, female, no gender, or another gender, and "gender expression" refers to the manner in which a person expresses his or her gender through clothing, appearance, behavior, speech, or other like.

Paragraph (1) of subdivision (g) of section 182-1.5 of title 9 is amended to read as follows:

(1) Each program shall employ policies and procedures designed to ensure that youth are not subject to unlawful discriminatory treatment in any program decision making process or when being considered for any available service. *Program staff and volunteers shall not engage in or condone discrimination or harassment on the basis of race, creed, color, national origin, age, sex, sexual orientation, gender identity or expression, marital status, religion, or disability. Each program shall promote and maintain a safe environment, take reasonable steps to prevent discrimination and harassment against youth by other youth, promptly investigate incidents of discrimination and harassment by staff, volunteers, and youth, and take reasonable and appropriate corrective or disciplinary action when such incidents occur. For the purposes of this section, "gender identity or expression" shall mean having or being perceived as having a gender identity, self-image, appearance, behavior or expression whether or not that gender identity, self-image, appearance, behavior or expression is different from that traditionally associated with the sex assigned to that person at birth. "Gender identity" refers to a person's internal sense of self as male, female, no gender, or another gender, and "gender expression" refers to the manner in which a person expresses his or her gender through clothing, appearance, behavior, speech, or other means.*

A new paragraph (d) is added to section 421.3 to read as follows:

(d) prohibit discrimination and harassment against applicants for adoption services on the basis of race, creed, color, national origin, age, sex, sexual orientation, gender identity or expression, marital status, religion, or disability, and, shall take reasonable steps to prevent such discrimination or harassment by staff and volunteers, promptly investigate incidents of discrimination and harassment, and take reasonable and appropriate corrective or disciplinary action when such incidents occur. For the purposes of this section, "gender identity or expression" shall mean having or being perceived as having a gender identity, self-image, appearance, behavior or expression whether or not that gender identity, self-image, appearance, behavior or expression is different from that traditionally associated with the sex assigned to that person at birth. "Gender identity" refers to a person's internal sense of self as male, female, no gender, or another gender, and "gender expression" refers to the manner in which a person expresses his or her gender through clothing, appearance, behavior, speech, and other means.

Subdivision (e) of section 421.16 of title 18 is repealed, and the subsequent subdivisions are re-lettered.

[(e) Length of marriage. Agencies shall not reject applicants for study or after study on the basis of the length of time they have been married, provided that time is at least one year.]

Paragraph (2) of subdivision (h) of section 421.16 of title 18 is repealed, paragraph (3) of said subdivision is renumbered paragraph (2) and is amended to read as follows:

(2) [Applicants shall not be rejected solely on the basis of homosexuality. A decision to accept or reject when homosexuality is at issue shall be made on the basis of individual factors as explored and found in the adoption study process as it relates to the best interests of adoptive children.

(3)] Exploration of *a* [sexual] preference[s] *to adopt a child of a particular gender* [and practices of applicants], where found necessary and appropriate, shall be carried out openly with a clear explanation to the applicant of the basis for, and relevance of, the inquiry.

A new paragraph (7) is added to subdivision (m) of section 423.4 of title 18 to read as follows:

(7) Staff and volunteers of agencies providing preventive services shall not engage in discrimination or harassment of families receiving preventive services on the basis of race, creed, color, national origin, age, sex, sexual orientation, gender identity or expression, marital status, religion, or disability. Such agencies shall promote and maintain a safe environment, take reasonable steps to prevent discrimination by staff and volunteers, promptly investigate incidents of discrimination and harassment, and take reasonable and appropriate corrective or disciplinary action when such incidents occur. For the purposes of this section, "gender identity or expression" shall mean having or being perceived as having a gender identity, self-image, appearance, behavior or expression whether or not that gender identity, self-image, appearance, behavior or expression is different from that traditionally associated with the sex assigned to that person at birth. "Gender identity" refers to a person's internal sense of self as male, female, no gender, or another gender, and "gender expression" refers to the manner in which a person expresses his or her gender through clothing, appearance, behavior, speech, or other means.

A new section 441.24 is added to part 441 of title 18 to read as follows:

441.24 Nondiscriminatory treatment.

(a) Authorized agency staff and volunteers shall not engage in or condone discrimination or harassment against prospective foster parents, foster parents or foster children on the basis of race, creed, color, national origin, age, sex, religion, sexual orientation, gender identity or expression, marital status, or disability. Authorized agencies shall promote and maintain a safe environment, take reasonable steps to prevent discrimination and harassment against youth by other youth, promptly investigate incidents of discrimination and harassment by staff, volunteers and youth, and take reasonable and appropriate corrective or disciplinary action when such incidents occur. Certified or approved foster parents shall not engage in discrimination or harassment against foster children on the basis of race, creed, color, national origin, age, sex, religion, sexual orientation, gender identity or expression, marital status, or disability, and shall promote and maintain a safe environment.

(b) For purposes of this section, the term "gender identity or expression'' means having or being perceived as having a gender identity, self-image, appearance, behavior or expression whether or not that gender identity, self-image, appearance, behavior or expression is different from that traditionally associated with the sex assigned to that person at birth. "Gender identity" refers to a person's internal sense of self as male, female, no gender, or another gender, and "gender expression" refers to the manner in which a person expresses his or her gender through clothing, appearance, behavior, speech, and other means.

Text of proposed rule and any required statements and analyses may be obtained from: Public Information Office, Office of Children and Family Services, 52 Washington Street, Rensselaer, NY 12210, (518) 473-7793

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

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

Regulatory Impact Statement

1. Statutory authority:

Social Services Law § 20(3) authorizes the New York State Office of

Children and Family Services (OCFS) to supervise local social services departments and to establish rules, regulations and policies to carry out these duties. Social Services Law § 462(1) authorizes OCFS to regulate voluntary agencies exercising care or custody of children, and Social Services Law § 378(5) provides the legal basis for regulations governing the issuing and revocation of foster care licenses and certificates and prescribing standards, records, accommodations and equipment for the care of children and minors received under such licenses and certificates. OCFS has the legal authority to regulate preventive services pursuant to Social Services Law §§ 409 and 409-a.

Social Services Law § 372-b(3) authorizes OCFS to promulgate regulations to maintain enlightened adoption policies and establish standards and criteria for adoption practices, and Social Services Law § 372-e(2) authorizes OCFS to establish standards and procedures for evaluating persons who have applied for adoption of a child.

Executive Law § 532-e provides authority for OCFS to approve and regulate programs for runaway and homeless youth, and Executive Law § 503 provides authority for the regulation of secure and non-secure detention.

2. Legislative objectives:

These proposed regulations serve the legislative objective of promoting the safety, permanency, and well-being of families who receive preventive services, and children in foster care, detention and run away and homeless youth programs. The amendments also promote fairness and equality in the child welfare adoption program by eliminating archaic regulatory language that implies the sexual orientation of gay, lesbian and bisexual prospective adoptive parents – but not of heterosexual prospective adoptive parents -- is relevant to evaluating their appropriateness as adoptive parents.

The proposed regulation would better promote the safety and well-being of such families and children by prohibiting discrimination and harassment on the basis of sexual orientation and gender identity and expression.

3. Needs and benefits:

The proposed regulatory amendments require program staff and volunteers to refrain from engaging in discrimination or harassment on the basis of sexual orientation, or gender identity or expression. They further require that program staff and volunteers take reasonable steps to prevent discrimination against youth by other youth, investigate incidents of discrimination and harassment promptly, and take all reasonable and appropriate corrective or disciplinary action when such incidents occur. The proposed amendments also eliminate archaic regulatory language, which implies that the sexual orientation of gay, lesbian and bisexual prospective adoptive parents – but not that of heterosexual prospective adoptive parents -- is relevant to evaluating their appropriateness as adoptive parents.

The proposed regulation is needed to allow OCFS to fully implement LGBTQ best practices in child welfare, detention and run away and homeless youth programs.

4. Costs:

There are no costs associated with the proposed regulation. While training on LGBTQ best practices will support implementation of the proposed regulatory amendments, the proposed regulatory amendments do not impose training requirements. Further, OCFS has provided, and anticipates that it will continue to provide, training to local departments of social services, voluntary agencies, and others on this topic. Additionally, many advocacy and educational organizations provide LGBTQ training for child welfare, juvenile justice and related programs at no cost.

5. Local government mandates:

This proposal prohibits counties and local departments of social services (LDSSs) that operate detention facilities, foster care programs, or provide preventive services from discriminating against program participants and service recipients on the basis of sexual orientation or gender identity or expression, and requires that they investigate acts of discrimination or harassment by staff and volunteers and take appropriate and reasonable corrective action in response thereto. The majority of detention and foster care programs are provided by voluntary agencies and the majority of preventive services are provided by not-for-profit entities. Counties and LDSSs are already prohibited from discriminating in the provision of social services on the other bases addressed by the regulations, and OCFS believes that most counties and LDSSs already prohibit discrimination on the basis of sexual orientation and gender identity and expression in the provision of these services.

The proposal also imposes a mandate on local departments of social services who contract with agencies for the provision of preventive services to include such anti-discrimination requirements in these contracts. OCFS does not anticipate that this requirement will limit the pool of available preventive service providers or affect the cost of these contracts.

6. Paperwork:

The proposed regulation requires no additional paperwork.

7. Duplication:

The proposed regulation does not duplicate other state or federal requirements.

8. Alternatives:

The regulatory amendment is necessary to promote and maintain a safe environment for lesbian, gay, bisexual, transgender and questioning youth, families and prospective adoptive parents. OCFS has issued guidelines within existing regulatory authority, but these regulatory amendments are necessary to promote best practices with this population.

9. Federal standards:

While federal statutes and regulations do not prohibit discrimination against youth in care or families receiving the enumerated services on the basis of sexual orientation, or gender identity or expression, the proposed regulations are not inconsistent with federal standards.

10. Compliance schedule:

The proposed regulation will take effect upon enactment. OCFS anticipates that it will issue policy directives to affected entities providing implementation guidance.

Regulatory Flexibility Analysis

1. Effect of rule:

The proposed regulation prohibits discrimination or harassment on numerous grounds, including sexual orientation, gender identity, and gender expression, by detention facilities, foster care homes and facilities, runaway and homeless programs, and preventive services providers. Detention facilities are operated by counties or by not-for-profit entities. In most cases preventive services are provided by not-for-profit entities, which may be small businesses; they also may be provided by local departments of social services (LDSSs). Foster care facilities are operated by voluntary authorized agencies, which may be small businesses.

2. Compliance requirements:

The proposed regulation requires counties, LDSSs, and authorized agencies to refrain from engaging in discrimination or harassment on the basis of sexual orientation, or gender identity or expression, take reasonable steps to prevent discrimination against youth by other youth, investigate incidents of discrimination and harassment by staff, volunteers and youth promptly, and take all reasonable and appropriate corrective or disciplinary action when such incidents occur.

3. Professional services:

OCFS anticipates that it will provide technical guidance and training on best practices associatedwith these regulations.

4. Compliance costs:

This proposal has no economic impact on small businesses and local government. Although training on LGBTQ best practices will support implementation of the proposed regulatory amendments, training requirements are not imposed. Further, OCFS has provided and anticipates that it will continue to provide training to LDSSs, voluntary agencies, and others on this topic. Additionally, many advocacy and educational organizations provide LGBTQ training for child welfare, juvenile justice and related programs at no cost.

5. Economic and technological feasibility:

The proposal is economically and technically feasible. There is no economic impact, and authorized agencies, counties and LDSSs may use whatever procedures are already in place for preventing and correcting prohibited behavior to comply. As noted, there are many sources of training to implement best practices available at no cost.

6. Minimizing adverse impact:

The proposal has no adverse impact.

7. Small business and local government participation:

During development of the informational letter on non-discrimination against LGBTQ youth in the child welfare system, OCFS conferred with representatives of authorized agencies, run away and homeless youth programs, and LDSSs. All of these entities were supportive of the development of non-discrimination standards.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:

The proposed regulation affects the City of New York and all of the counties in New York which operate as local departments of social services (LDSSs) and which may provide detention services, as well as authorized agencies and not-for-profit entities that operate foster care detention, or run away and homeless youth programs, or provide preventive services within those counties. Many of these counties and these agencies are located in rural areas.

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

The proposed regulation imposes no reporting or recordkeeping requirements.

3. Costs:

The proposal imposes no costs. While training on LGBTQ best practices will support implementation of the proposed regulatory amendments, the proposed regulatory amendments do not impose training requirements.

Further, OCFS has provided, and anticipates it will continue to provide, training to local departments of social services, voluntary agencies, and others on this topic. Additionally, many advocacy and educational organizations provide LGBTQ training for child welfare, juvenile justice and related programs at no cost.

4. Minimizing adverse impact:

The proposal has no adverse impact.

5. Rural area participation:

During development of the informational letter on non-discrimination against LGBTQ youth in the child welfare system, OCFS conferred with representatives of authorized agencies, run away and homeless youth programs, and LDSSs, some of which were located in rural areas. All of these entities were supportive of the development of non-discrimination standards.

Job Impact Statement

The proposal prohibits discrimination on the basis of sexual orientation, gender identity and expression. Agencies will likely choose to engage in training to better understand and prevent these forms of discrimination. Such training is currently available at no cost from OCFS and not-for-profit agencies. It is possible that not-for-profit agencies that currently provide LGBTQ non-discrimination training will need to hire additional staff to provide training to the numerous service providers subject to the proposed regulations.

Division of Criminal Justice Services

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Probation Case Record Management

I.D. No. CJS-32-13-00014-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 348 of Title 9 NYCRR. This rule is proposed pursuant to SAPA § 207(3), 5-Year Review of Existing Rules.

Statutory authority: Executive Law, section 243(1)

Subject: Probation Case Record Management.

Purpose: To establish minimum state standards regarding probation case record management.

Substance of proposed rule (Full text is posted at the following State website:www.criminaljustice. ny.gov): The proposed rule amendments revise Part 348 governing Case Record Management of probation department records governing probation service delivery. Below is a brief summary of the regulatory provisions.

Section 348.1 is the definitional section. It deletes unnecessary language and clarifies that records may be written and/or electronic.

Sections 348.2-348.4 have been renumbered Sections 348.4-348.6 respectively.

New Section 348.2 sets forth the Objective which is to establish minimum state standards regarding probation case record management.

New Section 348.3 governs applicability and provides that Part 348 is applicable to all probation departments in New York State.

Section 348.4 governs content of case records. Clarified is that records may be maintained and an index filing system established in an automated case management system. Other provisions provide more specificity as to minimum information and/or documents which should be in the case record. Additional language emphasizes that appropriate protections shall be instituted to safeguard records, electronic or otherwise prepared, transmitted, and stored.

Section 348.5 sets forth supervision recordkeeping requirements and has been updated to remove obsolete language and replace it with terminology in the new DCJS Supervision rule which took effect June 1, 2013.

Section 348.6 governs accessibility of case records. It has been expanded to clarify additional instances when certain probation case records must be made accessible pursuant to law and other times when probation records may be legally accessible and parameters governing such access. Specific changes reflect recent statutory laws and/or are being incorporated to address confusion. Overall changes in this section should foster greater probation understanding of when record sharing is mandatory or permissible, terms and conditions with respect to access, lead to greater collaboration where authorized, and maintain safeguards to protect confidentiality and guarantee against inappropriate access. Further, greater flexibility in the area of research, by recognizing bona fide research provided by a private entity, should lead to additional research in the area of probation services which can prove helpful to probation management in terms of assessing their current program services and/or needs and planning future service delivery.

Text of proposed rule and any required statements and analyses may be obtained from: Linda J. Valenti, Assistant Counsel, New York State Division of Criminal Justice Services, A.E. Smith Building, 80 South Swan Street, Room 832, Albany, New York 12210, (518) 457-8413, email: linda.valenti@dcjs.ny.gov

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

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

Review of Existing Rules: There exist various state and federal laws governing confidentiality, access and release of information which are typically contained in probation case records. These proposed regulatory amendments to 9 NYCRR Part 348 conform with existing laws governing confidentiality of certain case record information and provide probation departments with greater flexibility to communicate more effectively and better manage those under their supervision. Public safety and the general welfare of the public will be served by adoption of these regulatory amendments.

These regulatory amendments clarify rule language governing mandatory sharing of probation case record information in an effort to assist practitioners in fulfilling their responsibilities under law. Further, additional rule language clarifies discretionary sharing of probation case record information authorized in existing law and also expands upon probation's ability to share and/or otherwise disclose certain case record information to particular individuals or entities for public safety and/or case management purposes. Additional flexibility in the area of research will foster greater collaboration and assessment between probation and academia to assist them in analysis of probation needs and programmatic changes that will improve service delivery.

Moreover, these regulatory amendments address a need to promote community corrections by affording probation departments the ability to authorize greater probation record access to assist them in carrying out their official duties. The amendments retain necessary language to guard against inappropriate access to records which are otherwise sealed or not accessible under state or federal law. The regulatory changes in this area are consistent with good professional practice, are in the best interest of the state and local government since they address and optimize public and victim safety, promote greater offender accountability, facilitate better communication by probation departments, clarify certain constraints in law and establish appropriate safeguards to guarantee more uniform application.

Additionally, certain regulatory language has been updated to reflect recent statutory or regulatory changes and to avoid confusion. For example, mandatory and discretionary record sharing provisions have been expanded to reflect new statutory provisions governing access and/or disclosure of certain probation records relative to specific entities. Further, supervision recordkeeping requirements have been updated to remove obsolete language and replace it with terminology in the new DCJS Supervision rule which took effect June 1, 2013.

With respect to technology, revised regulatory language clarifies that probation case records may be written and/or electronic and that records may be maintained and an index filing system established in an automated case management system. Additional language emphasizes that appropriate protections shall be instituted to safeguard records, electronic or otherwise prepared, transmitted, and stored.

Regulatory Impact Statement

1. Statutory authority:

Executive Law section 243(1) empowers the Commissioner of the Division of Criminal Justice Services to promulgate rules "which shall regulate methods and procedure in the administration of probation services", including but not limited to "supervision, case work, recordkeeping… and research so as to secure the most effective application of the probation system and the most efficient enforcement of the probation laws throughout the state."

2. Legislative objectives:

These regulatory amendments are consistent with the legislative intent that the Commissioner adopt regulations in areas relating to critical probation functions. They promote consistent professional standards governing the administration and delivery of probation services in the area of case records management.

There exist various state and federal laws governing confidentiality, access and release of information which are typically contained in probation

case records. These regulatory amendments conform with existing laws governing confidentiality of certain case record information and provide probation departments with greater flexibility to communicate more effectively and better manage those under their supervision. Public safety and the general welfare of the public will be served by adoption of these regulatory amendments.

3. Needs and benefits:

These regulatory amendments clarify rule language governing mandatory sharing of probation case record information in an effort to assist practitioners in fulfilling their responsibilities under law. Further, additional rule language clarifies discretionary sharing of probation case record information authorized in existing law and also expands upon probation's ability to share and/or otherwise disclose certain case record information to particular individuals or entities for public safety and/or case management purposes. Additional flexibility in the area of research will foster greater collaboration and assessment between probation and academia to assist them in analysis and programmatic changes that will improve service delivery.

More comprehensive provisions in the area of case record management, including establishment and dissemination of local policies and procedures will prove beneficial in terms of compliance with existing laws, improving professional communication for public safety and/or case management purposes, facilitating probation research, and addressing other areas of public concern.

Moreover, these regulatory amendments address a need to promote community corrections by affording probation departments the ability to authorize greater probation record access to assist them in carrying out their official duties. The amendments retain necessary language to guard against inappropriate access to records which are otherwise sealed or not accessible under state or federal law. The regulatory changes in this area are consistent with good professional practice, are in the best interest of the state and local government since they address and optimize public and victim safety, promote greater offender accountability, facilitate better communication by probation departments, clarify certain constraints in law and establish appropriate safeguards to guarantee more uniform application.

4. Costs:

These changes are procedural in nature and may require some in-service training or instruction to conform with this revised regulation and updated local policies and procedures or in lieu thereof a local memorandum distributed to staff to clarify any changes. However, we do not foresee these regulatory reforms leading to significant additional costs to probation departments. Clearly, any minimal costs are significantly outweighed by increased public safety interests and offender accountability provided by these new provisions.

5. Local government mandates:

These regulatory amendments enhance current regulatory provisions governing release of case records consistent with laws governing access and confidentiality. We do not anticipate these new requirements will be burdensome or costly.

The Division circulated several prior drafts of these regulatory amendments to the Council of Probation Administrators (the statewide professional association of probation administrators), who assigned it to a specific committee for review and the State Probation Commission, the state advisory body to the Division relative to probation operations. All probation directors further received these drafts for review and comment. We incorporated in these amendments certain verbal and written suggestions raised by probation professionals to address problems which they experienced and to clarify certain provisions in law.

Overall, the Division has received support from probation agencies that these amendments are manageable and consistent with good professional practice.

6. Paperwork:

The proposed rule may lead to additional paperwork or electronic recordkeeping, although minimal in content with respect to establishing or expanding local procedures to address new regulatory language. However, the existing index file requirement has been eliminated, thereby mitigating some recordkeeping requirements.

7. Duplication:

This proposed rule does not duplicate any State or Federal law or regulation. It clarifies and reinforces certain laws with respect to confidentiality and access to probation case record and helps achieve greater flexibility where necessitated.

8. Alternatives:

In view of the need to establish enhanced minimum standards relative to case records to achieve greater offender accountability and probation operational flexibility, to better protect public and victim safety, and facilitate better case management, no other regulatory amendment alternatives were determined appropriate.

9. Federal standards:

There are certain federal standards governing confidentiality and access of certain documents contained in case records and these regulatory amendments are consistent with these requirements.

10. Compliance schedule:

Through prompt dissemination and because amendments are not unduly burdensome, local departments should be able to promptly implement these amendments.

Regulatory Flexibility Analysis

1. Effect of Rule:

The proposed rule amendments revise existing regulatory procedures in the area of Probation Case Record Management.

The proposed amendments will better assist probation departments in carrying out day-to-day operations with respect to case record management. It will afford them with certain additional relief with respect to flexibility of maintenance, reporting, and sharing of probation case records so as to take into consideration local needs, resources, and practices. Proposed regulatory changes will help foster compliance with laws governing mandatory sharing of probation records and those governing confidentiality, yet provide operational flexibility to engage in greater communication on a professional case-by-case and need-to-know basis with respect to certain individual case records and maintain adherence with applicable laws restricting or prohibiting access.

No small businesses are impacted by these proposed regulatory amendments.

2. Compliance Requirements:

Local probation departments should have no problem in complying with the proposed regulatory changes as they afford mandate relief. Through prompt dissemination to staff, local departments will be able to promptly implement these amendments and readily comply. These regulatory amendments shall take effect as soon as they are published in the State Register under a Notice of Adoption. There are no small business compliance requirements imposed by these proposed rule amendments.

3. Professional Services:

No professional services are required upon probation departments to comply with the proposed rule changes. There are no professional services required of small business associated with these proposed rule amendments.

4. Compliance Cost:

DCJS does not anticipate any additional costs or new annual costs required to comply with these regulatory changes. Any minimal costs which a probation department may incur are significantly outweighed by increased public and victim safety interests and offender accountability provided by these new provisions.

5. Economic and Technological Feasibility:

There are no economic or technological issues or problems arising from these proposed regulatory reforms in this area.

6. Minimizing Adverse Impacts:

DCJS foresees that these amendments will have no adverse impact on any jurisdiction. As noted in more detail below, OPCA collaborated with jurisdictions across the state and probation professional associations in soliciting feedback as to the proposed regulatory changes in order to provide sound probation mandate relief. The proposed changes afford greater flexibility in current regulatory requirements with respect to probation case records consistent with public safety and good professional practice.

As the probation case record management rule does not impact upon small business, the proposed changes have no negative impact upon small business operations.

7. Small Business and Local Government Participation:

As this rule does not impact upon small businesses, there was no business involvement with respect to the proposed regulatory changes.

With respect to the proposed regulatory changes upon probation departments and their participation, pursuant to Executive Order No. 17, in October 2009 a review of all rules and regulations was disseminated to all probation departments, the Council of Probation Administrators (COPA) (which is the statewide professional association of probation directors), the New York State Probation Officers Association (NYSPOA), the New York State Association of Counties (NYSAC), the State Probation Commission, and the Division of the Budget (DOB). Additionally, an October 26, 2009 meeting was convened in Albany which over a dozen probation departments (representative of rural, urban, and suburban counties), COPA and NYSPOA Presidents, NYSAC, and DOB representatives attended and where staff went over all rules and regulations and reviewed them individually, discussed proposed regulatory changes, and solicited feedback from the audience. The Director of Probation and Correctional Alternatives previously communicated that there was overwhelming support for the proposed regulatory changes in the area of probation case record management from rural, urban, and suburban jurisdictions.

In recent months, OPCA circulated for comment several prior drafts of this regulatory reform to all probation directors and the State Probation

Commission as well as COPA, and other professional associations. The current amendments incorporate many verbal and written suggestions from probation professionals across the state to address problems which probation departments experience in the area of case records and supervision and to clarify certain procedural provisions and existing laws governing confidentiality and access to probation case records. More flexibility in disclosing certain case record information was sought, along with a clearer explanation of the circumstances under which case record information must and in other instances can be disclosed. The Division did not find significant differences between urban, rural, and suburban jurisdictions as to issues raised or suggestions for change.

Rural Area Flexibility Analysis

1. Types and estimated number of rural areas:

Forty-four local probation departments are located in rural areas and will be affected by the amendments.

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

The proposed changes impose no new reporting, recordkeeping, other compliance requirements nor any professional services with respect to probation management operations. Rural counties will benefit from the proposed regulatory changes as it will afford their respective probation departments greater flexibility in managing probation operations consistent with local practice and resources. These regulatory amendments strengthen procedural requirements and improve probation practice, yet should not impose significant additional costs. There are no professional services needed in any rural area to comply with these regulatory changes. These regulatory amendments retain one current reporting requirement with respect to a probation department approving a bona fide research project. When this occurs, which is infrequently, a copy of the final research project must be submitted to the Division of Criminal Justice Services (DCJS). This requirement is not onerous. Additionally, the retention of language specifying written policies and procedures governing release of case records may require some minor refinement, but it is normal business activities of any agency and in keeping with good professional practice.

These case record rule amendments will improve compliance with state laws governing access to records, enhance probation communications, achieve greater offender accountability and help promote public and victim safety.

3. Costs:

DCJS does not anticipate any additional costs or new annual costs required to comply with these regulatory changes. Any minimal costs which a probation department may incur are significantly outweighed by increased public and victim safety interests and offender accountability provided by these new provisions.

4. Minimizing adverse impact:

DCJS foresees that these regulatory amendments will have no adverse impact on any jurisdiction, including rural areas. As noted in more detail below, OPCA collaborated with jurisdictions across the state, including rural areas, and probation professional associations with rural membership in soliciting feedback as to the proposed regulatory changes in order to provide sound probation mandate relief. The proposed changes afford greater flexibility in current regulatory requirements with respect to probation case records consistent with public safety and good professional practice.

5. Rural area participation:

With respect to the proposed regulatory changes governing probation management, pursuant to Executive Order No. 17, an initial Internal Rule Review Finding was prepared in October 2009 of all rules and regulations and disseminated to all probation departments, the Council of Probation Administrators (COPA) (which is the statewide professional association of probation directors), the New York State Probation Officers Association (NYSPOA), the New York State Association of Counties (NYSAC), the State Probation Commission, and the Division of the Budget (DOB). Additionally an October 26, 2009 meeting was convened in Albany which over a dozen probation departments (representative of rural, urban, and suburban counties), COPA and NYSPOA Presidents, NYSAC, and DOB representatives attended and where staff went over all rules and regulations and reviewed them individually, discussed proposed regulatory changes, and solicited feedback from the audience. The Director of Probation and Correctional Alternatives previously communicated that there was overwhelming support for the proposed regulatory changes in the area of probation case record management from rural, urban, and suburban jurisdictions.

In recent months, OPCA circulated for comment several prior drafts of this regulatory reform to all probation directors and the State Probation Commission as well as COPA, and other professional associations. The current regulatory amendments incorporate many verbal and written suggestions from probation professionals, including rural entities, across the state to address problems which probation departments experience in the area of case records and supervision and to clarify certain procedural provisions and existing laws governing confidentiality and access to probation case records. More flexibility in disclosing certain case record information was sought, along with a clearer explanation of the circumstances under which case record information must and in other instances can be disclosed. The Division did not find significant differences between urban, rural, and suburban jurisdictions as to issues raised or suggestions for change.

Job Impact Statement

A job impact statement is not being submitted with these regulations because it will have no adverse effect on private or public jobs or employment opportunities. The revisions are procedural in nature and clarify laws governing confidentiality and case records and provides for certain additional flexibility where permissible and appropriate. These changes are not onerous in nature and can be implemented through correspondence, in-service training, or instruction to probation staff.

Education Department

EMERGENCY RULE MAKING

State Student Assessments in the Elementary and Secondary Grades

I.D. No. EDU-19-13-00005-E

Filing No. 771

Filing Date: 2013-07-22

Effective Date: 2013-07-22

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

Action taken: Amendment of Part 8 of Title 8 NYCRR.

Statutory authority: Education Law, sections 101(not subdivided), 207(not subdivided), 208(not subdivided) and 209(not subdivided)

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

Specific reasons underlying the finding of necessity: Pursuant to the New York State Constitution and the Education Law, the Board of Regents is responsible for the general supervision of all educational activities within the State. Included among these activities is the authority to, for example, establish "examinations as to attainments in learning" (Education Law § 207) and "examinations in studies furnishing a suitable standard of graduation" (Education Law § 209).

The proposed amendment is necessary to clarify the Board of Regents' authority to approve the State-designated performance levels or cut scores for determining proficiency on State assessments administered to students in the elementary and secondary grades, which are established by the Commissioner.

The Board of Regents adopted the Common Core State Standards (CCSS) for English Language Arts & Literacy and Mathematics at its July 2010 meeting and incorporated New York-specific additions, creating the Common Core Learning Standards (CCLS), at its January 2011 meeting. The first State assessments to measure student progress on the CCLS were administered in April 2013 for Grades 3-8 ELA and math. Following the administration of the new tests, the Department will use a research-based methodology to set cut scores and performance standards for the tests, which must be approved by the Board of Regents. Beginning with ELA and Algebra I in June 2014, Regents Examinations that measure student progress on the CCLS will be phased in during a transition period. Similar performance-standard setting processes will occur after the initial administration of each new Regents Examination.

The proposed amendment was adopted as an emergency rule at the April 22-23, 2013 Regents meeting, effective April 23, 2013. A Notice of Emergency Adoption and Proposed Rule Making was published in the State Register on May 8, 2013.

Because the Board of Regents meets at fixed intervals, the earliest the proposed amendment can be presented for permanent adoption, after publication in the State Register and expiration of the 45-day public comment period provided for in State Administrative Procedure Act (SAPA) section 202(1) and (5), is the July 22-23, 2013 Regents meeting. Furthermore, pursuant to SAPA, the earliest effective date of the proposed amendment, if adopted at the July meeting, would be August 7, 2013, the date a Notice of Adoption would be published in the State Register. However, the April

emergency rule will expire on July 21, 2013, 90 days from its filing with the Department of State on April 23, 2013. A lapse in the effective date of the rule may disrupt administration of State Assessments, other than Regents examinations, for elementary and secondary education.

Emergency action is therefore necessary for the preservation of the general welfare to ensure that the emergency rule adopted at the April 22-23, 2013 Regents meeting remains continuously in effect until the effective date of its permanent adoption.

It is anticipated that the proposed amendment will be presented to the Board of Regents for adoption on a permanent basis at the July 22-23, 2013 Regents meeting, which is the first scheduled meeting after expiration of the 45-day public comment period mandated by SAPA.

Subject: State student assessments in the elementary and secondary grades.

Purpose: To clarify procedures for establishment of cut scores and performance standards for determining proficiency on State Assessments.

Text of emergency rule: 1. The Title of Part 8 of the Rules of the Board of Regents is amended, effective July 22, 2013, to read as follows:

REGENTS EXAMINATIONS *AND OTHER STATE ASSESSMENTS*

2. Section 8.3 of the Rules of the Board of Regents is amended, effective July 22, 2013, to read as follows:

8.3 Passing mark *or State designated performance level*

1. Except as [provided] *prescribed* in section [100.5(a)(5)(i)] *100.5* of this Title, the minimum passing [mark] *score* in Regents examinations shall be 65 [percent] *or such other minimum passing score as approved by the Board of Regents*.

2. The State designated performance level or cut score for determining proficiency on all State student assessments in the elementary and secondary grades, other than Regents examinations, shall be established by the Commissioner subject to approval by the Board of Regents.

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-19-13-00005-EP, Issue of May 8, 2013. The emergency rule will expire September 19, 2013.

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

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

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

Education Law § 209 authorizes the regents to establish examinations in studies furnishing a suitable standard of graduation therefrom and of admission to colleges, and to confer certificates or diplomas on students who satisfactorily pass such examinations.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment is consistent with the Regents authority under the above statutes, in particular, their authority to establish ''examinations as to attainments in learning'' (Education Law § 208) and ''examinations in studies furnishing a suitable standard of graduation'' (Education Law § 209).

3. NEEDS AND BENEFITS:

Currently, the Rules of the Board of Regents and the Regulations of the Commissioner of Education do not address the process for approval of State-designated performance levels or cut scores on State assessments in elementary and secondary education other than the Regents examinations. The Department's past practice has been to submit the State-designated performance levels or cut scores to the Board of Regents for their review, but questions have been raised about the process that will be used for designation of the State-designated performance levels for the 2012-2013 grades 3-8 State assessments that are being administered in April 2013. The proposed amendment to the Rules of the Board of Regents would codify the Department's past practice by clarifying that the State-designated performance level or cut score for determining proficiency on all State assessments administered to students in the elementary and secondary grades, other than Regents examinations, shall be established by the Commissioner subject to approval by the Board of Regents.

The Board of Regents adopted the Common Core State Standards (CCSS) for English Language Arts & Literacy and Mathematics at its July 2010 meeting and incorporated New York-specific additions, creating the Common Core Learning Standards (CCLS), at its January 2011 meeting. The first State assessments to measure student progress on the CCLS are being administered in April 2013 for Grades 3-8 ELA and math. Following the administration of the new tests, the Department will use a research-based methodology to set cut scores and performance standards for the tests, which must be approved by the Board of Regents. Beginning with ELA and Algebra I in June 2014, common-core aligned Regents Examinations will be phased in during a transition period. Similar performance-standard setting processes will occur after the initial administration of each new Regents Examination.

With respect to Regents examinations, the passing scores are specified in section 100.5 of the Regulations of the Commissioner. The proposed amendment makes needed technical changes to the existing language of Regents Rule 8.3, which currently references section 100.5(a)(5)(i) only, to broaden the cross-reference to capture provisions recently added to section 100.5 related to the special education safety net which specify passing scores for certain students. The amendments also clarify that while 65 remains the minimum passing score on Regents examinations, with the exceptions set forth in section 100.5, it is no longer a percentage. Finally, in order to reflect the upcoming transition to Regents Exams that measure student progress on the CCLS, which may not be scored on a 0-100 scale, the amendment clarifies that the Board of Regents may prescribe a different minimum passing score.

4. COSTS:

The proposed amendment will not impose any costs on the State, local governments, private regulated parties, or the State Education Department.

The proposed amendment merely codifies the State Education Department's past practice for approval of State-designated performance levels or cut scores on State assessments in elementary and secondary education, other than the Regents examinations, by clarifying that the performance level or cut score shall be established by the Commissioner subject to approval by the Board of Regents. The proposed amendment also makes technical and clarifying changes.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment does not impose any program, service, duty or responsibility upon school districts, charter schools or other local governments. The proposed amendment merely codifies the State Education Department's past practice for approval of State-designated performance levels or cut scores on State assessments in elementary and secondary education, other than the Regents examinations, by clarifying that the performance level or cut score shall be established by the Commissioner subject to approval by the Board of Regents. The proposed amendment also makes technical and clarifying changes.

6. PAPERWORK:

The proposed amendment does not impose any additional reporting, record keeping or other paperwork requirements upon school districts or charter schools. The proposed amendment merely codifies the State Education Department's past practice for approval of State-designated performance levels or cut scores on State assessments in elementary and secondary education, other than the Regents examinations, by clarifying that the performance level or cut score shall be established by the Commissioner subject to approval by the Board of Regents. The proposed amendment also makes technical and clarifying changes.

7. DUPLICATION:

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

8. ALTERNATIVES:

There are no significant alternatives and none were considered. The proposed amendment merely codifies the State Education Department's past practice for approval of State-designated performance levels or cut scores on State assessments in elementary and secondary education, other than the Regents examinations, by clarifying that the performance level or cut score shall be established by the Commissioner subject to approval by the Board of Regents. The proposed amendment also makes technical and clarifying changes.

9. FEDERAL STANDARDS:

There are no applicable Federal standards.

10. COMPLIANCE SCHEDULE:

It is anticipated that compliance may be achieved by the effective date of the proposed amendment, which does not impose any additional costs or compliance requirements on local governments and private regulated parties, and merely codifies the State Education Department's past practice for approval of State-designated performance levels or cut scores on State assessments in elementary and secondary education, other than the Regents examinations, by clarifying that the performance level or cut score shall be established by the Commissioner subject to approval by the Board of Regents. The proposed amendment also makes technical and clarifying changes.

Regulatory Flexibility Analysis

Small Businesses:

The proposed amendment merely codifies the State Education Department's past practice for approval of State-designated performance levels or cut scores on State assessments of student proficiency in elementary and secondary education other than Regents examinations, by clarifying that the performance level or cut score shall be established by the Commissioner subject to approval by the Board of Regents.

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

Local Governments:

1. EFFECT OF RULE:

The proposed amendment applies to each school district, board of cooperative educational services (BOCES) and charter schools in the State. At present, there are 695 school districts (including New York City) and 37 BOCES. There are currently approximately 190 charter schools.

2. COMPLIANCE REQUIREMENTS:

The proposed amendment does not impose any additional compliance requirements on regulated parties but merely codifies the State Education Department's past practice for approval of State-designated performance levels or cut scores on State assessments in elementary and secondary education, other than the Regents examinations, by clarifying that the performance level or cut score shall be established by the Commissioner subject to approval by the Board of Regents. The proposed amendment also makes needed technical changes to the existing language of Regents Rule 8.3, which currently references section 100.5(a)(5)(i) only, to broaden the cross-reference to capture provisions recently added to section 100.5 related to the special education safety net which specify passing scores for certain students. The amendments also clarify that while 65 remains the minimum passing score on Regents examinations, with the exceptions set forth in section 100.5, it is no longer a percentage. Finally, in order to reflect the upcoming transition to Regents Exams that measure student progress on the CCLS, which may not be scored on a 0-100 scale, the amendment clarifies that the Board of Regents may prescribe a different minimum passing score.

3. PROFESSIONAL SERVICES:

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

4. COMPLIANCE COSTS:

The proposed amendment does not impose any additional costs on regulated parties but merely codifies the State Education Department's past practice for approval of State-designated performance levels or cut scores on State assessments in elementary and secondary education, other than the Regents examinations, by clarifying that the performance level or cut score shall be established by the Commissioner subject to approval by the Board of Regents. The proposed amendment also makes technical and clarifying changes.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The proposed amendment does not impose any additional costs or technological requirements.

6. MINIMIZING ADVERSE IMPACT:

The proposed amendment does not impose any additional compliance requirements or costs on regulated parties but merely codifies the State Education Department's past practice for approval of State-designated performance levels or cut scores on State assessments in elementary and secondary education, other than the Regents examinations, by clarifying that the performance level or cut score shall be established by the Commissioner subject to approval by the Board of Regents. The proposed amendment also makes technical and clarifying changes.

7. LOCAL GOVERNMENT PARTICIPATION:

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

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

Pursuant to State Administrative Procedure Act section 207(1)(b), the State Education Department proposes that the initial review of this rule shall occur in the fifth calendar year after the year in which the rule is adopted, instead of in the third calendar year. The justification for a five year review period is that the proposed amendment merely codifies the State Education Department's past practice for approval of State-designated performance levels or cut scores on State assessments in elementary and secondary education, other than the Regents examinations, by clarifying that the performance level or cut score shall be established by the Commissioner subject to approval by the Board of Regents. The proposed amendment does not impose any additional compliance requirements or costs on regulated parties. Accordingly, there is no need for a shorter review period. The Department invites public comment on the proposed five year review period for this rule. Comments should be sent to the agency contact listed in item 10. of the Notice of Proposed Rule Making published herewith, and must be received within 45 days of the State Register publication date of the Notice.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed amendment applies to all school districts, boards of cooperative educational services (BOCES) and charter schools 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. There is currently one charter school located in a rural area.

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

The proposed amendment does not impose any additional compliance requirements on regulated parties but merely codifies the State Education Department's past practice for approval of State-designated performance levels or cut scores on State assessments in elementary and secondary education, other than the Regents examinations, by clarifying that the performance level or cut score shall be established by the Commissioner subject to approval by the Board of Regents. The proposed amendment also makes needed technical changes to the existing language of Regents Rule 8.3, which currently references section 100.5(a)(5)(i) only, to broaden the cross-reference to capture provisions recently added to section 100.5 related to the special education safety net which specify passing scores for certain students. The amendments also clarify that while 65 remains the minimum passing score on Regents examinations, with the exceptions set forth in section 100.5, it is no longer a percentage. Finally, in order to reflect the upcoming transition to Regents Exams that measure student progress on the CCLS, which may not be scored on a 0-100 scale, the amendment clarifies that the Board of Regents may prescribe a different minimum passing score.

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

3. COSTS:

The proposed amendment does not impose any additional costs on regulated parties but merely codifies the State Education Department's past practice for approval of State-designated performance levels or cut scores on State assessments in elementary and secondary education, other than the Regents examinations, by clarifying that the performance level or cut score shall be established by the Commissioner subject to approval by the Board of Regents. The proposed amendment also makes technical and clarifying changes.

4. MINIMIZING ADVERSE IMPACT:

The proposed amendment does not impose any additional compliance requirements or costs on regulated parties but merely codifies the State Education Department's past practice for approval of State-designated performance levels or cut scores on State assessments in elementary and secondary education, other than the Regents examinations, by clarifying that the performance level or cut score shall be established by the Commissioner subject to approval by the Board of Regents. The proposed amendment also makes technical and clarifying changes.

The proposed amendment relates to State-designated performance levels or cut scores for purposes of determining student proficiency on State Assessments that are administered to students throughout the State, including those in rural areas. Such standards, of necessity, must be uniform throughout the State. Therefore, it was not possible to establish different requirements or exemptions for rural areas.

5. RURAL AREA PARTICIPATION:

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

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

Pursuant to State Administrative Procedure Act section 207(1)(b), the State Education Department proposes that the initial review of this rule shall occur in the fifth calendar year after the year in which the rule is adopted, instead of in the third calendar year. The justification for a five year review period is that the proposed amendment merely codifies the State Education Department's past practice for approval of State-designated performance levels or cut scores on State assessments in elementary and secondary education, other than the Regents examinations, by clarifying that the performance level or cut score shall be established by the Commissioner subject to approval by the Board of Regents. The proposed amendment does not impose any additional compliance requirements or costs on regulated parties. Accordingly, there is no need for a shorter review period. The Department invites public com-

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

Job Impact Statement

The proposed amendment merely codifies the State Education Department's past practice for approval of State-designated performance levels or cut scores on State assessments of student proficiency in elementary and secondary education other than Regents examinations, by clarifying that the performance level or cut score shall be established by the Commissioner subject to approval by the Board of Regents.

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.

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Coursework or Training in Harassment, Bullying and Discrimination Prevention and Intervention

I.D. No. EDU-32-13-00006-EP

Filing No. 778

Filing Date: 2013-07-23

Effective Date: 2013-07-23

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

Proposed Action: Amendment of sections 80-1.13, 80-3.5, 80-5.14 and 80-5.22 of Title 8 NYCRR.

Statutory authority: Education Law, sections 14(5), 207(not subdivided), 305(1), (2), 3004(1) and 3007(not subdivided); and L. 2013, ch. 90

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

Specific reasons underlying the finding of necessity: The Dignity for All Students Act (DASA) added Article 2 to the Education Law (Education Law §§ 10 through 18), to require, among other things, school districts to create policies and guidelines to be used in school training programs to discourage the development of discrimination or harassment and to enable employees to prevent and respond to discrimination or harassment. These provisions took effect on July 1, 2012.

Thereafter, in June 2012, the Legislature enacted Chapter 102 of the Laws of 2012, which amended the Dignity Act to include a requirement that school professionals applying for a certificate or license on or after July 1, 2013 complete training on the social patterns of harassment, bullying and discrimination.

In response to the new law, the Department consulted with a work group, which was comprised of representatives of teachers, administrators, school social workers, school counselors, school guidance counselors, school psychologists, superintendents, school boards, teacher education program faculty, GLESN and Empire Pride Agenda to seek recommendations on how many hours and the types of training needed to ensure that school personnel have adequate training in harassment, bullying and discrimination. The work group recommended that the following actions be taken:

- Part 52 of the Commissioner's Regulations be amended to require teacher and school leadership preparation programs to include at least six hours of training in Harassment, Bullying and Discrimination Prevention and Intervention.
- A new Subpart 57-4 of the Commissioner's Regulations shall be added to establish standards under which the Department will approve providers of this training.
- Part 80 of the Commissioner's Regulations be amended to require that anyone applying for an administrative or supervisory service, classroom teaching service or school service certificate or license on or after July 1, 2013, shall have completed at least six clock hours of coursework or training in Harassment, Bullying and Discrimination Prevention and Intervention.

At its May meeting, the Board of Regents adopted regulations to implement the recommendations of the Work Group. However, since the Department was consulting with the Work Group for the last several months to develop a syllabus for the 6-hour training course and the syllabus and provider applications only became available in the last couple of months, there was not sufficient access to the training before the July 1 deadline. As a result, on June 30, 2013, the Governor signed Chapter 90 of the Laws of 2013, extending the timeframe for school professionals to complete the training until December 31, 2013. The proposed amendment implements the new law, by extending the timeframe to complete the training from July 1 to December 31, 2013.

Emergency action is necessary for preservation of the general welfare to immediately implement the new law and to ensure that applicants for certification are notified that that the deadline for the training requirements has been extended from July 1, 2013 to December 31, 2013.

Subject: Coursework or training in harassment, bullying and discrimination prevention and intervention.

Purpose: To conform the Commissioner's Regulations to Education Law section 14(5), as amended by Chapter 90 of the Laws of 2013.

Text of emergency/proposed rule: 1. Section 80-1.13 of the Regulations of the Commissioner of Education is amended, effective July 23, 2013, as follows:

80-1.13 Required study in harassment, bullying and discrimination prevention and intervention.

All candidates for a certificate or license valid for an administrative or supervisory service, classroom teaching service or school service who apply for a certificate or license on or after [July 1, 2013] *December 31, 2013*, shall have completed at least six clock hours, of which at least three hours must be conducted through face-to-face instruction, of course work or training in harassment, bullying and discrimination prevention and intervention, as required by section 14 the Education Law, which is provided by a registered program leading to certification pursuant to section 52.21 of this Title or other approved provider pursuant to Subpart 57-4 of this Title.

2. Subparagraph (i) of paragraph (1) of subdivision (b) of section 80-3.5 of the Regulations of the Commissioner of Education is amended, effective July 23, 2013, as follows:

(i) Education. The candidate shall complete at least two clock hours of course work or training regarding the identification and reporting suspected child abuse or maltreatment, in accordance with requirements of section 3004 of the Education Law. In addition, the candidate who applies for the certificate on or after February 2, 2001, shall complete at least two clock hours of coursework or training in school violence prevention and intervention, as required by section 3004 of the Education Law, which is provided by a provider approved or deemed approved by the department pursuant to Subpart 57-2 of this Title. A candidate who applies for the certificate on or after [July 1, 2013] *December 31, 2013*, shall also complete at least six clock hours, of which at least three hours must be conducted through face-to-face instruction, of coursework or training in harassment, bullying and discrimination prevention and intervention, as required by section 14 the Education Law.

3. Subparagraph (i) of paragraph (2) of subdivision (b) of section 80-3.5 of the Regulations of the Commissioner of Education is amended, effective July 23, 2013, as follows:

(i) Education. The candidate shall complete at least two clock hours of course work or training regarding the identification and reporting suspected child abuse or maltreatment, in accordance with requirements of section 3004 of the Education Law. In addition, the candidate who applies for the certificate on or after February 2, 2001, shall complete at least two clock hours of coursework or training in school violence prevention and intervention, as required by section 3004 of the Education Law, which is provided by a provider approved or deemed approved by the department pursuant to Subpart 57-2 of this Title. A candidate who applies for the certificate on or after [July 1, 2013] *December 31, 2013*, shall also complete at least six clock hours, of which at least three hours must be conducted through face-to-face instruction, of coursework or training in harassment, bullying and discrimination prevention and intervention, as required by section 14 the Education Law.

4. Paragraph (1) of subdivision (b) of section 80-5.14 of the Regulations of the Commissioner of Education is amended, effective July 23, 2013, to read as follows:

(1) Education. A candidate shall hold a graduate academic or graduate professional degree from a regionally accredited institution of higher education or from an institution authorized by the Board of Regents to confer degrees. A candidate shall complete study in the means for identifying and reporting suspected child abuse and maltreatment, which shall include at least two clock hours of coursework or training in the identification and reporting of suspected child abuse or maltreatment in accordance with the requirements of section 3004 of the Education Law. In addition, the candidate who applies for the certificate on or after February 2, 2001, shall complete at least two clock hours of coursework or training in school violence prevention and intervention, as required by section 3004 of the Education Law, which is provided by a provider approved or deemed approved by the department pursuant to Subpart 57-2 of this Title. A

candidate who applies for the certificate on or after [July 1, 2013] *December 31, 2013*, shall also complete at least six clock hours, of which at least three hours must be conducted through face-to-face instruction, of coursework or training in harassment, bullying and discrimination prevention and intervention, as required by section 14 the Education Law.

5. Subparagraph (i) of paragraph (2) of subdivision (a) of section 80-5.22 of the Regulations of the Commissioner of Education is amended, effective July 23, 2013, as follows:

(i) Education. A candidate shall hold a graduate degree in science, technology, engineering or mathematics from a regionally or nationally accredited institution of higher education, a higher education institution that the commissioner deems substantially equivalent, or from an institution authorized by the Board of Regents to confer degrees. A candidate shall complete study in the means for identifying and reporting suspected child abuse and maltreatment, which shall include at least two clock hours of coursework or training in the identification and reporting of suspected child abuse or maltreatment in accordance with the requirements of section 3004 of the Education Law. In addition, the candidate shall complete at least two clock hours of coursework or training in school violence prevention and intervention, as required by section 3004 of the Education Law, which is provided by a provider approved or deemed approved by the department pursuant to Subpart 57-2 of this Title. A candidate who applies for the certificate on or after [July 1, 2013] *December 31, 2013*, shall also complete at least six clock hours, of which at least three hours must be conducted through face-to-face instruction, of coursework or training in harassment, bullying and discrimination prevention and intervention, as required by section 14 the Education Law.

This notice is intended: to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire October 20, 2013.

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: Peg Rivers, State Education Department, Office of Higher Education, State Education Building Annex, Room 979, 89 Washington Ave., Albany, NY 12234, (518) 486-3633, email: privers@mail.nysed.gov

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

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

Education Law section 14(5) requires the Commissioner of Education to prescribe regulations to require that school professionals applying on or after July 1, 2013 for a certificate or license, including but not limited to a certificate or license valid for service as a classroom teacher, school counselor, school psychologist, school social worker, school administrator or supervisor or superintendent of schools to complete training on the social patterns of harassment, bullying and discrimination. Chapter 90 of the Laws of 2013 amended Education Law section 14(5) to require such training for school professionals applying for a certificate or license on or after December 31, 2013, instead of on or after July 1, 2013.

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 of the Board of Regents and authorizes the Commissioner to enforce laws relating to the educational system and to execute educational policies determined by the Regents. Section 305(2) authorizes the Commissioner to have general supervision over all schools subject to the Education Law.

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

Education Law section 3007 authorizes the Commissioner to endorse a diploma or certificate issued in another state.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment is consistent with the above statutory authority and is necessary to implement Education Law 14(5), as amended by Chapter 90 of the Laws of 2013, to require school professionals applying for a certificate or license on or after December 31, 2013 to complete training on the social patterns of harassment, bullying and discrimination.

3. NEEDS AND BENEFITS:

The Dignity for All Students Act (DASA) added Article 2 to the Education Law (Education Law §§ 10 through 18), to require, among other things, school districts to create policies and guidelines to be used in school training programs to discourage the development of discrimination or harassment and to enable employees to prevent and respond to discrimination or harassment. These provisions took effect on July 1, 2012.

Thereafter, in June 2012, the Legislature enacted Chapter 102 of the Laws of 2012, which amended the Dignity Act to include a requirement that school professionals applying for a certificate or license on or after July 1, 2013 complete training on the social patterns of harassment, bullying and discrimination.

In response to the new law, the Department consulted with a work group, which was comprised of representatives of teachers, administrators, school social workers, school counselors, school guidance counselors, school psychologists, superintendents, school boards, teacher education program faculty, GLESN and Empire Pride Agenda to seek recommendations on how many hours and the types of training needed to ensure that school personnel have adequate training in harassment, bullying and discrimination. The work group recommended that the following actions be taken:

- Part 52 of the Commissioner's Regulations be amended to require teacher and school leadership preparation programs to include at least six hours of training in Harassment, Bullying and Discrimination Prevention and Intervention.
- A new Subpart 57-4 of the Commissioner's Regulations shall be added to establish standards under which the Department will approve providers of this training.
- Part 80 of the Commissioner's Regulations be amended to require that anyone applying for an administrative or supervisory service, classroom teaching service or school service certificate or license on or after July 1, 2013, shall have completed at least six clock hours of coursework or training in Harassment, Bullying and Discrimination Prevention and Intervention.

At its May meeting, the Board of Regents adopted regulations to implement the recommendations of the Work Group. However, since the Department was consulting with the Work Group for the last several months to develop a syllabus for the 6-hour training course and the syllabus and provider applications only became available in the last couple of months, there was not sufficient access to the training before the July 1 deadline. As a result, on June 30, 2013, the Governor signed Chapter 90 of the Laws of 2013, which amends Education Law section 14(5) to require such training for school professionals applying for a certificate or license on or after December 31, 2013, instead of July 1, 2013. The proposed amendment implements the new law, by making the training requirement applicable to school professionals applying for a certificate or license on or after December 31, 2013.

4. COSTS:

(a) Costs to State government: none.

(b) Costs to local governments: none.

(c) Cost to private regulated parties: none.

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

The proposed amendment does not impose any costs on the State, local governments, private regulated parties or the State Education Department. The proposed amendment merely conforms the Commissioner's Regulations to Education Law section 14(5), as amended by Chapter 90 of the Laws of 2013, by making the training requirement on the social patterns of harassment, bullying and discrimination applicable to school professionals applying for a certificate or license on or after December 31, 2013, instead of on or after July 1, 2013.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment does not impose any additional program, service, duty or responsibility upon local governments. The proposed amendment merely conforms the Commissioner's Regulations to Education Law section 14(5), as amended by Chapter 90 of the Laws of 2013, by making the training requirement on the social patterns of harassment, bullying and discrimination applicable to school professionals applying for a certificate or license on or after December 31, 2013, instead of on or after July 1, 2013.

6. PAPERWORK:

The proposed amendment does not impose any new paperwork or record keeping requirements. The proposed amendment merely conforms the Commissioner's Regulations to Education Law section 14(5), as amended by Chapter 90 of the Laws of 2013, by making the training requirement on the social patterns of harassment, bullying and discrimination applicable to school professionals applying for a certificate or license on or after December 31, 2013, instead of on or after July 1, 2013.

7. DUPLICATION:

The amendment does not duplicate any existing State or Federal requirements, and is necessary to implement the Chapter 90 of the Laws of 2013.

8. ALTERNATIVES:

The proposed amendment is necessary to implement Chapter 90 of the

Laws of 2013, which amended Education Law section 14(5) to require training on the social patterns of harassment, bullying and discrimination for school professionals applying for a certificate or license on or after December 31, 2013, instead of on or after July 1, 2013. The proposed amendment merely conforms the Commissioner's Regulations to the statute. There are no significant alternatives and none were considered.

9. FEDERAL STANDARDS:

There are no related Federal standards governing the certification of teachers and administrators.

10. COMPLIANCE SCHEDULE:

It is anticipated that regulated parties will be able to achieve compliance with this amendment by its stated effective date.

Regulatory Flexibility Analysis

The proposed amendment is necessary to conform the Commissioner's Regulations to Education Law section 14(5), as amended by Chapter 90 of the Laws of 2013, by making the training requirement on the social patterns of harassment, bullying and discrimination applicable to school professionals applying for a certificate or license on or after December 31, 2013, instead of on or after July 1, 2013. The proposed amendment does not impose any adverse economic impact, reporting, recordkeeping or any other compliance requirements on small businesses or local governments. Because it is evident from the nature of the proposed amendment that it does not affect small businesses or local governments, no affirmative steps are 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.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed amendment will affect school professionals in all parts of this State who are applying for a certificate or license on or after December 31, 2013, 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 does not impose any compliance requirements or professional services requirements. The proposed amendment merely conforms the Commissioner's Regulations to Education Law section 14(5), as amended by Chapter 90 of the Laws of 2013, by making the training requirement on the social patterns of harassment, bullying and discrimination applicable to school professionals applying for a certificate or license on or after December 31, 2013, instead of on or after July 1, 2013.

3. COSTS:

The proposed amendment does not impose any costs. The proposed amendment merely conforms the Commissioner's Regulations to Education Law section 14(5), as amended by Chapter 90 of the Laws of 2013, by making the training requirement on the social patterns of harassment, bullying and discrimination applicable to school professionals applying for a certificate or license on or after December 31, 2013, instead of on or after July 1, 2013.

4. MINIMIZING ADVERSE IMPACT:

The proposed amendment does not impose any compliance requirements or costs. The proposed amendment merely conforms the Commissioner's Regulations to Education Law section 14(5), as amended by Chapter 90 of the Laws of 2013, by making the training requirement on the social patterns of harassment, bullying and discrimination applicable to school professionals applying for a certificate or license on or after December 31, 2013, instead of on or after July 1, 2013. The statute which the proposed amendment implements applies to affected school professionals throughout the State, including those in rural areas. Therefore, it was not possible to establish different requirements for school professionals in rural areas, or to exempt them from the amendment's provisions.

5. RURAL AREA PARTICIPATION:

The Department consulted with a work group, which was comprised of representatives of teachers, administrators, school social workers, school counselors, school guidance counselors, school psychologists, superintendents, school boards, teacher education program faculty, GLSEN and Empire Pride Agenda. The work group included representatives from across the State, including members from rural areas.

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

Pursuant to State Administrative Procedure Act section 207(1)(b), the State Education Department proposes that the initial review of this rule shall occur in the fifth calendar year after the year in which the rule is adopted, instead of in the third calendar year. The justification for a five year review period is that the proposed amendment merely implements, and conforms the Commissioner's Regulations to, statutory requirements under Chapter 90 of the Laws of 2013 and therefore the substantive provisions of the proposed amendment cannot be repealed or modified unless there is a further statutory change. Accordingly, there is no need for a shorter review period. The Department invites public comment on the proposed five year review period for this rule. Comments should be sent to the agency contact listed in item 10. of the Notice of Proposed Rule Making published herewith, and must be received within 45 days of the State Register publication date of the Notice.

Job Impact Statement

The proposed amendment is necessary to conform the Commissioner's Regulations to Education Law section 14(5), as amended by Chapter 90 of the Laws of 2013, by making the training requirement on the social patterns of harassment, bullying and discrimination applicable to school professionals applying for a certificate or license on or after December 31, 2013, instead of on or after July 1, 2013. 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.

NOTICE OF EMERGENCY ADOPTION AND REVISED RULE MAKING NO HEARING(S) SCHEDULED

Moral Character Hearings Under 8 NYCRR Part 83 for Certified Teachers and Other Certified School Personnel

I.D. No. EDU-19-13-00006-ERP

Filing No. 774

Filing Date: 2013-07-22

Effective Date: 2013-07-22

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

Action Taken: Amendment of sections 83.4 and 83.5 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207(not subdivided), 305(7), (30), 3001(2), 3001-d(2), 3004(1), 3004-c(not subdivided), 3006(1), 3009(1), 3010(not subdivided), 3035(1) and (3)

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

Specific reasons underlying the finding of necessity: The Department's Office of School Personnel Review & Accountability (OSPRA) is responsible for facilitating fingerprint generated criminal background checks in accordance with the Education Law (Chapter 180 of the Laws of 2000). All prospective covered school employees and/or applicants for a teaching certificate must be fingerprinted.

Generally, fingerprints are collected across the state at school districts, Boards of Cooperative Educational Services (BOCES), colleges and universities, and law enforcement agencies. Fingerprints are received by the Department in two formats: hard cards containing fingerprints that are collected through the "ink and roll" method and mailed, and digital fingerprint images captured on a scanner and transmitted electronically via a server. All fingerprint images are delivered by the Department to the state Division of Criminal Justice Services (DCJS), which conducts a state criminal history records check and then forwards the images to the Federal Bureau of Investigation (FBI) for processing against their criminal record repository.

The Department has taken steps to better ensure the security of fingerprints in recent years by growing the number of fingerprints collected electronically. Approximately 75 percent of fingerprints are collected electronically, which reduces the opportunity for the integrity of fingerprints to be compromised.

In an effort to close potential gaps that may exist (such as the ability of a person to submit false fingerprints), the Department began a review of the fingerprinting process. As part of this review, the Department has determined that there are no provisions to expeditiously address actions related to fingerprint fraud. As such, individuals with serious criminal histories, whose presence in the classroom or school poses a danger to the safety of students and/or staff, may be able to evade the criminal history record check process and gain access to schools. The proposed amendment establishes a rebuttable presumption that a teacher or school administrator who is convicted of any crime relating to the submission of false information, or who has committed fraud, relating to his/her criminal history record check lacks good moral character. In addition to shifting the burden to the teacher or school administrator in Part 83 proceedings, such

an amendment would serve as a deterrent for individuals who may be inclined to submit false information relative to a criminal history background check.

Based on public comment received following the 45-day public comment period required under the State Administrative Procedure Act, the proposed amendment was revised to clarify that the rebuttable presumption for fingerprinting fraud applies not only to crimes committed after certification, but also to convictions of individuals for submission of false fingerprints or other fraudulent acts undertaken to obtain their certification. In addition, the proposed amendment was revised to allow the Commissioner to initiate a review of the findings and recommendations of a hearing officer or hearing panel, including fingerprinting fraud.

Emergency action is needed for the preservation of the general welfare in order to ensure that action can be taken expeditiously to revoke or suspend the certificates of teachers and school administrators who commit a crime involving fraud or submission of information related to their criminal history record checks in order to ensure the safety of the children and faculty of the schools in this State.

Emergency action is also needed for the preservation of the general welfare in order to ensure that the proposed amendment continuously remains in effect until it can be adopted as a permanent rule. The proposed amendment was adopted as an emergency rule at the April 22-23, 2013 Regents meeting, effective April 23, 2013. A Notice of Emergency Adoption and Proposed Rule Making was published in the State Register on May 8, 2013. Following the 45-day public comment period required under SAPA, the proposed rule was revised as described above. A Notice of Revised Rule Making will be published in the State Register on July 23, 2013. Following the public 30-day public comment period for a revised rule making, the proposed amendment will be adopted as a permanent rule. The earliest effective date of the revised rule, if adopted at the September meeting, would be October 2, 2013.

Emergency action is necessary for the preservation of the general welfare to revise the proposed amendment and ensure that the revised rule remains continuously in effect until the effective date of its permanent adoption.

Subject: Moral character hearings under 8 NYCRR Part 83 for certified teachers and other certified school personnel.

Purpose: To establish a rebuttable presumption that a certified individual who is convicted of any crime relating to the submission of false information, or who has committed fraud, relating to his/her criminal history record check lacks good moral character.

Text of emergency/revised rule: 1. Subdivision (d) of section 83.4 of the Regulations of the Commissioner of Education shall be amended, effective July 22, 2013, to read as follows:

(d) Evidence of conviction of a crime shall be admissible in any proceeding conducted pursuant to this Part, but such conviction shall not in and of itself create a conclusive presumption that the person so convicted lacks good moral character. *Except as otherwise provided in paragraph (4) of this subdivision,* [In] *in* the case of a certified individual, proof of conviction for any of the following acts constituting a crime in New York State and committed subsequent to certification shall create a rebuttable presumption that the individual so convicted lacks good moral character.

(1) . . .

(2) . . .

(3) . . .

(4) any crime committed involving the submission of false information, or the commission of fraud, related to a criminal history record check.

2. A new subparagraph (iv) shall be added to paragraph (1) of subdivision (b) of section 83.5 of the Regulations of the Commissioner of Education, effective July 22, 2013, to read as follows:

(iv) any crime committed involving the submission of false information, or the commission of fraud, related to a criminal history record check.

This notice is intended to serve as both a notice of emergency adoption and a notice of revised rule making. The notice of proposed rule making was published in the *State Register* on May 8, 2013, I.D. No. EDU-19-13-00006-EP. The emergency rule will expire 60 days after filing.

Emergency rule compared with proposed rule: Substantial revisions were made in sections 83.4(d) and 83.5(b)(1).

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: Peg Rivers, NYS Education Department, Office of Higher Education, Room 979, Washington Avenue, Albany, NY 12234, (518) 486-3633, email: privers@mail.nysed.gov

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

Revised Regulatory Impact Statement

Since publication of a Notice of Emergency Adoption and Proposed Rule Making in the State Register on May 8, 2013, the proposed rule has been substantially revised as follows.

The introductory language of subdivision (d) of section 83.4 was revised in response to public comment to add the phrase ''Except as otherwise provided in paragraph (4) of this subdivision'' to clarify that the rebuttable ''lack of moral character'' presumption in section 83.4(d)(4) for proof of conviction of any crimes involving the submission of false information, or the commission of fraud, related to a criminal history check shall apply, not only to such crimes committed after certification, but also to such crimes that are committed to obtain certification.

In response to public comment, a new subdivision (iv) was added to section 83.5(b)(1) to authorize the Commissioner to initiate a review of the findings and recommendation of a hearing officer or hearing panel in cases involving convictions for any crimes involving the submission of false information, or the commission of fraud, related to a criminal history check.

The above revisions require that the Needs and Benefits, Local Government Mandates, and Compliance Requirements sections of the previously published Regulatory Impact Statement be revised to read as follows:

3. NEEDS AND BENEFITS:

The State Education Department's Office of School Personnel Review & Accountability (OSPRA) is responsible for facilitating fingerprint generated criminal background checks in accordance with the Education Law (Chapter 180 of the Laws of 2000). All prospective covered school employees and/or applicants for a teaching certificate must be fingerprinted.

Generally, fingerprints are collected across the state at school districts, Boards of Cooperative Educational Services (BOCES), colleges and universities, and law enforcement agencies. Fingerprints are received by the Department in two formats: hard cards containing fingerprints that are collected through the "ink and roll" method and mailed, and scanned fingerprint images captured on a scanner and transmitted electronically via a server. All fingerprint images are delivered by the Department to the state Division of Criminal Justice Services (DCJS) to conduct a state criminal history records check and to forward them to the Federal Bureau of Investigation (FBI) for processing against their criminal record repository.

The Department has taken steps to better ensure the security of fingerprints in recent years by growing the number of fingerprints collected electronically. Approximately 75 percent of fingerprints are collected electronically, which reduces the opportunity for the integrity of fingerprints to be compromised. However, the Department has begun to review the fingerprinting process to close potential gaps that may exist, such as the ability of a person to submit false fingerprints. As part of this review, the Department has determined that the proposed amendment is needed to expedite the removal of school district personnel that commit certain crimes. Currently, there are no provisions to expeditiously address actions related to fingerprint fraud, which can result in convicted felons whose presence in the classroom or school poses a danger to the safety of students and/or staff evading the criminal history record check process and gaining access to schools. The proposed amendment establishes a rebuttable presumption that a teacher or school administrator who is convicted of any crime relating to the submission of false information, or who has committed fraud, relating to his/her criminal history record check lacks good moral character. The proposed amendment also authorizes the Commissioner to initiate a review of the findings and recommendation of a hearing officer or hearing panel in cases involving convictions for any crimes involving the submission of false information, or the commission of fraud, related to a criminal history check. The proposed amendment will thereby expedite the removal of teachers and administrators that commit crimes involving the submission of false information, or the commission of fraud, related to a criminal history record check.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment does not impose any program, service, duty or responsibility upon local governments. The proposed amendment relates to evidentiary standards in the conduct of moral character hearings for certified teachers and other certified school personnel under Part 83 of the Commissioner's Regulations, and merely establishes a rebuttable presumption that a certified individual who is convicted of any crime relating to the submission of false information, or who has committed fraud, relating to his/her criminal history record check lacks good moral character. The proposed amendment also authorizes the Commissioner to initiate a review of the findings and recommendation of a hearing officer or hearing panel in cases involving convictions for any crimes involving the submission of false information, or the commission of fraud, related to a criminal history check. The proposed amendment will thereby expedite the removal of teachers and administrators that commit crimes involving the submission of false information, or the commission of fraud, related to a criminal history record check.

10. COMPLIANCE SCHEDULE:

The proposed amendment does not impose any costs or compliance requirements. The proposed amendment relates to evidentiary standards in hearings relating to the conduct of moral character hearings for certified teachers and other certified school personnel under Part 83 of the Commissioner's Regulations, and merely establishes a rebuttable presumption that a certified individual who is convicted of any crime relating to the submission of false information, or who has committed fraud, relating to his/her criminal history record check lacks good moral character. The proposed amendment also authorizes the Commissioner to initiate a review of the findings and recommendation of a hearing officer or hearing panel in cases involving convictions for any crimes involving the submission of false information, or the commission of fraud, related to a criminal history check. The proposed amendment will thereby expedite the removal of teachers and administrators that commit crimes involving the submission of false information, or the commission of fraud, related to a criminal history record check.

Revised Regulatory Flexibility Analysis

Since publication of a Notice of Emergency Adoption and Proposed Rule Making in the State Register on May 8, 2013, the proposed rule has been substantially revised as set forth in the Revised Regulatory Impact Statement submitted herewith. The proposed amendment, as so revised, relates to evidentiary standards in the conduct of moral character hearings for certified teachers and other certified school personnel under Part 83 of the Commissioner's Regulations, and will not impose any adverse economic, reporting, recordkeeping, or any other compliance requirements on small businesses or local governments. Because it is evident from the nature of the revised rule that it does not affect small businesses or local governments, no further steps were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses and local governments is not required and one has not been prepared.

Revised Rural Area Flexibility Analysis

Since publication of a Notice of Emergency Adoption and Proposed Rule Making in the State Register on May 8, 2013, the proposed rule has been substantially revised as set forth in the Revised Regulatory Impact Statement submitted herewith.

The above changes require that the Reporting, Recordkeeping and Other Compliance Requirements; and Professional Services and Minimizing Adverse Impact sections of the previously published Rural Area Flexibility Analysis be revised to read as follows:

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

The proposed amendment does not impose any additional reporting, recordkeeping, or other compliance requirements, or professional services requirements on any regulated party. The proposed amendment relates to evidentiary standards in the conduct of moral character hearings for certified teachers and other certified school personnel under Part 83 of the Commissioner's Regulations, and merely establishes a rebuttable presumption that a teacher or school administrator who is convicted of any crime relating to the submission of false information, or who has committed fraud, relating to his/her criminal history record check lacks good moral character. The proposed amendment also authorizes the Commissioner to initiate a review of the findings and recommendation of a hearing officer or hearing panel in cases involving convictions for any crimes involving the submission of false information, or the commission of fraud, related to a criminal history check. The proposed amendment will thereby expedite the removal of teachers and administrators that commit crimes involving the submission of false information, or the commission of fraud, related to a criminal history record check.

4. MINIMIZING ADVERSE IMPACT:

The proposed amendment does not impose any compliance requirements or costs on public or private entities located in rural areas. The proposed amendment relates to evidentiary standards in the conduct of moral character hearings for certified teachers and other certified school personnel under Part 83 of the Commissioner's Regulations, and merely establishes a rebuttable presumption that a teacher or school administrator who is convicted of any crime relating to the submission of false information, or who has committed fraud, relating to his/her criminal history record check lacks good moral character. The proposed amendment also authorizes the Commissioner to initiate a review of the findings and recommendation of a hearing officer or hearing panel in cases involving convictions for any crimes involving the submission of false information, or the commission of fraud, related to a criminal history check. The proposed amendment will thereby expedite the removal of teachers and administrators that commit crimes involving the submission of false information, or the commission of fraud, related to a criminal history record check. Because evidentiary standards in Part 83 moral character hearings must be uniformly applicable throughout the State in order to meet Constitutional requirements, it is not possible to establish differing requirements for or to exempt affected individuals in rural areas.

Revised Job Impact Statement

Since publication of a Notice of Emergency Adoption and Proposed Rule Making in the State Register on May 8, 2013, the proposed rule has been substantially revised as set forth in the Revised Regulatory Impact Statement submitted herewith. The proposed amendment, as so revised, relates to evidentiary standards in the conduct of moral character hearings for certified teachers and other certified school personnel under Part 83 of the Commissioner's Regulations, and will not have an adverse impact on jobs or employment opportunities. Because it is evident from the nature of the proposed revised amendment that it will have a positive impact, or no impact, on jobs or employment opportunities, no further steps were needed to ascertain those facts and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

Assessment of Public Comment

Since publication of a Notice of Emergency Adoption and Proposed Rule Making in the State Register on May 8, 2013, the State Education Department received the following comments:

1. One commenter notes that currently 8 NYCRR § 83.4(d) lists three categories of crimes that create a rebuttable presumption related to moral character: Penal Law drug offenses, physical or sexual abuse of a minor or student, and any crime committed on school property or while performing teaching duties. However, in all three cases the presumption is limited to only such crimes that are "committed subsequent to certification." It is not clear that this limitation should properly pertain to a conviction for fingerprinting fraud. Instead, it would seem appropriate to apply such a presumption not only to crimes committed after certification, but also to convictions of individuals for submission of false fingerprints or other fraudulent acts undertaken to obtain their certification.

DEPARTMENT RESPONSE:

The Department agrees and proposed amendment was revised to clarify that the presumption related to convictions for fingerprinting fraud also apply to the conviction of individuals for submission of false fingerprints or other fraudulent acts undertaken to obtain their certification.

2. COMMENT:

The commenter also notes that § 83.5(b) of the Commissioner's regulations provides that the Commissioner may initiate a review of the findings and recommendations of a hearing officer or hearing panel, but only in cases involving convictions of specific crimes – specifically, this provision relists the three categories of crimes in § 83.4(d). If SED believes that acts involving fingerprinting/criminal history fraud merit inclusion in the rebuttable presumption provisions in § 83.4(d), it may also find it appropriate to add such offenses to the list of crimes in § 83.5(b) that enable the Commissioner to initiate a review of a hearing report involving such cases.

DEPARTMENT RESPONSE:

The Department agrees and has revised § 83.5 of the Commissioner's regulations accordingly.

NOTICE OF ADOPTION

State Student Assessments in the Elementary and Secondary Grades

I.D. No. EDU-19-13-00005-A

Filing No. 777

Filing Date: 2013-07-23

Effective Date: 2013-08-07

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

Action taken: Amendment of Part 8 of Title 8 NYCRR.

Statutory authority: Education Law, sections 101(not subdivided), 207(not subdivided), 208(not subdivided) and 209(not subdivided)

Subject: State student assessments in the elementary and secondary grades.

Purpose: To clarify procedures for establishment of cut scores and performance standards for determining proficiency on State Assessments.

Text or summary was published in the May 8, 2013 issue of the Register, I.D. No. EDU-19-13-00005-EP.

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

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

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2018, which is the 4th or 5th year after the

year in which this rule is being adopted. This review period, justification for proposing same, and invitation for public comment thereon, were contained in a RFA, RAFA or JIS:

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

Assessment of Public Comment

The agency received no public comment.

Department of Environmental Conservation

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Commercial and Recreational Regulations for Atlantic Menhaden

I.D. No. ENV-32-13-00004-EP

Filing No. 773

Filing Date: 2013-07-22

Effective Date: 2013-07-22

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

Proposed Action: Amendment of section 40.1(f); and addition of section 40.1(x) to Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 11-0303, 11-1303, 13-0105 and 13-0342

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

Specific reasons underlying the finding of necessity: Adoption of these regulations on an emergency basis is necessary for New York to end overfishing on the Atlantic menhaden, be in compliance with the Fishery Management Plan (FMP) for Atlantic Menhaden as adopted by the Atlantic States Marine Fisheries Commission (ASMFC), and to avoid potential federal sanctions imposed for lack of compliance with the plan. Each member state of ASMFC is expected to promulgate regulations that comply with FMPs adopted by ASMFC. These regulations are needed to properly manage the State's fisheries. Because of the extended time needed to develop New York's fishery management proposal for menhaden and to allow the ASMFC Atlantic Menhaden Board to review the proposal, there was not enough time to promulgate this is as a normal rule making. This rule must be in effect as close to the ASMFC's compliance date of July 1, 2013 as possible. Therefore the rule is being submitted as an Emergency Rulemaking and Notice of Adoption.

Subject: Commercial and recreational regulations for Atlantic menhaden.

Purpose: Establish commercial quota management, reporting requirements and a recreational possession limit for Atlantic menhaden.

Text of emergency/proposed rule: Existing section 6 NYCRR 40.1 is amended to read as follows:

Existing subdivision 6 NYCRR 40.1(f) is amended to read as follows:

Species Striped bass through Oyster toadfish remain the same. Species Atlantic menhaden is added to read as follows:

40.1(f) Table A – Recreational Fishing.

Species	Open Season	Minimum Length	Possession Limit
Atlantic menhaden	*All year*	*No minimum size*	*100*

New subdivision 40.1(x) is adopted to read as follows:

(x) 'Atlantic menhaden commercial fishing - special regulations.'

(1) Permits. It is unlawful for any person to take or land menhaden for commercial purposes without having in possession a valid commercial food fishing license, commercial food fish landing license, a menhaden vessel license, or marine bait permit issued by the State of New York. For purposes of this subdivision, a person is presumed to be taking menhaden for commercial purposes when that person possesses more than 100 menhaden, or more than the possession limit for menhaden listed in Table A of this section, whichever is less. A person who holds a lobster bait gill net permit may take or land more than 100 menhaden; menhaden taken using this permit are for the sole use of the permittee to pursue the permittee's lobster fishery and may not be sold. A person who holds a lobster bait gill net permit must abide by the special regulations of this subdivision.

(2) Quota harvest and trip limits.

(i) The total annual harvest of menhaden may not exceed that amount annually allocated to New York State by the Atlantic States Marine Fisheries Commission (ASMFC) for the period January 1 through December 31. Annual harvest limits for menhaden are based on the Fishery Management Plan (FMP) for menhaden as adopted and approved by the ASMFC pursuant to the Atlantic Coastal Fisheries Cooperative Management Act, 16 U.S.C., section 5101, 'et. seq.'

(ii) Following consultation with industry, the department may establish quota periods, trip limits and directed fishery thresholds such that the harvest does not exceed the quota assigned to New York.

(iii) When the department determines, based on a projection of landings using daily fishing vessel trip reports, that trip limits are necessary as provided in Table B of subdivision (i), such trip limits will be required and enforceable upon 72 hours written notice to license holders referenced in paragraph (1) of the appropriate limit allowed per vessel for that time period. Such trip limits may be further reduced by written direction of the department if the projection of the landings indicates a closure will be required before the end of the period. In any time period, the trip limits may be increased if the projection of the landings indicates the total quota will not be caught.

(3) Fishery closures.

(i) If the department determines that the maximum allowable harvest of menhaden will take place before the end of any period, the directed harvesting of menhaden for commercial purposes will be prohibited, except that the department may allow a bycatch of menhaden in non-directed fisheries, not to exceed 6,000 pounds daily per vessel trip. Directed harvest may be prohibited for all license holders, or for users of specific gear types as directed by the department upon 72 hours written notice to all license holders referenced in paragraph (1). If the department closes the period, but unanticipated events result in the quota not being landed by the projected date, then the department may reopen the period for a specified time and a specified trip limit upon 72 hours written notice to all license holders referenced in paragraph (1).

(4) Possession, transport and sale.

(i) During periods of trip limits, all menhaden must be held together in a separate container or containers readily available for inspection and may not be mixed with other species while on board any vessel.

(ii) During closed periods, no possession of menhaden shall be permitted on the waters of the marine and coastal district except as bycatch aboard vessels participating in other fisheries.

(5) Reporting requirements.

Any person who is the holder of a marine commercial food fishing license, commercial food fish landing license, a menhaden vessel license, marine bait permit, or lobster bait gill net permit issued by the State of New York shall report all harvest of menhaden in accordance with the requirements established in subdivision (c)(1) of this section.

This notice is intended: to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire October 19, 2013.

Text of rule and any required statements and analyses may be obtained from: Kim McKown, New York State Department of Environmental Conservation, 205 North Belle Mead Road, Suite 1, East Setauket, NY 11733, (631) 444-0454, email: kamckown@gw.dec.state.ny.us

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

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

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

Regulatory Impact Statement

1. Statutory authority:

Environmental Conservation Law (ECL) section 11-0303 authorizes the Department of Environmental Conservation (DEC) to adopt management regulations for fish resources. ECL section 11-1303 authorizes DEC to establish by regulation open seasons, size and catch limits and manner of taking of all species of fish in all waters of the state. ECL Section 13-0342 authorizes DEC to adopt regulations which require reporting of catch, effort, area fished, gear used, by-catch and volume and value of product purchased from permit holders of almost all categories of marine fish harvester and dealer licenses.

ECL Section 13-0105 requires that DEC be guided by the recommendations of the Marine Resources Advisory Council (MRAC) and to incorporate the Council's recommendation into the final rulemaking if they are found to be consistent with the state's marine fisheries conservation and management policies and interstate Fishery Management Plans (FMPs).

2. Legislative objectives:

It is the objective of the above-cited statutory provisions that DEC manages marine fisheries to optimize resource use for commercial and recreational harvesters consistent with marine fisheries conservation and management policies, and interstate FMPs. Further it is the intent of the statute that DEC incorporates the recommendation of the MRAC if the recommendations do not conflict with state policy or interstate FMPs.

3. Needs and benefits:

This rule making is necessary to reduce menhaden harvest by 20 percent to end overfishing. The Atlantic Menhaden Management Board adopted new reference points in response to the 2010 Peer Review Panel's recommendation to provide greater protection for the stock. The 2012 stock assessment update found overfishing to be occurring on the Atlantic menhaden stock. Amendment 2 to the Atlantic States Marine Fisheries Commission (ASMFC) Atlantic Menhaden FMP implements a total allowable catch (TAC) in 2013 to end overfishing. The TAC is a 20 percent reduction from the 2009 through 2011 average landings and approximately 25 percent reduction from 2011.

Because of the extended time needed to develop New York's fishery management proposal for menhaden and to allow the ASMFC Atlantic Menhaden Board to review the proposal, there was not enough time to promulgate this is as a normal rule making. This rule must be in effect as close as possible to the ASMFC's compliance date of July 1, 2013. Therefore the rule is being submitted as an emergency adoption (with an accompanying notice of proposed rule making). Failure to adopt the rule in a timely fashion may result in a menhaden fishery closure due to noncompliance. The commercial and recreational menhaden fisheries in New York could be penalized and closed until the State comes back into compliance. This would cause significant hardship on resource users. The estimated dollar value of New York's commercial menhaden harvest was approximately $270,000 in 2011 based on our best estimate of landings. Menhaden is used as bait in New York's trap fisheries and by recreational anglers. Since menhaden is used as bait to catch other fish, the loss of this resource would have much higher economic impact.

4. Costs:

(a) Cost to State government:

The cost to state government is primarily that affecting the regulating agency, the Department of Environmental Conservation, and is described under section (d).

(b) Cost to local government:

There will be no costs to local governments.

(c) Cost to private regulated parties:

The proposed rule will impose costs to commercial menhaden harvesters and potentially to recreational anglers who use menhaden as bait. The objective of Amendment 2 is to decrease harvest by 20 percent based on historic landings information. If New York must abide by the quota specified in Amendment 2, the impact to permit holders will be much greater than the 20 percent reduction, since we believe the historic harvest may have been an order of magnitude greater than New York's ASMFC quota allocation.

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

DEC will incur costs associated with both the implementation and administration of these rules, including the costs relating to notifying permit holders of the new rules, the workload and mailing costs associated with quota management and the costs of increased enforcement.

5. Local government mandates:

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

6. Paperwork:

Food fishing, menhaden vessel, marine bait and lobster bait gillnet permit holders are required to report their menhaden harvesting activities in accordance with state reporting regulations. Food fish, marine bait and lobster bait gillnet permit holders are required by 6 NYCRR section 40.1(c) to report all species caught. The proposed rule specifies that menhaden catch must be reported.

7. Duplication:

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

8. Alternatives:

Alternative Measures: Amendment 2 to the ASMFC Atlantic Menhaden FMP adopted a TAC which was a 20 percent reduction of the average harvest from 2009 through 2011 to end overfishing. Alternative measures would need to be approved by the ASMFC Menhaden Management Board.

"Landings reconstruction": DEC requested a grace period to give staff time to reconstruct New York's historic (2009 through 2011) menhaden landings. This would allow New York to establish a more realistic quota based on information submitted on harvest reports that have not yet been compiled and processed and from previously unreported landings submitted by harvesters which have been verified. The ASMFC Menhaden Management Board was not clear about the status of this grace period, but still required DEC to implement quota management in 2013. DEC intends to continue to work on reconstructing the 2009 through 2012 menhaden landings data in order to attempt to revise our ASMFC quota allocation in the future.

No action: This alternative is rejected because New York State must abide by the ASMFC Atlantic Menhaden FMP required quota management plan to end overfishing on the stock.

9. Federal standards:

The revisions to Section 40.1 are in compliance with the ASMFC fishery management plan for Atlantic menhaden.

10. Compliance schedule:

The ASMFC implementation deadline for menhaden management was July 1, 2013. DEC seeks to adopt this rule making as quickly as possible. Regulated parties will be notified of the changes to the regulations by mail, through appropriate news releases and via DEC's website and electronic mailing list.

Regulatory Flexibility Analysis

1. Effect of rule:

The amendment of 6 NYCRR Section 40.1 establishes Atlantic menhaden commercial quota management, reporting requirements and a recreational possession limit. The rule will affect both commercial and recreational menhaden harvesters. Small businesses directly affected by the quota include licensed commercial food fish, menhaden vessel and marine bait harvesters. There were 1,108 food fishing, 23 menhaden vessel and 80 marine bait permit holders during 2012. Most commercial harvesters holding food fishing and marine bait permits are self-employed. Commercial harvesters who utilize menhaden for bait (such as lobster and crab permit holders) and recreational anglers may be impacted by these rules due to possible bait shortages or price increases. Recreational harvesters may also be impacted by the possession limit for recreational harvest. In addition, although most permit reporting requirements specify that "all species" caught must be reported, many permit holders did not realize that menhaden needed to be reported since it is used as bait. The proposed regulation specifies that menhaden must be reported on trip reports. The regulations do not apply directly to local governments, and will not have any direct effects on local governments.

The objective of Amendment 2 to the Atlantic States Marine Fisheries Commissions (ASMFC) Atlantic Menhaden Fishery Management Plan (FMP) is to reduce harvest of menhaden by 20 percent to end overfishing. Amendment 2 implements a total allowable catch (TAC) in 2013 to end overfishing. The TAC is a 20 percent reduction from the 2009 through 2011 average landings and approximately 25 percent reduction from 2011.

The proposed rule will impose costs to commercial menhaden harvesters and recreational anglers. The objective of Amendment 2 is to decrease harvest by 20 percent based on historic landings information. If New York must abide by the quota specified in Amendment 2, the impact to permit holders will be much greater than the 20 percent reduction, since we believe the historic harvest was approximately an order of magnitude greater than New York's ASMFC quota allocation. The estimated dollar value of New York's commercial menhaden harvest was approximately $270,000 in 2011 based on estimated landings. Menhaden is used as bait in New York's trap fisheries and by recreational anglers. Since menhaden is used as bait to catch other fish, the loss of this resource would have much higher economic impact.

In the long-term, the maintenance of sustainable fisheries will have a positive effect on small businesses in the fisheries in question. Any short-term losses in participation, harvest and sales will be offset by the restoration of fishery stocks and an increase in yield from well-managed resources. Menhaden are an important prey species for many marine species. Protection of the menhaden resource is essential to the survival of these predator species and the commercial and recreational fisheries that rely on the health and sustainability of both menhaden and many of the species that feed on them. These regulations are designed to protect stocks while allowing appropriate harvest, to prevent over-harvest, and to continue to rebuild or maintain the stocks for future utilization.

2. Compliance requirements:

New York must implement a quota management system by July 1, 2013 and manage the fishery under a quota which is much lower than the estimated landings of previous years. Recreational anglers that catch menhaden for their own bait will need to comply with a possession limit. In addition, food fishing, menhaden vessel, marine bait and lobster bait gillnet permit holders are required to report their menhaden harvesting activities in accordance with the state reporting requirements. Food fishing, marine bait and lobster bait gillnet permits are already required to report "all species" caught. This rule specifies that menhaden catch must be reported as well.

3. Professional services:

None.

4. Compliance costs:

There are no initial capital costs that will be incurred by a regulated

business or industry to comply with the proposed rule. Commercial menhaden harvesters' costs involve the loss of harvest due to the quota which reduces harvest by 20 percent based on 2009 – 2011 reported landings, which may be as much as an order of magnitude below New York's actual landings during that time period. Bait dealers and recreational anglers may incur costs due to decreased availability of menhaden for sale and possible increased costs for those menhaden that are available.

5. Economic and technological feasibility:

The proposed regulations do not require any expenditure on the part of affected businesses in order to comply with the changes. The changes required by this proposed rule may economically impact some commercial menhaden harvesters and bait dealers as detailed above.

There is no additional technology required for small businesses, and this action does not apply to local governments. Therefore, there are no technological impacts for any such bodies.

6. Minimizing adverse impact:

The unavoidable short term impact of these regulations will be an immediate reduction in the amount of menhaden that can be landed by commercial fishermen and recreational harvesters. Due to the fact that New York's historic menhaden harvest was under-reported, DEC submitted a proposal to the ASMFC Atlantic Menhaden Management Board requesting a grace period for more time to reconstruct New York's historic (2009 through 2011) menhaden landings. This would allow New York to establish a more realistic quota based on information from reports that have not been compiled and processed and from previously unreported landings. The ASMFC Menhaden Management Board was not clear about the status of this grace period, but still required DEC to implement quota management in 2013. DEC intends to continue to work on reconstructing the 2009 through 2012 menhaden landings data in order to attempt to revise the ASMFC quota allocation for New York in the future.

The promulgation of this regulation is necessary for DEC to become in compliance with the Atlantic menhaden FMP. The regulations are intended to protect the menhaden resource and avoid adverse impacts that would be associated with closure of the fishery for non-compliance with the FMP.

Ultimately, the maintenance of long-term sustainable fisheries will have a positive effect on employment for the fisheries in question, as well as wholesale and retail outlets and other support industries. Failure to comply with an FMP and take required actions to protect a marine fishery could have an adverse impact on the commercial and recreational fisheries for that species, as well as the supporting industries for those fisheries. These regulations are being adopted in order to end overfishing while allowing for some harvest.

7. Small business and local government participation:

ASMFC scheduled a public meeting on draft Amendment 2 for November 1, 2012. This meeting had to be canceled due to the impact of Super Storm Sandy on the region. ASMFC was unable to reschedule the meeting, but the draft Amendment was available on the ASMFC web site and there was an opportunity for harvesters to submit written comments.

DEC alerted the Marine Resources Advisory Council (MRAC) about New York's Menhaden Fishery Management proposal for implementation of Amendment 2 at the May 2013 meeting. No formal discussion or vote was taken on the proposal. The same evening DEC held an informational meeting for permit holders to discuss the same information. We received feedback from permit holders that the reported landings that ASMFC was basing New York's commercial menhaden quota on were unrealistically low. Many permit holders mentioned they didn't realize they needed to report, and offered to help DEC to reconstruct the historic landings.

There was no special effort to contact local governments because the proposed rule does not affect them.

8. For rules that either establish or modify a violation or penalties associated with a violation:

Pursuant to SAPA 202-b (1-a)(b), no cure period is included in the rule because of the potential adverse impact on the resource. Cure periods for the illegal taking of fish or wildlife are neither desirable nor recommended. Immediate compliance is required to ensure the general welfare of the public and the resource is protected.

9. Initial review of the rule, pursuant to SAPA section 207 as amended by L. 2012, ch. 462:

DEC will conduct an initial review of the rule within three years as required by SAPA section 207.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:

The proposed rule will affect commercial and recreational fishermen who harvest Atlantic menhaden from marine and estuarine waters in New York. The majority of these individuals are residents of the New York City and Long Island metropolitan areas. In 2012 over 98 percent of the 1,144 permit holders affected by the proposed rule lived in urban counties while only 2 percent lived in rural counties.

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

Food fishing, menhaden vessel, marine bait, and lobster bait gillnet permit holders are required to report their menhaden harvesting activities in accordance with state reporting regulations. Food fishing, marine bait, and lobster bait gillnet permit holders are already required to report all species caught; this rule just specifies that menhaden catch must also be reported.

3. Costs:

The proposed rule will impose costs to commercial menhaden harvesters and potentially to recreational anglers who use menhaden as bait. The objective of the Amendment 2 is to decrease harvest by 20 percent based on historic landings information. If New York must abide by the quota specified in Amendment 2, the impact to permit holders will be much greater than 20 percent reduction, since we believe the historic harvest may have been an order of magnitude greater then ASMFC's quota allocation. The majority of these costs will impact urban areas since 98 percent of the permit holders come from urban counties.

4. Minimizing adverse impact:

The unavoidable short term impact of these regulations will be an immediate reduction in the amount of menhaden that can be landed by commercial fishermen and recreational harvesters. Due to the fact that New York's historic menhaden harvest was under-reported, DEC submitted a proposal to the ASMFC Atlantic Menhaden Management Board requesting a grace period for more time to reconstruct New York's historic (2009 through 2011) menhaden landings. This would allow New York to establish a more realistic quota based on information from harvest reports that have not been compiled and processed and from previously unreported landings submitted by harvesters. The ASMFC Menhaden Management Board was not clear about the status of this grace period, but still required DEC to implement quota management in 2013. DEC intends to continue to work on reconstructing the 2009 through 2012 menhaden landings data in order to attempt to revise our ASMFC quota allocation in the future.

The promulgation of this regulation is necessary for DEC to become in compliance with the Atlantic menhaden FMP. The regulations are intended to protect the menhaden resource and avoid adverse impacts that would be associated with closure of the fishery for non-compliance with the FMP.

Ultimately, the maintenance of long-term sustainable fisheries will have a positive effect on employment for the fisheries in question, as well as wholesale and retail outlets and other support industries. Failure to comply with an FMP and take required actions to protect a marine fishery could have an adverse impact on the commercial and recreational fisheries for that species, as well as the supporting industries for those fisheries. These regulations are being adopted in order to end overfishing while allowing for some harvest.

5. Rural area participation:

The majority of menhaden harvesters are residents of the New York City and Long Island metropolitan areas. In 2012 over 98 percent of the 1,144 permit holders affected by the proposed rule lived in urban counties while only 2 percent lived in rural counties.

ASMFC scheduled a public meeting on Long Island on draft Amendment 2 for November 1, 2012. This meeting had to be canceled due to the impact of Super Storm Sandy on the region. ASMFC was unable to reschedule the meeting, but the draft Amendment was available on the ASMFC web site and there was an opportunity for harvesters to submit written comments. New York's Menhaden Fishery Management proposal was discussed at the Marine Resources Advisory Council meeting and a menhaden public information meeting in May 2013 on Long Island.

DEC staff focused public outreach in the marine and coastal district because that is where the majority of the menhaden are harvested.

6. Initial review of the rule, pursuant to SAPA section207 as amended by L. 2012, ch. 462:

The department will conduct an initial review of the rule within three years as required by SAPA section 207.

Job Impact Statement

1. Nature of impact:

The amendment of 6 NYCRR Section 40.1 establishes Atlantic menhaden commercial quota management, reporting requirements and a recreational possession limit. The rule will affect both commercial and recreational menhaden harvesters. This rule making is necessary to implement Amendment 2 of the Atlantic States Marine Fisheries Commission (ASMFC) Atlantic menhaden Fishery Management Plan (FMP). Failure by New York to adopt this measure could result in a determination of non-compliance by ASMFC and the Secretary of Commerce and the imposition of a fishery closure. The objective of this Amendment 2 is to reduce the menhaden harvest by 20 percent to end overfishing. New York must abide by the quota specified in Amendment 2, however DEC believes the impact to license holders will be greater than the 20 percent reduction, since there are strong indicators that the historic harvest was approximately an order of magnitude greater than New York's ASMFC quota allocation.

2. Categories and numbers affected:

The rule will affect both commercial and recreational menhaden harvesters. Small businesses directly affected by the quota include licensed commercial food fish, menhaden vessel and marine bait harvesters. There were 1,108 food fishing, 3 menhaden vessel, and 80 marine bait permit holders during 2012. Most commercial harvesters holding food fish and marine bait permits are self-employed. An unknown number of other commercial harvesters that rely on menhaden for bait (such as lobster and crab permit holders) and recreational anglers may be impacted by these rules due to possible bait shortages or price increases. Recreational harvesters may also be impacted by the possession limit for recreational harvest.

3. Regions of adverse impact:

In 2012 almost 93 percent of the license holders affected by the proposed rule lived in The New York City and Long Island metropolitan areas counties while less than 7 percent lived in other areas within and outside of New York.

4. Minimizing adverse impact:

The unavoidable short-term impact of these regulations will be an immediate reduction in the amount of menhaden that can be landed by commercial fishermen and recreational harvesters. Due to the fact that New York's historic menhaden harvest was under-reported, DEC submitted a proposal to the ASMFC Atlantic Menhaden Management Board requesting a grace period for more time to reconstruct New York's historic (2009 through 2011) menhaden landings. This would allow New York to establish a more realistic quota based on information submitted on harvest reports that have not been computerized and from previously unreported landings submitted by harvesters which have been verified. The ASMFC Menhaden Management Board was not clear about the status of this grace period, but still required DEC to implement quota management in 2013. DEC intends to continue to work on reconstructing the 2009 through 2012 menhaden landings data in order to attempt to revise our ASMFC quota allocation in the future.

The promulgation of this regulation is necessary for DEC to become in compliance with the Atlantic menhaden FMP. The regulations are intended to protect the menhaden resource and avoid adverse impacts that would be associated with closure of the fishery for non-compliance with the FMP.

Ultimately, the maintenance of long-term sustainable fisheries will have a positive effect on employment for the fisheries in question, as well as wholesale and retail outlets and other support industries. Failure to comply with an FMP and take required actions to protect a marine fishery could have an adverse impact on the commercial and recreational fisheries for that species, as well as the supporting industries for those fisheries. These regulations are being adopted in order to end overfishing while allowing for some harvest.

5. Self-employment opportunities:

The commercial menhaden industry as a whole is self-employed, as are portions of the recreational industry.

6. Initial review of the rule, pursuant to SAPA section 207 as amended by L. 2012, ch. 462:

DEC will conduct an initial review of the rule within three years as required by SAPA section 207.

NOTICE OF ADOPTION

Exception for the Possession and Sale of Bighead Carp

I.D. No. ENV-10-13-00007-A

Filing No. 772

Filing Date: 2013-07-22

Effective Date: 2013-08-07

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

Action taken: Amendment of section 180.9 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 3-0301, 11-0303, 11-0305, 11-0507 and 11-0511

Subject: Exception for the Possession and Sale of Bighead Carp.

Purpose: Repeal the current exception for the sale of bighead carp.

Text or summary was published in the March 6, 2013 issue of the Register, I.D. No. ENV-10-13-00007-P.

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

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

Revised Regulatory Impact Statement

A revised Regulatory Impact Statement (RIS) is not included as there are no revisions to the previously published RIS as contained in the Notice of Proposed Rule Making (NPR).

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

A RAFA, RFA and JIS were not required for the NPR and the NPR included statements stating why. Therefore the statements are not being included as part of the NOA.

Initial Review of Rule

As a rule that does not require a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2018, which is no later than the 5th year after the year in which this rule is being adopted

Assessment of Public Comment

Comments were received from a total of approximately 20 people/organizations. The majority of those received were from individuals with a few from organizations (both private and public entities). Comment received was unanimously in support of the proposal to eliminate the current exception that allows for the possession and sale of bighead carp. No comment was received in opposition of the proposal.

Department of Financial Services

NOTICE OF EMERGENCY ADOPTION AND REVISED RULE MAKING NO HEARING(S) SCHEDULED

Unauthorized Providers of Health Services

I.D. No. DFS-11-13-00008-ERP

Filing No. 776

Filing Date: 2013-07-22

Effective Date: 2013-07-22

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

Action Taken: Amendment of Part 65 of Title 11 NYCRR.

Statutory authority: Financial Services Law, section 202 and arts. 3 and 4; Insurance Law, sections 301, 5109, and 5221 and arts. 4 and 51

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

Specific reasons underlying the finding of necessity: This regulation concerns the de-authorization of certain providers of health services. Insurance Law § 5109(a) requires the Superintendent, in consultation with the Commissioner of Health and the Commissioner of Education, to promulgate standards and procedures for investigating and suspending or removing the authorization for providers of health services to demand or request payment for health services under Article 51 of the Insurance Law upon findings of certain unlawful conduct reached after investigation, notice, and a hearing pursuant to Insurance Law § 5109.

For years, certain owners and operators of professional service corporations and other types of corporations have abused the no-fault insurance system. These persons are involved in activities that include intentionally staging accidents and billing no-fault insurers for health services that were unnecessary or never in fact rendered. Indeed, recent federal indictments have demonstrated that organized crime has infiltrated and permeated the no-fault provider network. Such wide-scale criminal activity is estimated to have defrauded insurers of at least hundreds of millions of dollars, if not more. Insurers ultimately pass on these costs to New York consumers in the form of higher automobile premiums, and schemes such as the fraudulent staging of auto accidents endangers the innocent public. Furthermore, it places in peril the quality of care received by innocent auto accident victims and the public's health, safety, and welfare.

It is of the utmost importance that the Superintendent, Commissioner of Health, and Commissioner of Education be able, as soon as possible, to prohibit health service providers who engage in such activities from demanding or requesting payment from no-fault insurers.

For the reasons stated above, emergency action is necessary for the public health, public safety, and general welfare.

Subject: Unauthorized Providers of Health Services.

Purpose: Establish standards and procedures for the investigation and suspension or removal of a health service provider's authorization.

Text of emergency/revised rule: *Section 65-5.0 Preamble.*

(a) For years, certain owners and operators of professional service corporations or other similar business entities have abused the no-fault insurance system. These persons are involved in activities that include intentionally staging accidents and billing no-fault insurers for health services that were unnecessary or never in fact rendered. This fraud costs no-fault insurers tens if not hundreds of millions of dollars, which insurers ultimately pass on to New York consumers in the form of higher automobile insurance premiums. It also threatens the affordability of health care and the public's health, safety, and welfare.

(b) Insurance Law section 5109 requires the Superintendent of Financial Services, in consultation with the Commissioner of Health and the Commissioner of Education, to establish standards and procedures for the investigation and suspension or removal of a provider of health services' authorization to demand or request payment for health services provided under Insurance Law article 51. This Subpart implements Insurance Law section 5109.

Section 65-5.1 Definitions.

As used in this Subpart, the following terms shall have the meaning ascribed to them:

(a) "Health services" or "medical services" means services, supplies, therapies, or other treatments as specified in Insurance Law section 5102(a)(1)(i), (ii), or (iv).

(b) "Insurer" shall have the meaning set forth in Insurance Law section 5102(g), and also shall include the motor vehicle accident indemnification corporation and any company or corporation providing coverage for basic economic loss, as defined in Insurance Law section 5102(a), pursuant to Insurance Law section 5103(g).

(c) "Noticing commissioner" means the Commissioner of Health or the Commissioner of Education, whomever sends a notice of hearing under this Subpart.

(d) "Provider of health services" or "provider" means a person or entity who or that renders or has rendered health services.

(e) "Superintendent" means the Superintendent of Financial Services.

Section 65-5.2 Investigations.

(a) The superintendent may investigate any reports made pursuant to Insurance Law section 405, allegations, or other information in the superintendent's possession, regarding providers of health services engaging in any of the unlawful activities set forth in Insurance Law section 5109(b). After conducting an investigation, the superintendent will send to the Commissioner of Health or the Commissioner of Education, as appropriate, a list of any providers who or that the superintendent believes may have engaged in any of the unlawful activities set forth in Insurance Law section 5109(b), together with a description of the grounds for inclusion on the list. Within 45 days of receipt of the list, the Commissioner of Health or Commissioner of Education shall notify the superintendent in writing whether he or she confirms that the superintendent has a reasonable basis to proceed with notice and a hearing for determining whether any of the listed providers should be deauthorized from demanding or requesting any payment for medical services in connection with any claim under Insurance Law article 51.

(b) The Commissioner of Health and the Commissioner of Education also may investigate any reports, allegations, or other information in their possession, regarding providers engaging in any of the unlawful activities set forth in Insurance Law section 5109(b). If either commissioner conducts an investigation, then that commissioner, or the superintendent, if requested by the commissioner, shall be responsible for providing notice and an opportunity to be heard to the providers of health services that they are subject to deauthorization from demanding or requesting any payment for medical services in connection with any claim under Insurance Law article 51. Nothing in this section, however, shall preclude the superintendent, Commissioner of Health, or Commissioner of Education from conducting joint investigations and hearings, or the Commissioner of Health or Commissioner of Education from conducting professional misconduct proceedings against the providers of health services pursuant to the Public Health Law or Title VIII of the Education Law.

Section 65-5.3 Notice; how given.

(a)(1) The superintendent, Commissioner of Health, or Commissioner of Education shall give notice of any hearing to a provider at least 30 days prior to the hearing, in writing, either by delivering it to the provider or by depositing the same in the United States mail, postage prepaid, registered or certified, and addressed to the last known place of business of the provider or if no such address is known, then to the residence address of the provider.

(2) The notice shall refer to the applicable provisions of the law under which action is proposed to be taken and the grounds therefor, but failure to make such reference shall not render the notice ineffective if the provider to whom it is addressed is thereby or otherwise reasonably apprised of such grounds.

(3) It shall be sufficient for the superintendent or noticing commissioner to give to the provider:

(i) notice of the time and the place at which an opportunity for hearing will be afforded; and

(ii) if the person appears at the time and place specified in the notice or any adjourned date, a hearing.

(b) At least ten days prior to the hearing date fixed in the notice, the provider may file an answer to any charges with the superintendent or noticing commissioner.

(c) Any hearing of which such notice is given may be adjourned from time to time without other notice than the announcement thereof at such hearing.

(d) The statement of any regular salaried employee of the Department of Financial Services, Department of Health, or Department of Education, subscribed and affirmed by such employee as true under the penalties of perjury, stating facts that show that any notice referred to in this section has been delivered or mailed as hereinbefore provided, shall be presumptive evidence that such notice has been duly delivered or mailed, as the case may be.

Section 65-5.4 Hearings.

(a) Unless otherwise provided, any hearing may be held before the superintendent, Commissioner of Health or Commissioner of Education, any deputy, or any designated salaried employee of the Department of Financial Services, Department of Health, or Department of Education who is authorized by the superintendent or noticing commissioner for such purpose. The hearing shall be noticed, conducted, and administered in compliance with the State Administrative Procedure Act.

(b) The person conducting the hearing shall have the power to administer oaths, examine and cross-examine witnesses, and receive documentary evidence, and shall report his or her findings, in writing, to the superintendent or noticing commissioner with a recommendation. The report, if adopted by the superintendent or noticing commissioner, may be the basis of any determination made by the superintendent or noticing commissioner.

(c) Every such hearing shall be open to the public unless the superintendent or noticing commissioner, or the person authorized by the superintendent or noticing commissioner to conduct such hearing, shall determine that a private hearing would be in the public interest, in which case the hearing shall be private.

(d) Every provider affected shall be permitted to: be present during the giving of all the testimony; be represented by counsel; have a reasonable opportunity to inspect all adverse documentary proof; examine and cross-examine witnesses; and present proof in support of the provider's interest. A stenographic record of the hearing shall be made, and the witnesses shall testify under oath.

(e) Nothing herein contained shall require the observance at any such hearing of formal rules of pleading or evidence.

Section 65-5.5 Report of hearing and findings.

(a) Pending a final determination by the superintendent, Commissioner of Health, or Commissioner of Education, if the superintendent or noticing commissioner believes that the provider has engaged in any activity set forth in Insurance Law section 5109(b), then the superintendent or noticing commissioner may temporarily prohibit the provider from demanding or requesting any payment for medical services under Insurance Law article 51 for up to 90 days from the date of the notice of such temporary prohibition pursuant to Insurance Law section 5109(e).

(b) The hearing officer shall issue to the superintendent or noticing commissioner the report described in Section 65-5.4(b) of this Subpart, with a recommendation. The superintendent or noticing commissioner may adopt, modify, remand, or reject the hearing officer's report and recommendation.

(c)(1) Upon consideration of the hearing officer's report and recommendation, the superintendent or noticing commissioner may issue a final order prohibiting the provider from demanding or requesting any payment for medical services in connection with any claim under Insurance Law article 51 and requiring the provider to refrain from subsequently treating, for remuneration, as a private patient, any person seeking medical treatment under Insurance Law article 51, for a period specified by the superintendent or noticing commissioner.

(2) If the superintendent or noticing commissioner issues a final order prohibiting the provider from demanding or requesting any payment for medical services in connection with any claim under Insurance Law article 51 and requiring the provider to refrain from subsequently treating, for remuneration, as a private patient, any person seeking medical treatment under Insurance Law article 51, for a period longer than three years, then the provider may, after the expiration of three years, submit a written application to the superintendent or noticing commissioner requesting that the superintendent or noticing commissioner reconsider his or her order. The written application shall explain why revising the order would not jeopardize the health, safety, and welfare of the people of this State.

This notice is intended to serve as both a notice of emergency adoption

and a notice of revised rule making. The notice of proposed rule making was published in the *State Register* on March 13, 2013, I.D. No. DFS-11-13-00008-EP. The emergency rule will expire September 19, 2013.

Emergency rule compared with proposed rule: Substantial revisions were made in sections 65-5.0(b), 65-5.1(d), 65-5.2 and 65-5.5(a), (c).

Text of rule and any required statements and analyses may be obtained from: Camielle A. Barclay, New York State Department of Financial Services, One State Street, New York, NY 10004, (212) 480-5299, email: camielle.barclay@dfs.ny.gov

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

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

Revised Regulatory Impact Statement

1. Statutory authority: Section 202 and Articles 3 and 4 of the Financial Services Law, and Sections 301, 5109, and 5221 and Articles 4 and 51 of the Insurance Law. Insurance Law § 301 and Financial Services Law §§ 202 and 302 authorize the Superintendent of Financial Services (the "Superintendent") to prescribe regulations interpreting the provisions of the Insurance Law and to effectuate any power granted to the Superintendent under the Insurance Law. Article 3 of the Financial Services Law sets forth administrative and procedural provisions, while Article 4 of the Financial Services Law confers certain powers and duties on the Superintendent with regard to financial frauds prevention. Insurance Law § 5109 requires the Superintendent to promulgate standards and procedures for investigating and suspending or removing, after notice and a hearing, the authorization of health service providers to bill no-fault insurance if they engage in certain unlawful conduct. Insurance Law § 5221 specifies the duties and obligations of the Motor Vehicle Accident Indemnification Corporation ("MVAIC") with regard to the payment of no-fault benefits to qualified persons. In addition, Article 4 of the Insurance Law sets forth requirements for reporting and preventing fraud, while Article 51 of the Insurance Law governs the no-fault insurance system.

2. Legislative objectives: Insurance Law § 5109 requires the Superintendent, in consultation with the Commissioner of Health and the Commissioner of Education, to promulgate standards and procedures for investigating and suspending or removing the authorization for health service providers to demand or request payment for health services under Article 51 of the Insurance Law upon findings of certain unlawful conduct reached after investigation, notice, and a hearing pursuant to § 5109. Furthermore, Insurance Law § 301 and Financial Services Law §§ 202 and 302 authorize the Superintendent to prescribe regulations interpreting the provisions of the Insurance Law and to effectuate any power granted to the Superintendent under the Insurance Law.

3. Needs and benefits: For years, certain owners and operators of professional service corporations and other business entities have abused the no-fault insurance system. These persons are involved in activities that include intentionally staging accidents and billing no-fault insurers for health services that were unnecessary or never in fact rendered. Indeed, recent federal indictments have demonstrated that organized crime has infiltrated and permeated the no-fault provider network. Such wide-scale criminal activity is estimated to have defrauded insurers of at least hundreds of millions of dollars, if not more. Insurers ultimately pass on these costs to New York consumers in the form of higher automobile insurance premiums, and schemes such as the fraudulent staging of auto accidents endanger the innocent public. Furthermore, these activities place in peril the quality of care received by innocent auto accident victims and the public's health, safety, and welfare.

It is of the utmost importance that the Superintendent, Commissioner of Health, and Commissioner of Education be able, as soon as possible, to prohibit health service providers who engage in such activities from demanding or requesting payment from no-fault insurers.

Therefore, after consultation with the Commissioner of Health and the Commissioner of Education, the Superintendent drafted this rule to promulgate standards and procedures for investigating and suspending or removing the authorization for health service providers to demand or request payment for health services under Article 51 of the Insurance Law upon findings of certain unlawful conduct reached after investigation, notice, and a hearing pursuant to § 5109.

4. Costs: This rule does not impose compliance costs on state or local governments. The rule should reduce costs for no-fault insurers, which may include local governments who self-fund their no-fault insurance benefits, because it will permit the Superintendent, Commissioner of Health, or Commissioner of Education to prohibit, after notice and a hearing, health service providers who engage in certain unlawful conduct from demanding or requesting payment from no-fault insurers. The rule also should reduce costs for New York consumers in the form of reduced automobile insurance premiums.

5. Local government mandates: This rule does not impose any requirement upon a city, town, village, school district, or fire district.

6. Paperwork: This rule does not impose any additional paperwork.

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

8. Alternatives: The earlier, emergency version of this rule did not indicate whether the Superintendent or noticing commissioner may prohibit a person from billing no-fault insurers for a specified period of time rather than permanently. However, there may be circumstances where it is appropriate for the Superintendent or noticing commissioner to impose the prohibition for only a limited period of time or to entertain applications to lift the prohibition after a certain number of years.

Therefore, the rule makes clear that the Superintendent or noticing commissioner may prohibit a person from billing no-fault insurers for a period determined by the Superintendent. Under this language, if the Superintendent or noticing commissioner has prohibited a provider from billing no-fault insurers for more than three years, then the provider may, after the expiration of three years, submit a written application to the Superintendent or noticing commissioner requesting that he or she reconsider his or her order. The written application must explain why revising the order would not jeopardize the health, safety, and welfare of the people of New York State.

9. Federal standards: There are no minimum standards of the federal government for the same or similar subject areas. The rule is consistent with federal standards or requirements.

10. Compliance schedule: Insurance Law § 5109(a) requires notice to all health service providers of the provisions of § 5109 and this rule at least 90 days in advance of the effective date of the rule. This rule was promulgated on an emergency basis on March 9, 2012 (to take effect 95 days after filing with the Secretary of State, i.e., June 12, 2012), June 6, 2012 (to take effect on June 12, 2012), August 31, 2012, November 28, 2012, and February 25, 2013. Notice of the proposed rule was published in the State Register on March 13, 2013. The rule was re-promulgated on an emergency basis on May 24, 2013.

The Department provided the required notice by, among other things, emailing notice of Insurance Law § 5109 and the rule on March 14, 2012 to health service provider organizations, such as the Medical Society of the State of New York, New York State Chiropractic Association, and Acupuncture Society of New York; posting a copy of the rule on its website continually since March 9, 2012; and publishing the rule in the State Register.

Revised Regulatory Flexibility Analysis

1. Effect of the rule: The Department of Financial Services ("Department") finds that this rule will generally not impose reporting, recordkeeping or other requirements on small businesses or local governments. The basis for this finding is that this rule does not impose any substantive requirements on small businesses or local governments. In addition, this rule affects no-fault insurers authorized to do business in New York State and self-insurers, none of which fall within the definition of "small business" because none are both independently owned and have less than one hundred employees. Self-insurers are typically large enough to have the financial ability to self-insure losses and the Department does not have any information to indicate that any self-insurers are small businesses.

This rule also affects health service providers, some of whom may be considered small businesses. However, this rule does not impose any substantive requirements on health service providers.

Some local governments self-insure their no-fault benefits. The Department has not been able to determine the number of local governments that are self-insured. However, this rule does not impose any substantive requirements on local governments, and any impact on local governments would be positive and should reduce their costs.

2. Compliance requirements: This rule does not impose any additional paperwork.

3. Professional services: This rule does not require anyone to use professional services. However, if a health service provider is subject to a hearing, the provider may be represented by counsel.

4. Compliance costs: This rule does not impose compliance costs on small businesses or local governments, because it does not impose any substantive requirements. The rule should reduce costs for no-fault insurers, which may include local governments who self-fund their no-fault insurance benefits, because it will permit the Superintendent, Commissioner of Health, or Commissioner of Education to prohibit, after notice and a hearing, health service providers who engage in certain unlawful conduct from demanding or requesting payment from no-fault insurers.

5. Economic and technological feasibility: This rule does not impose any substantive requirements on small businesses or local governments, so there should not be any issues pertaining to economic and technological feasibility.

6. Minimizing adverse impact: This rule affects uniformly health service providers and no-fault insurers in all parts of New York State and the rule is mandated by statute. The Department does not believe that it will have an adverse impact.

7. Small business and local government participation: The Department issued a press release regarding the rule on March 8, 2012; emailed notice of Insurance Law § 5109 and the rule on March 14, 2012 to health service provider organizations, such as the Medical Society of the State of New York, New York State Chiropractic Association, and Acupuncture Society of New York; has posted a copy of the rule on its website since March 9, 2012; and published the rule in the State Register. In addition, interested parties were given an opportunity to comment on the proposed regulation that was published in the State Register on March 13, 2013.

Revised Rural Area Flexibility Analysis

1. Types and estimated number of rural areas: Health service providers, insurers, and self-insurers affected by this regulation do business in every county in this state, including rural areas as defined under Section 102(10) of the State Administrative Procedure Act. Some of the home offices of these health service providers, insurers, and self-insurers lie within rural areas. Some government entities that are self-insurers for no-fault benefits may be located in rural areas.

2. Reporting, recordkeeping and other compliance requirements: This rule does not impose any additional paperwork.

3. Costs: This rule does not impose compliance costs on state or local governments. The rule should reduce costs for no-fault insurers, which may include local governments who self-fund their no-fault insurance benefits, because it will permit the Superintendent, Commissioner of Health, or Commissioner of Education to prohibit, after notice and a hearing, health service providers who engage in certain unlawful conduct from demanding or requesting payment from no-fault insurers. The rule also should reduce costs for New York consumers in the form of reduced automobile insurance premiums.

4. Minimizing adverse impact: This rule affects uniformly health service providers and no-fault insurers in both rural and non rural areas of New York State and the rule is mandated by statute. The Department of Financial Services does not believe that it will have an adverse impact on rural areas.

5. Rural area participation: The Department issued a press release regarding the rule on March 8, 2012; emailed notice of Insurance Law § 5109 and the rule on March 14, 2012 to health service provider organizations, such as the Medical Society of the State of New York, New York State Chiropractic Association, and Acupuncture Society of New York; has posted a copy of the rule on its website continually since March 9, 2012; and published the rule in the State Register. In addition, interested parties were given an opportunity to comment on the proposed regulation that was published in the State Register on March 13, 2013.

Revised Job Impact Statement

Neither the proposed rule that was published in the State Register on March 13, 2013 nor the emergency measure amending 11 NYCRR 65 indicated whether the Superintendent or noticing commissioner may prohibit a person from billing a no-fault insurer for a specified period of time rather than permanently. This revised rule clarifies that the Superintendent or noticing commissioner may prohibit a person from billing no-fault insurers for a specified period as determined by the Superintendent. This revision to the rule requires no change to the JIS.

Assessment of Public Comment

The agency received no public comment.

Department of Health

EMERGENCY RULE MAKING

Reduction to Statewide Base Price

I.D. No. HLT-32-13-00005-E
Filing No. 775
Filing Date: 2013-07-22
Effective Date: 2013-07-22

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

Action taken: Amendment of section 86-1.16 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 2807-c(35)

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

Specific reasons underlying the finding of necessity: It is necessary to issue the proposed regulations on an emergency basis in order to achieve targeted savings.

Public Health Law section 2807-c(35)(b) specifically provides the Commissioner of Health with authority to issue hospital inpatient rate-setting regulations as emergency regulations.

Further, there is compelling interest in enacting these regulations immediately in order to secure federal approval of the associated Medicaid State Plan Amendment.

Subject: Reduction to Statewide Base Price.

Purpose: Continues a reduction to the statewide base price for inpatient services.

Text of emergency rule: Pursuant to the authority vested in the Commissioner of Health by section 2807-c(35)(b) of the Public Health Law, Subdivision (c) of section 86-1.16 of Subpart 86-1 of Title 10 of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended, to be effective May 1, 2012, to read as follows:

(c)*(1)* For the period effective July 1, 2011 through March 31, 2012, the statewide base price shall be adjusted such that total Medicaid payments are decreased by $24,200,000.

(2) For the period May 1, 2012 through March 31, 2013 and for state fiscal year periods on and after April 1, 2013, the statewide base price shall be adjusted such that total Medicaid payments are decreased for such period and for each such state fiscal year period by $19,200,000.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire October 19, 2013.

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

Regulatory Impact Statement

Statutory Authority:

The requirement to implement a modernized Medicaid reimbursement system for hospital inpatient services based upon 2005 base year operating costs pursuant to regulations is set forth in Section 2807-c(35) of the Public Health Law, which states that the Commissioner has the authority to set emergency regulations for general hospital inpatient rates and such regulations shall include but not be limited to a case-mix neutral Statewide base price. Such Statewide base price will exclude certain items specified in the statute and any other factors as may be determined by the Commissioner.

Legislative Objectives:

The Legislature and Medicaid Redesign Team adopted a proposal to reduce unnecessary cesarean deliveries to promote quality care and reduce unnecessary expenditures. Due to industry concerns with the initial proposal, it was determined that a more clinically sound method needed to be developed. To generate immediate savings, however, a $24.2 million gross ($12.1 million State share) reduction in the statewide base price was implemented for 2011-12 while an obstetrical workgroup worked to develop a more clinically sound approach to meet Legislative objectives. Based on the results of workgroup meetings, a new proposal was developed which achieved less savings than required by the Financial Plan ($5 million gross/$2.5 million State share). Therefore, this emergency amendment continues the base price reduction at $19.2 million gross ($9.6 million State share) to account for the difference.

Needs and Benefits:

The proposed amendment appropriately implements the provisions of Public Health Law section 2807-c(35)(b)(xii), which authorizes the Commissioner to address the inappropriate use of cesarean deliveries. Cesarean deliveries are surgical procedures that inherently involve risks; however, elective cesarean deliveries increase the risks unnecessarily. Therefore, high rates of cesarean deliveries are increasingly viewed as indicative of quality of care issues.

Due to industry concerns with the initial proposal, it was determined that a more clinically sound approach to meeting Legislative objectives needed to be developed. To generate immediate savings, however, a $24.2 million gross ($12.1 million State share) reduction in the statewide base price was implemented for 2011-12 while an obstetrical workgroup worked to develop such an approach. Based on the results of those meetings, a new proposal was developed which achieved less savings than required by the Financial Plan ($5 million gross/$2.5 million State share). Therefore, this emergency amendment continues the base price reduction at $19.2 million gross ($9.6 million State share) to account for the difference for periods subsequent to the 2011-12 state fiscal year.

COSTS:

Costs to State Government:

There are no additional costs to State government as a result of this amendment.

Costs of Local Government:
There will be no additional cost to local governments as a result of these amendments.
Costs to the Department of Health:
There will be no additional costs to the Department of Health as a result of this amendment.
Local Government Mandates:
The proposed amendments do not impose any new programs, services, duties or responsibilities upon any county, city, town, village, school district, fire district or other special district.
Paperwork:
There is no additional paperwork required of providers as a result of these amendments.
Duplication:
These regulations do not duplicate existing State and Federal regulations.
Alternatives:
No significant alternatives are available at this time. In collaboration with the hospital industry, the State developed a more clinically sound method to achieve savings. However, this amount was less than was required by the Financial Plan. Thus, there is no option to not act on this initiative since the Enacted Budget assumed savings that total $24.2 million.
Federal Standards:
This amendment does not exceed any minimum standards of the federal government for the same or similar subject areas.
Compliance Schedule:
The proposed amendment to section 86-1.16 requires that the statewide base price be reduced by $19,200,000 for the period May 1, 2012, through March 31, 2013 and for each state fiscal year period thereafter.

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 with 100 or fewer full time equivalents. Based on recent financial and statistical data extracted from the Institutional Cost Report, seven hospitals were identified as employing fewer than 100 employees.
Health care providers subject to the provisions of this regulation under section 2807-c(35) of the Public Health Law will see a minimal decrease in funding as a result of the reduction in the statewide base price.
This rule will have no direct effect on Local Governments.
Compliance Requirements:
No new reporting, recordkeeping or other compliance requirements are being imposed as a result of these rules. Affected health care providers will bill Medicaid using procedure codes and ICD-9 codes approved by the American Medical Association, as is currently required. The rule should have no direct effect on Local Governments.
Professional Services:
No new or additional professional services are required in order to comply with the proposed amendments.
Compliance Costs:
As a result of the new provision of 86-1.16, overall statewide aggregate hospital Medicaid revenues for hospital inpatient services will decrease in an amount corresponding to the total statewide base price reduction.
Economic and Technological Feasibility:
Small businesses will be able to comply with the economic and technological aspects of this rule. The proposed amendments are technologically feasible because it requires the use of existing technology. The overall economic impact to comply with the requirements of this regulation is expected to be minimal.
Minimizing Adverse Impact:
The proposed amendments reflect statutory intent and requirements.
Small Business and Local Government Participation:
Hospital associations participated in discussions and contributed comments through the State's Medicaid Redesign Team process regarding these changes.

Rural Area Flexibility Analysis

Types and Estimated Numbers of Rural Areas:
This rule applies uniformly throughout the state, including rural areas. Rural areas are defined as counties with a population less than 200,000 and counties with a population of 200,000 or greater that have towns with population densities of 150 persons or fewer per square mile. The following 43 counties have a population of less than 200,000 based upon the United States Census estimated county populations for 2010 (http://quickfacts.census.gov). Approximately 17% of small health care facilities are located in rural areas.

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

The following counties have a population of 200,000 or greater and towns with population densities of 150 persons or fewer per square mile. Data is based upon the United States Census estimated county populations for 2010.

Albany County	Monroe County	Orange County
Broome County	Niagara County	Saratoga County
Dutchess County	Oneida County	Suffolk County
Erie County	Onondaga County	

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 amendments reflect statutory intent and requirements.
Rural Area Participation:
This amendment is the result of discussions with industry associations as part of the Medicaid Redesign team process. These associations include members from rural areas. As well, the Medicaid Redesign Team held multiple regional hearings and solicited ideas through a public process.

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 rule that it will not have a substantial adverse impact on jobs or employment opportunities. The proposed emergency regulation revises the final statewide base price for the period beginning May 1, 2012, through March 31, 2013 and for each state fiscal year thereafter.

EMERGENCY RULE MAKING

Statewide Pricing Methodology for Nursing Homes

I.D. No. HLT-32-13-00016-E
Filing No. 780
Filing Date: 2013-07-23
Effective Date: 2013-07-23

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:
Action taken: Addition of section 86-2.40 to Title 10 NYCRR.
Statutory authority: Public Health Law, section 2808(2-c)
Finding of necessity for emergency rule: Preservation of public health.
Specific reasons underlying the finding of necessity: It is necessary to issue the proposed regulations on an emergency basis in order to implement, as expeditiously as possible, the new Medicaid reimbursement methodology for nursing homes, effective January 1, 2012. The new

methodology will replace an overly complex and burdensome methodology with a transparent pricing methodology that will stabilize the nursing home industry by timely providing predictable rate setting information that can be effectively used by providers to plan and manage their operations. In addition, implementing the pricing methodology as soon as possible will also mitigate the retroactive cash flow impact of reconciling rates that are paid today to the new pricing rates effective on January 1, 2012.

Proceeding with the proposed regulations on an emergency basis is in accordance with the provisions of Public Health Law section 2808 (2-c) which provides the Commissioner of Health the explicit authority to issue these emergency regulations.

Further, there is compelling interest in enacting these regulations immediately in order to secure federal approval of the associated Medicaid State Plan Amendment.

Subject: Statewide Pricing Methodology for Nursing Homes.

Purpose: To establish a new Medicaid reimbursement methodology for Nursing Homes.

Substance of emergency rule: This regulation establishes a new reimbursement methodology for the operating component of non-specialty residential health care facilities (nursing homes). The operating component of the price is based upon allowable costs and is the sum of the direct price, indirect price and a facility-specific non-comparable price. The direct and indirect prices are a blend of a statewide price and a peer group price. There are two peer groups: 1) all non-specialty hospital-based facilities and non-specialty freestanding facilities with certified beds capacities of 300 or more, and 2) non-specialty freestanding facilities with certified bed capacities of less than 300 beds. The direct price is subject to a case mix adjustment and a wage index adjustment. The new case mix adjustment methodology also contains mechanisms to safeguard the integrity of case mix data reporting. If reported case mix data indicates a change in the facility's case mix of more than five percent, the payment adjustment associated with the change over five percent may be held, pending an audit to verify the accuracy of the reported data. Also, facilities are required to formally certify to the accuracy of their case mix data reporting on an annual basis. The indirect price is subject to a wage index adjustment. Per-diem adjustments to the operating component of the rate include add-ons for bariatric, traumatic brain-injured (TBI) extended care, and dementia residents; adjustments for the reporting of quality data; and transition payments. Non-specialty facilities will transition to the price over a five-year period (2012-2016), with prices fully implemented beginning in 2017. The non-capital component of the rate for specialty facilities, which are not subject to the new reimbursement methodology, will be the rates in effect for such facilities on January 1, 2009.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire October 20, 2013.

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

Regulatory Impact Statement

Statutory Authority:

The statutory authority for this regulation is contained in Section 2808(2-c) of the Public Health Law (PHL) as enacted by Section 95 of Part H of Chapter 59 of the Laws of 2011, which authorizes the Commissioner to promulgate emergency regulations, with regard to Medicaid reimbursement rates for residential health care facilities. Such rate regulations are set forth in Subpart 86-2 of Title 10 (Health) of the Official Compilation of Codes, Rules, and Regulation of the State of New York.

Legislative Objectives:

Subpart 86-2 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulation of the State of New York, will be amended by adding a new section 2.40 to establish a new Medicaid reimbursement methodology for nursing homes. The reimbursement methodology is based on a blend of statewide prices and peer group prices, with adjustments for case mix, regional wage differences, add-ons for certain patients, and quality incentives and payments. To ensure a smooth transition to the new pricing methodology by mitigating significant fluctuations (increases or decreases) in the amount of Medicaid revenues received by nursing homes, per diem transition rate adjustments will be included to phase-in the new pricing methodology over a five-year period, with full implementation in the sixth year. The new and streamlined methodology will significantly reduce administrative burdens on both nursing homes and the Department and, by limiting the potential bases of subsequent administrative rate appeals and audit adjustments, enhance the stability and certainty of initial Medicaid payments and reduce the likelihood of litigation.

Needs and Benefits:

The new pricing reimbursement methodology reforms and replaces an outdated, complex, and administratively burdensome (to both providers and the Department) rate-setting system with a stable, predictable and transparent methodology that rewards efficiencies and incentivizes quality outcomes. The new pricing system will also provide a good foundation for the transition of nursing home residents to managed care that will occur over the next several years. The new methodology will also, by limiting the potential bases of subsequent administrative rate appeals and audit adjustments, enhance the stability and certainty of initial Medicaid payments and reduce the likelihood of litigation. The new methodology also contains mechanisms to safeguard the integrity of case mix data reporting. If reported case mix data indicates a change in the facility's case mix of more than five percent, the payment adjustment associated with the change over five percent may be held, pending an audit to verify the accuracy of the reported data. Also, facilities are required to formally certify to the accuracy of their case mix data reporting on an annual basis.

Costs to Private Regulated Parties:

There will be no additional costs to private regulated parties. The only additional data requested from providers would be reporting quality measures in their annual cost report.

Costs to State Government:

There is no additional aggregate increase in Medicaid expenditures anticipated as a result of these regulations.

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 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 create new or additional paperwork responsibility of any kind.

Duplication:

These regulations do not duplicate existing state or federal regulations.

Alternatives:

The Department is required by the Public Health Law section 2808 2-c to implement the new pricing methodology. The department worked closely with the Nursing Home Industry Associations to develop the details of the pricing methodology to be implemented by the regulation.

Federal Standards:

The proposed regulation does not exceed any minimum standards of the federal government for the same or similar subject area.

Compliance Schedule:

The new prices will be published by the department and transmitted to the EMedNY system. There are no new compliance efforts required by the nursing homes.

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 were identified as employing fewer than 100 employees.

To ensure a smooth transition and mitigate significant swings in Medicaid revenues, the new Medicaid reimbursement methodology for nursing homes implemented by this regulation will be phased-in over a five year period (full implementation in the sixth year). Of the 60 nursing homes, 36 nursing homes that are subject to this regulation will experience a decrease in Medicaid revenues. The losses in Medicaid revenues will occur gradually – and will increase from.473% of total operating revenue in year one to 5.4% of total operating revenue in year six. Twenty-four nursing homes that are subject to this regulation will experience an increase in Medicaid revenues. The gains in Medicaid revenues will occur gradually – and will increase from 1.2% of total operating revenue in year one to 2% of total operating revenue in year six. In addition, the new methodology will also, by limiting the potential bases of subsequent administrative rate appeals and audit adjustments, enhance the stability and certainty of initial Medicaid payments and reduce the likelihood of litigation.

This rule will have no direct effect on local governments.

Compliance Requirements:

There are no new compliance requirements.

Professional Services:

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

Compliance Costs:
No additional compliance costs are anticipated as a result of this rule.
Economic and Technological Feasibility:
The proposed rule doesn't require additional technological or economic requirements.
Minimizing Adverse Impact:
To ensure a smooth transition to the new pricing methodology by mitigating significant fluctuations (increases or decreases) in the amount of Medicaid revenues received by nursing homes, per diem transition rate adjustments will be included to phase-in the new pricing methodology over a five-year period, with full implementation in the sixth year. The new methodology will also, by limiting the potential bases of subsequent administrative rate appeals and audit adjustments, enhance the stability and certainty of initial Medicaid payments and reduce the likelihood of litigation.
Small Business and Local Government Participation:
The State filed a Federal Public Notice, published in the State Register, prior to the effective date of the change. The Notice provided a summary of the action to be taken and instructions as to where the public, including small businesses and local governments, could locate copies of the corresponding proposed State Plan Amendment. The Notice further invited the public to review and comment on the related proposed State Plan Amendment. The Department worked closely with the major nursing home industry associations to develop the details of the pricing methodology to be implemented by the regulation. In addition, contact information for the Department was provided for anyone interested in further information.

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 as a result of the proposed rule.
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 additional compliance costs are anticipated as a result of this rule.
Minimizing Adverse Impact:
To ensure a smooth transition to the new pricing methodology by mitigating significant fluctuations (increases or decreases) in the amount of Medicaid revenues received by nursing homes, per diem transition rate adjustments will be included to phase-in the new pricing methodology over a five-year period, with full implementation in the sixth year. The new methodology will also, by limiting the potential bases of subsequent administrative rate appeals and audit adjustments, enhance the stability and certainty of initial Medicaid payments and reduce the likelihood of litigation.
Rural Area Participation:
The Department, in collaboration with the major nursing home industry associations (which include representation of rural nursing homes), worked collaboratively to develop the key components of the statewide pricing methodology. 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 establish a new Medicaid reimbursement methodology for nursing homes will have a material impact on jobs or employment opportunities across the nursing home industry. To ensure a smooth transition to the new pricing methodology by mitigating significant fluctuations (increases or decreases) in the amount of Medicaid revenues received by nursing homes, per diem transition rate adjustments will be included in the proposed regulations to phase-in the new pricing methodology over a five-year period, with full implementation in the sixth year.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Death Certificates

I.D. No. HLT-32-13-00015-P

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

Proposed Action: This is a consensus rule making to amend section 35.4 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 4100(1)

Subject: Death Certificates.

Purpose: To issue a death certificate to any applicant upon the request of a sibling of the deceased.

Text of proposed rule: Paragraph (2) of subdivision (b) of Section 35.4 is amended as follows:

* * *

(b) A certified copy of a death certificate or a certified transcript of a death certificate shall be issued only:

(1) pursuant to the order of a court of competent jurisdiction on a showing of necessity, or

(2) upon specific request of the spouse, *sibling,* children, or parents of the deceased or the lawful representative of such persons; or

* * *

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.

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

Consensus Rule Making Determination

Statutory Authority:
The Department and Commissioner are authorized to promulgate this regulatory revision pursuant to Public Health Law (PHL) Article 41, Vital Records. PHL Section 4100(1) provides in relevant part that the Department shall, except in the City of New York, have charge of the registration of deaths and provide instructions for obtaining records of death. In addition, PHL Section 4100(2) specifies that the Commissioner shall have general supervision of vital statistics, except in the City of New York.
Chapter 130 of the Laws of 2012 amended PHL Section 4174, effective July 18, 2012, to authorize the DOH to issue death certificates upon the request of a sibling of the deceased.
Basis:
The proposed amendment merely conforms State regulation to State law (PHL Section 4174) as revised by Chapter 130 of the Laws of 2012. Section 35.4(b)(2) of Title 10 NYCRR, as currently written, is out of compliance with PHL Section 4174. Since Chapter 130 of the Laws of 2012 became effective July 18, 2012, the Department sent an email to each municipal registrar which informed the affected parties of the law change and the impact on their operations. Registrars were directed to

ensure that siblings be able to receive copies of their siblings death certificates and were provided with a copy of the law. They are currently required to be in compliance.

Job Impact Statement

No Job Impact Statement is required pursuant to Section 201a(2)(a) of the State Administrative Procedure Act. It is apparent, from the nature of the proposed amendment, that it will not have a substantial adverse impact on jobs and employment opportunities.

Chapter 130 of the Laws of 2012 amended PHL Section 4174 to authorize the DOH to issue death certificates upon the request of a sibling of the deceased. This law came into effect on July 18, 2012.

The proposed amendment merely conforms State regulation to State law (PHL Section 4174) as revised by Chapter 130 of the Laws of 2012. Section 35.4(b)(2) of Title 10 NYCRR, as currently written, is out of compliance with PHL Section 4174. Since the revision to PHL Section 4174 became effective July 18, 2012, the Department sent an email to each municipal registrar which informed affected parties of the law change and the impact on their operations. Registrars were directed to ensure that siblings be able to receive copies of their siblings death certificates and were provided with a copy of the law. They are currently required to be in compliance.

Categories and Numbers Affected:

These provisions will apply to the 1500 registrars in New York State.

Regions of Adverse Impact:

This rule is not expected to cause any regions in the State to have an adverse job impact.

Minimizing Adverse Impact:

There will be no adverse impact to this proposal because registrars are already required to be in compliance with Chapter 130 of the Laws of 2012 which amended the PHL and which became effective on July 18, 2012.

Department of Motor Vehicles

EMERGENCY RULE MAKING

A3 Restriction

I.D. No. MTV-32-13-00002-E

Filing No. 767

Filing Date: 2013-07-18

Effective Date: 2013-07-18

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

Action taken: Amendment of section 3.2 of Title 15 NYCRR.

Statutory authority: Vehicle and Traffic Law, sections 215(a) and 501(2)(c)

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

Specific reasons underlying the finding of necessity: Effective Jan 30, 2009, the Federal Motor Carrier Administration (FMCSA) adopted revisions to 49 CFR Parts 383, 384, 390 and 391, which, among other things, require states to modify their driver licensing processes for the issuance of Commercial Drivers Licenses (CDL). Specifically, the regulations require states to collect, record and disseminate medical certification information on qualifying types of CDL drivers. Certain types of drivers are exempt from the medical certification requirement and each state has the option to require or exempt certain types of intrastate operation from the medical certificate requirement.

Failure to comply with the federal regulation by January 30, 2012, subjected states to a penalty of up to 5% of their federal highway funds if FMCSA declared the state out of compliance and if the FMCSA had not approved an action plan submitted by the state demonstrating its path to compliance. The FMCSA deemed New York State out of compliance but approved the State's action plan to come into compliance.

A critical piece of New York's action plan is contacting the 560,000 CDL holders and providing them with the opportunity to both declare their driving type and provide a medical certificate if their driving type requires one. (Part 383.5 defines four types of drivers—Non-excepted interstate, excepted interstate, non-excepted intrastate and excepted intrastate.) As part of the State's planning and ongoing communication with FMCSA, the State has determined that the latest date that the DMV can start mailing notices to drivers and have a reasonable chance of completing the entire enrollment process by January 30, 2014, the next federal compliance date, is July 18, 2013. This leaves 6 months to contact the drivers, have them respond, enter the driver information, and then contact drivers who are non-compliant to begin the process of downgrading such non-compliant driver's licenses from a CDL to a non-CDL. This process presupposes approximately 93,000 contacts per month between the DMV and the CDL holders.

The proposed amendment is integral to the process of contacting 560,000 CDL holders, since many of such holders will need to have the A3 restriction recorded on their driver's license, because they are exempt from the medical requirements. Because the proposed amendment significantly expands the scope of the restriction, it is critical that the CDL holders are aware of all of the categories covered by the new A3 restriction. The current version of the A3 restriction only exempts school bus and municipal drivers, while the new version covers 12 exempt categories. If the new A3 restriction is not in place when the DMV begins the process of notifying drivers, drivers who are eligible for the A3 restriction will not be able to be served in DMV offices or by mail. Therefore, the number of drivers who could be processed will be reduced. It is expected based on current information that the A3 designation will be a popular selection as it reduces the burden on the drivers who qualify. Without the legal authority to place the revised A3 restriction on the driver record and license, the DMV would need to delay implementation of programming to implement such restriction. Delays in computer programming will inordinately delay the implementation of the entire program.

DMV needs to contact, and then collect information from and take subsequent action regarding all of the affected drivers before January 30, 2014. Because of the sheer number of drivers involved (560,000), any delay in starting the process places the State in serious risk of not meeting required deadlines. Should FMCSA take note of the delay, they have the option to declare us out of compliance and withhold up to $65 million in state highway funds from NYS DOT as of October 1, 2013.

Subject: A3 restriction.

Purpose: Expands the scope of the A3 restriction for CDL holders who are exempt from certain federal medical standards.

Text of emergency rule: Paragraph (3) of subdivision (c) of section 3.2 is amended to read as follows:

A3 [SCHOOL BUS/MUNICIPAL VEHICLE] *Med Cert Exempt*

This notice is intended to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires October 15, 2013.

Text of rule and any required statements and analyses may be obtained from: Heidi Bazicki, Department of Motor Vehicles, 6 Empire State Plaza, Rm. 522A, Albany, NY 12228, (518) 474-0871, email: heidi.bazicki@dmv.ny.gov

Regulatory Impact Statement

1. Statutory authority: Vehicle and Traffic Law (VTL) section 215(a) provides that the Commissioner of Motor Vehicles may enact rules and regulations that regulate and control the exercise of the powers of the Department of Motor Vehicles (DMV). Section 501(2)(c) of the VTL provides that the Commissioner may by regulation provide for additional restrictions based upon other types of vehicles or other factors deemed appropriate by the Commissioner.

2. Legislative objectives: Section 501(2)(c) of the VTL authorizes the Commissioner to establish driver license restrictions when necessary to comply with statutory and/or programmatic needs. On December 1, 2008, the Federal Motor Carrier Safety Administration (FMCSA) published a final rule in the Federal Register (73 Fed. Reg. 73096) that amended 49 CFR 383, 384, 390 and 391 to require states to modify their driver licensing processes for the issuance of Commercial Drivers Licenses (CDL). The rule was effective January 30, 2009. Specifically, the federal regulations require states to collect, record and appropriately disseminate medical certification information on qualifying types of CDL drivers. The federal regulations permit the states to exempt certain categories of CDL holders from the medical certification requirements. In accordance with this authority, New York State has decided to exempt several categories of CDL holders from the medical certification requirements. This regulation establishes the A3 "Med Cert Exempt" restriction, which will be placed on the driver's licenses of persons included in one of the exempt categories.

3. Needs and benefits: The purpose of this regulation is to establish the A3 "Med Cert Exempt" restriction for CDL holders who are exempt from the federal medical certification requirements. Specifically, the federal regulations require states to collect, record and appropriately disseminate medical certification information on qualifying types of CDL drivers.

The federal law provides that no person shall operate a commercial motor vehicle unless such person meets the physical qualifications and physical examination requirements, as set forth in 49 CFR 391.41 and 391.43. Drivers performing "non-excepted" operation must meet the physical qualification requirements contained in 49 CFR 391 and must obtain a Medical Examiner's Certificate. Drivers performing "excepted operation" are

exempt from federal and state regulations requiring a Medical Examiner's Certificate. Such "excepted" drivers must have the A3 Restriction recorded on their driver's license, which indicates that they are exempt from the medical requirements.

Currently, the A3 restriction only exempts school bus and municipal drivers from the medical requirements. However, under federal regulations (49 CFR 390.3 and 391.2) and New York State DOT regulations (17 NYCRR 721.3(f) and 820.3), the State must exempt other drivers from the federal medical requirements, including drivers who operate commercial motor vehicles:

Transporting school children and/or school staff between home and school (49 CFR 390.3(f)(1));

As federal, State or local government employees (49 CFR 390.3(f)(2));

Transporting human corpses or sick or injured persons (49 CFR 309.3(f)(4));

Driving fire truck or rescue vehicles during emergencies and other related activities (49 CFR 390.3(f)(5));

Primarily in the transportation of propane winter heating fuel when responding to an emergency condition requiring immediate response such as damage to a propane gas system after a storm or flooding (49 CFR 390.3(f)(7));

In response to a pipeline emergency condition requiring immediate response such as a pipeline leak or rupture (49 CFR 390.3(f)(7));

In custom harvesting on a farm or to transport farm machinery and supplies used in the custom harvesting operation to and from a farm or to transport custom harvested crops to a storage or market (49 CFR 391.2(a));

As a beekeeper in the seasonal transportation of bees (49 CFR 391.2(b));

That are farm vehicles, but not combination vehicles (power unit and towed unit), used to transport agricultural products, farm machinery or farm supplies (no placardable hazardous materials) to and from a farm and within 150 air-miles of the farm (49 CFR 391.2(c));

As a private motor carrier of passengers for non-business purposes (49 CFR 390.3(f)(6));

Transporting migrant workers (49 CFR 398.3(b));

Drivers who obtained their CDL prior to September 9, 1999, which is the date that NYS Department of Transportation adopted regulations incorporating by reference the federal medical requirements for commercial motor vehicle operators (17 NYCRR 721.3(f) and 820.3).

This proposed rule is necessary to put CDL applicants and CDL holders on notice about the scope of the medical certification exemption, so that the A3 restriction is applied to their driver's licenses and driving records when appropriate.

4.Costs:

a. Cost to regulated parties and customers: There is no cost to the citizens of the State.

b: Costs to the agency and local governments: There is no cost to local governments or to DMV.

5. Local government mandates: There are no local government mandates.

6. Paperwork: There are no new paperwork requirements associated with this proposed rule.

7. Duplication: This proposal does not duplicate, overlap or conflict with any relevant rule or legal requirement of the State and federal governments.

8. Alternatives: A no action alternative was not considered because CDL holders must have the option of obtaining a CDL with the A3 restriction, if appropriate.

9. Federal standards: The proposal does not exceed any minimum standards of the federal government for the same or similar subject areas.

10. Compliance schedule: The proposed rule would take effect immediately.

Regulatory Flexibility Analysis

A Regulatory Flexibility Analysis for Small Businesses and Local Governments is not attached because this rule will not have a disproportionate impact on small businesses or local governments, nor will it impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on small businesses or local governments.

Rural Area Flexibility Analysis

A RAFA is not attached because this rule will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on public or private entities in rural areas.

Job Impact Statement

A Job Impact Statement is not submitted with this rule because it will not have an adverse impact on job creation or development.

Public Service Commission

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Allowing for an Emergency Economic Development Program to Assist in the Restoration of Utility Service to Storm Damaged Property

I.D. No. PSC-32-13-00003-EP

Filing Date: 2013-07-19

Effective Date: 2013-07-19

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

Proposed Action: The PSC adopted an order allowing Niagara Mohawk Power Corporation d/b/a National Grid to implement an Emergency Economic Development Program to assist service restoration efforts to damaged areas in the Company's service territory caused by severe flooding from recent rainstorms.

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

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

Specific reasons underlying the finding of necessity: This action is taken on an emergency basis pursuant to State Administrative Procedure Act (SAPA) § 202(6). Failure to grant the requested relief on an emergency basis could result in the prolonged interruption of utility service to certain customers who own property damaged by severe recent flooding from recent storms. Such results would adversely impact the public safety, health and general welfare of the citizens of New York. As a result, compliance with the advance notice and comment requirements of SAPA § 202(1) would be contrary to the public interest, and an immediate waiver of certain requirements of 16 NYCRR § 255.604 is necessary for the preservation of the public health, safety and general welfare.

Subject: Allowing for an Emergency Economic Development Program to assist in the restoration of utility service to storm damaged property.

Purpose: The Program will allow timely restoration of utility service to customers whose property was damaged by recent storm flooding.

Substance of emergency/proposed rule (Full text is posted at the following State website:www.dps.ny.gov): The Public Service Commission adopted an order allowing Niagara Mohawk Power Corporation d/b/a National Grid (NMPC) to implement an Emergency Economic Development Program permitting the Company to provide up to $2 million in total in economic aid through grants of up to $50,000 per qualified customer to the Company's customers who have been impacted by severe flooding from recent storms to the extent necessary to position the customer's property to take service from National Grid. NMPC is to fund the program from its existing allowance as contained in a recent Joint Proposal that was adopted by a Commission Order in March 2013. Program funds are available to be used by non-residential customers for restoration of utility service efforts.

This notice is intended: to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire October 16, 2013.

Text of rule may be obtained from: Deborah Swatling, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: Deborah.Swatling@dps.ny.gov

Data, views or arguments may be submitted to: Jeffrey Cohen, Acting 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 amended rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

NOTICE OF ADOPTION

Approval to Appoint a Temporary System Operator of the Painted Apron Water Company, Inc.

I.D. No. PSC-50-11-00006-A
Filing Date: 2013-07-22
Effective Date: 2013-07-22

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

Action taken: On 7/18/13, the PSC adopted an order approving a temporary system operator of Painted Apron Water Company, Inc.

Statutory authority: Public Service Law, sections 4(1), 5(1)(f), 25, 89-b(1), 89-c(b), (4), 89(j) and 112(a)

Subject: Approval to appoint a temporary system operator of the Painted Apron Water Company, Inc.

Purpose: To approve the appointment of a temporary system operator of the Painted Apron Water Company, Inc.

Substance of final rule: The Commission, on July 18, 2013, adopted an order approving a petition of the Painted Apron Water Committee appointing it as the temporary system operator of the Painted Apron Water Company, Inc., subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Deborah Swatling, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2659, email: deborah.swatling@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(11-W-0640SA1)

NOTICE OF ADOPTION

Denying Chaffee Water Works Company's Request for Additional Funding for Expenditures

I.D. No. PSC-26-12-00014-A
Filing Date: 2013-07-19
Effective Date: 2013-07-19

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

Action taken: On 7/18/13, the PSC adopted an order denying Chaffee Water Works Company's request for additional funding for expenditures to finish the rehabilitation of the water company.

Statutory authority: Public Service Law, section 89-c and f

Subject: Denying Chaffee Water Works Company's request for additional funding for expenditures.

Purpose: To deny Chaffee Water Works Company's request for additional expenditures.

Substance of final rule: The Commission, on July 18, 2013, adopted an order denying Chaffee Water Works Company's (Chaffee or the Company) request for additional funding because the New York State Environmental Facilities Corporation made no commitment to increase the amount of Chaffee's loan and the Company failed to justify and substantiate the reasonableness of recovering the additional funds from ratepayers, 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: Deborah Swatling, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2659, email: deborah.swatling@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-0260SA1)

NOTICE OF ADOPTION

Approving the Disposition of Property Tax Benefits

I.D. No. PSC-30-12-00008-A
Filing Date: 2013-07-23
Effective Date: 2013-07-23

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

Action taken: On 7/18/13, the PSC adopted an order approving a joint proposal for the disposition of property tax benefits for the Town of Monroe and the City of Middletown.

Statutory authority: Public Service Law, sections 2, 5, 89-b and 113(2)

Subject: Approving the disposition of property tax benefits.

Purpose: To approve the disposition of property tax benefits.

Substance of final rule: The Commission, on July 18, 2013, adopted an order approving a joint proposal between Orange and Rockland Utilities, Inc. and Department of Public Service Staff regarding the disposition of property tax refunds from the Town of Monroe and the City of Middletown, 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: Deborah Swatling, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2659, email: deborah.swatling@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-0205SA1)

NOTICE OF ADOPTION

Authorizing UWON to Recover Revenue Through a Storm Surcharge Related to Tropical Storm Lee

I.D. No. PSC-51-12-00007-A
Filing Date: 2013-07-22
Effective Date: 2013-07-22

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

Action taken: On 7/18/13, the PSC adopted an order approving United Water Owego-Nichols, Inc.'s (UWON) petition authorizing a storm surcharge recovery of $445,661 in storm costs resulting from Tropical Storm Lee.

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

Subject: Authorizing UWON to recover revenue through a storm surcharge related to Tropical Storm Lee.

Purpose: To authorize UWON to recover revenue through a storm surcharge related to Tropical Storm Lee.

Substance of final rule: The Commission, on July 18, 2013, adopted an order approving United Water Owego-Nichols, Inc.'s petition authorizing a storm surcharge recovery of $445,661 of net capital expenditures and expenses resulting from Tropical Storm Lee, 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: Deborah Swatling, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2659, email: deborah.swatling@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-0534SA1)

NOTICE OF ADOPTION

Directing Chaffee Water Works Company's to Turn Over Payments Received from a Third Party

I.D. No. PSC-07-13-00017-A
Filing Date: 2013-07-19
Effective Date: 2013-07-19

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

Action taken: On 7/18/13, the PSC adopted an order directing Chaffee Water Works Company to transfer annual payments from Gernatt Asphalt Products, Inc. to the New York State Environmental Facilities Corporation.

Statutory authority: Public Service Law, section 89-c

Subject: Directing Chaffee Water Works Company's to turn over payments received from a third party.

Purpose: To direct Chaffee Water Works Company's to turn over payments received from a third party.

Substance of final rule: The Commission, on July 18, 2013, adopted an order directing Chaffee Water Works Company to transfer annual payments received from Gernatt Asphalt Products, Inc. to the New York State Environmental Facilities Corporation within seven days of receiving the payments, 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: Deborah Swatling, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2659, email: deborah.swatling@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.

(08-W-1407SA2)

NOTICE OF ADOPTION

Approving the Use of the Rosemount 8800 Series Vortex Flowmeter

I.D. No. PSC-07-13-00018-A
Filing Date: 2013-07-23
Effective Date: 2013-07-23

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

Action taken: On 7/18/13, the PSC adopted an order approving the petition of Consolidated Edison Company of New York, Inc. to allow the use of the Rosemount 8800 Series Vortex Flowmeter for customer billing applications in New York State.

Statutory authority: Public Service Law, section 80(10)

Subject: Approving the use of the Rosemount 8800 Series Vortex Flowmeter.

Purpose: To approve the use of the Rosemount 8800 Series Vortex Flowmeter.

Substance of final rule: The Commission, on July 18, 2013, adopted an order approving the petition of Consolidated Edison Company of New York, Inc. for use of the Rosemount 8800 Series Vortex Flowmeter for steam revenue billing in residential and commercial applications.

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

Text of rule may be obtained from: Deborah Swatling, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2659, email: deborah.swatling@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(13-S-0027SA1)

NOTICE OF ADOPTION

Approving a Limited Waiver of the Commission's Policy Statement on Test Periods in Major Rate Proceedings

I.D. No. PSC-14-13-00003-A
Filing Date: 2013-07-23
Effective Date: 2013-07-23

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

Action taken: On 7/18/13, the PSC adopted an order approving Consolidated Edison Co. of NY, Inc.'s petition for a limited waiver of the 150-day rule set forth in the Commission's Policy Statement on Test Periods in Major Rate Proceedings in a major electric rate case.

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

Subject: Approving a limited waiver of the Commission's Policy Statement on Test Periods in Major Rate Proceedings.

Purpose: To approve a limited waiver of the Commission's Policy Statement on Test Periods in Major Rate Proceedings.

Substance of final rule: The Commission, on July 18, 2013, adopted an order approving the petition of Consolidated Edison Company of New York, Inc. for a limited waiver of the Commission's "Statement of Policy on Test Periods in Major Rate Proceedings" in a major electric rate case, 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: Deborah Swatling, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2659, email: deborah.swatling@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(13-E-0030SA1)

NOTICE OF ADOPTION

Approving a Limited Waiver of the Commission's Policy Statement on Test Periods in Major Rate Proceedings

I.D. No. PSC-14-13-00006-A
Filing Date: 2013-07-23
Effective Date: 2013-07-23

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

Action taken: On 7/18/13, the PSC adopted an order approving Consolidated Edison Co. of New York, Inc.'s petition for a limited waiver of the 150-day rule set forth in the Commission's Policy Statement on Test Periods in Major Rate Proceedings in a major gas rate case.

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

Subject: Approving a limited waiver of the Commission's Policy Statement on Test Periods in Major Rate Proceedings.

Purpose: To approve a limited waiver of the Commission's Policy Statement on Test Periods in Major Rate Proceedings.

Substance of final rule: The Commission, on July 18, 2013, adopted an order approving the petition of Consolidated Edison Company of New York, Inc. for a limited waiver of the Commission's "Statement of Policy on Test Periods in Major Rate Proceedings" in a major gas rate case, 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: Deborah Swatling, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2659, email: deborah.swatling@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(13-G-0031SA1)

NOTICE OF ADOPTION

Approving a Limited Waiver of the Commission's Policy Statement on Test Periods in Major Rate Proceedings

I.D. No. PSC-14-13-00008-A
Filing Date: 2013-07-23
Effective Date: 2013-07-23

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

Action taken: On 7/18/13, the PSC adopted an order approving Consolidated Edison Co. of New York, Inc's petition for a limited waiver of the 150-day rule set forth in the Commission's Policy Statement on Test Periods in Major Rate Proceedings in a major steam rate case.

Statutory authority: Public Service Law, sections 4(1), 79(1) and 80(10)

Subject: Approving a limited waiver of the Commission's Policy Statement on Test Periods in Major Rate Proceedings.

Purpose: To approve a limited waiver of the Commission's Policy Statement on Test Periods in Major Rate Proceedings.

Substance of final rule: The Commission, on July 18, 2013, adopted an order approving the petition of Consolidated Edison Company of New York, Inc. for a limited waiver of the Commission's "Statement of Policy on Test Periods in Major Rate Proceedings" in a major steam rate case, 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: Deborah Swatling, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2659, email: deborah.swatling@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(13-S-0032SA1)

NOTICE OF ADOPTION

Allowing Revisions to SC No. 8 — Seller Service to Go into Effect

I.D. No. PSC-19-13-00007-A
Filing Date: 2013-07-18
Effective Date: 2013-07-18

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

Action taken: On 7/18/13, the PSC allowed a tariff filing by KeySpan Gas East Corporation d/b/a National Grid proposing revisions to Service Classification (SC) No. 8 — Seller Service to go into effect.

Statutory authority: Public Service Law, sections 65 and 66(12)

Subject: Allowing revisions to SC No. 8 — Seller Service to go into effect.

Purpose: To allow revisions to SC No. 8 — Seller Service to go into effect.

Substance of final rule: The Commission, on July 18, 2013, allowed the tariff filing by KeySpan Gas East Corporation d/b/a National Grid to remove language under Service Classification No. 8 — Seller Service to go into effect.

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

Text of rule may be obtained from: Deborah Swatling, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2659, email: deborah.swatling@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(13-G-0180SA1)

NOTICE OF ADOPTION

Allowing Revisions to SC No. 19 — Seller Transportation Aggregation Service to Go into Effect

I.D. No. PSC-19-13-00009-A
Filing Date: 2013-07-18
Effective Date: 2013-07-18

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

Action taken: On 7/18/13, the PSC allowed a tariff filing by The Brooklyn Union Gas Company d/b/a National Grid proposing revisions to Service Classification (SC) No. 19 — Seller Transportation Aggregation Service to go into effect.

Statutory authority: Public Service Law, sections 65 and 66(12)

Subject: Allowing revisions to SC No. 19 — Seller Transportation Aggregation Service to go into effect.

Purpose: To allow revisions to SC No. 19 — Seller Transportation Aggregation Service to go into effect.

Substance of final rule: The Commission, on July 18, 2013, allowed the tariff filing by The Brooklyn Union Gas Company d/b/a National Grid to remove language under Service Classification No. 19 — Seller Transportation Aggregation Service to go into effect.

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

Text of rule may be obtained from: Deborah Swatling, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2659, email: deborah.swatling@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(13-G-0179SA1)

NOTICE OF ADOPTION

Approval for NYSERDA to Modify the Solar Photovoltaic Programs in the Customer-Sited Tier of the RPS

I.D. No. PSC-20-13-00007-A
Filing Date: 2013-07-22
Effective Date: 2013-07-22

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

Action taken: On 7/18/13, the PSC adopted an order approving New York State Research and Development Authority's (NYSERDA) petition authorizing modifications to the Solar Photovoltaic Programs in the Customer-Sited Tier of the Renewable Portfolio Standard Program (RPS).

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

Subject: Approval for NYSERDA to modify the Solar Photovoltaic Programs in the Customer-Sited Tier of the RPS.

Purpose: To approve NYSERDA to modify the Solar Photovoltaic Programs in the Customer-Sited Tier of the RPS.

Substance of final rule: The Commission, on July 18, 2013, adopted an order approving New York State Energy Research and Development Authority's petition to modify the Renewable Portfolio Standard Customer-Sited Tier Solar Photovoltaic Programs, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Deborah Swatling, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2659, email: deborah.swatling@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(03-E-0188SA40)

NOTICE OF ADOPTION

Approving an Exemption of Program Limits in NYSEG's Non-Rate Economic Development Programs

I.D. No. PSC-20-13-00012-A
Filing Date: 2013-07-19
Effective Date: 2013-07-19

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

Action taken: On 7/18/13, the PSC adopted an order approving New York State Electric and Gas Corporation's (NYSEG) petition requesting an exemption under its Non Rate Economic Development Program.

Statutory authority: Public Service Law, sections 5(1)(b), 65(1), (2), (3), 66(1), (3), (5), (10), (12) and (12-b)

Subject: Approving an exemption of program limits in NYSEG's Non-Rate Economic Development programs.

Purpose: To approve an exemption of program limits in NYSEG's Non-Rate Economic Development programs.

Substance of final rule: The Commission, on July 18, 2013, adopted an order approving New York State Electric & Gas Corporation's petition to exempt program limits from its Non-Rate Economic Development 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: Deborah Swatling, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2659, email: deborah.swatling@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(13-E-0185SA1)

NOTICE OF ADOPTION

Approving Corning's Petition to Develop a Targeted Economic Development Program for Manufacturing Expansion

I.D. No. PSC-20-13-00013-A
Filing Date: 2013-07-19
Effective Date: 2013-07-19

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

Action taken: On 7/18/13, the PSC adopted an order approving Corning Natural Gas Corporation's (Corning) petition for a targeted Economic Development program for the expansion of Corning Incorporated in Steuben County.

Statutory authority: Public Service Law, sections 5(1)(b), 65(1), (2), (3), 66(1), (3), (5), (10), (12) and (12-b)

Subject: Approving Corning's petition to develop a targeted Economic Development program for manufacturing expansion.

Purpose: To approve Corning's petition to develop a targeted Economic Development program for manufacturing expansion.

Substance of final rule: The Commission, on July 18, 2013, adopted an order approving Corning Natural Gas Corporation's petition to develop a targeted Economic Development program for the expansion of Corning Incorporated in the Town of Erwin, Steuben County, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Deborah Swatling, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2659, email: deborah.swatling@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(13-G-0184SA1)

NOTICE OF ADOPTION

Authorizing NYSEG to Issue Up to $74 Million of Long-Term Debt Not Later Than December 31, 2013

I.D. No. PSC-22-13-00008-A
Filing Date: 2013-07-19
Effective Date: 2013-07-19

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

Action taken: On 7/18/13, the PSC adopted an order approving a petition filed by New York State Electric & Gas Corporation (NYSEG) authorizing the issuance of up to $74 million of long-term securities and to enter into derivative instruments.

Statutory authority: Public Service Law, section 69

Subject: Authorizing NYSEG to issue up to $74 million of Long-Term Debt not later than December 31, 2013.

Purpose: To authorize NYSEG to issue up to $74 million of Long-Term Debt not later than December 31, 2013.

Substance of final rule: The Commission, on July 18, 2013, adopted an order approving a petition authorizing New York State Electric & Gas Corporation to issue up to $74 million of Long-Term Debt not later than December 31, 2013, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Deborah Swatling, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2659, email: deborah.swatling@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(13-M-0200SA1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Petition for Temporary Waiver of 16 NYCRR Section 96.7(a)(1) and (b)

I.D. No. PSC-32-13-00008-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 grant, deny or modify, in whole or part, two petitions seeking a temporary waiver of 16 NYCRR section 96.7(a)(1) and (b).

Statutory authority: Public Service Law, sections 4, 30-53, 65 and 66

Subject: Petition for temporary waiver of 16 NYCRR section 96.7(a)(1) and (b).

Purpose: To consider the request for temporary waiver of 16 NYCRR section 96.7(a)(1) and (b).

Substance of proposed rule: The Public Service Commission is considering whether to grant, deny or modify, in whole or part the petitions filed by 1) Quadlogic Controls Corporation, AMPS/ELEMCO, Inc., Bay City Metering Company, Incorporated, Leviton Manufacturing Company, Incorporated, and E-Mon, LLC; and, 2) Quadlogic Controls Corporation, AMPS/ELEMCO, Inc., Bay City Metering Company, Incorporated, Leviton Manufacturing Company, Incorporated, E-Mon, LLC and Intech21, Inc. (collectively, the Petitioners) for a temporary waiver of 16 NYCRR § 96.7(a)(1) and § 96.7(b).

The Commission's December 18, 2012 Order required in 16 NYCRR § 96.7(a)(1) compliance with 16 NYCRR Parts 92 and 93 for all submetering products and ancillary equipment used to monitor electric flow to submetered residents installed or replaced by January 1, 2014. The Order also applied the deadline in 16 NYCRR § 96.7(b) for submetering products to institute an annual testing program to analyze a statistically significant sample of the in-service submeters in accordance with the testing procedures and standards required in 16 NYCRR Parts 92 and 93 unless otherwise directed by the Commission.

The Petitioners are seeking temporary waivers to provide time for compliance with the meter standards and implementation of testing procedures.

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: Deborah Swatling, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2659, email: Deborah.Swatling@dps.ny.gov

Data, views or arguments may be submitted to: Jeffrey C. Cohen, Acting Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 408-1978, email: secretary@dps.ny.gov

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

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

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

(11-M-0710SP3)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

To Consider the Definition of ''Misleading or Deceptive Conduct'' in the Commission's Uniform Business Practices

I.D. No. PSC-32-13-00009-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 determining that the definition of ''misleading or deceptive conduct'' in the Commission's Uniform Business Practices includes the use of the name ''NYSEG Solutions'' by Direct Energy Services, LLC.

Statutory authority: Public Service Law, section 5

Subject: To consider the definition of ''misleading or deceptive conduct'' in the Commission's Uniform Business Practices.

Purpose: To consider the definition of ''misleading or deceptive conduct'' in the Commission's Uniform Business Practices.

Substance of proposed rule: The Public Service Commission issued an "Order Instituting Proceeding and to Show Cause" in Case 13-M-0224 regarding the use of the name "NYSEG Solutions" by Direct Energy Services, LLC (Direct), an energy services company (ESCO). The Commission is considering whether the definition of "misleading or deceptive conduct", as that phrase is used in the Commission's Uniform Business Practices (UBP), Section 10.C.4.a includes the use of the name "NYSEG Solutions" by Direct. UBP Section 10.C.4.a prohibits ESCOs from engaging in misleading or deceptive conduct, as defined by, inter alia, "Commission rule, regulation or Order," in the course of an ESCO's marketing activities. The Commission may prohibit Direct from further use of the name "NYSEG Solutions" in its marketing activities. The Commission may also address related matters.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website http://www.dps.ny.gov/f96dir.htm. For questions, contact: Deborah Swatling, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2659, email: deborah.swatling@dps.ny.gov

Data, views or arguments may be submitted to: Jeffrey Cohen, Acting Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 408-1978, email: secretary@dps.ny.gov

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

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

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

(13-M-0224SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Permission to Write Off and Eliminate Recordkeeping for Regulatory Reserves for Pensions and Other Post Retirement Benefits

I.D. No. PSC-32-13-00010-P

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

Proposed Action: The Commission is considering whether to allow, modify or reject a petition filed by the Frontier Telecommunication Companies seeking to write off and eliminate recordkeeping for Pension and Other Post Retirement Benefits Reserves.

Statutory authority: Public Service Law, section 95(2)

Subject: Permission to write off and eliminate recordkeeping for regulatory reserves for Pensions and Other Post Retirement Benefits.

Purpose: To allow write off and eliminate recordkeeping of Pension and Other Post Retirement Benefits Reserves.

Substance of proposed rule: The Commission is considering whether to allow, reject or modify the Frontier Telecommunication Companies Petition in Case 13-C-0293 to write off Pension and Other Post Retirement Benefits Reserves, and to provide the Frontier Telecommunications Companies (Citizens Telecommunications Company of New York, Inc., Ogden Telephone Company, Frontier Communications of New York, Inc., Frontier Communications of Ausable Valley, Inc., Frontier Communications of Sylvan Lake, Frontier Communications of Seneca Gorham, Frontier Communications of Rochester, Inc.) relief from certain accounting and reporting requirements related to Pension and Other Post Retirement Benefits Reserves.

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: Deborah Swatling, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2659, email: Deborah.Swatling@dps.ny.gov

Data, views or arguments may be submitted to: Jeffrey C. Cohen, Acting Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 408-1978, email: secretary@dps.ny.gov

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

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

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

(13-C-0293SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

To Bill and Collect Sewer Rents on Behalf of the Village of Port Chester Using Utility Assets and Customer Usage Information

I.D. No. PSC-32-13-00011-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 a joint petition of United Water Westchester Inc. and Village of Port Chester authorizing the use utility assets and customer usage information for non-regulated purpose.

Statutory authority: Public Service Law, sections 8 and 17

Subject: To bill and collect sewer rents on behalf of the Village of Port Chester using utility assets and customer usage information.

Purpose: To determine whether to grant, modify or deny, in whole or in part, the joint petition to bill and collect sewer rent.

Substance of proposed rule: The Public Service Commission is considering whether to approve, deny or modify, in whole or in part, a joint petition by United Water Westchester Inc. and Village of Port Chester seeking authorization, pursuant to PSL 8 & 17, to use utility assets, including ratepayer consumption information, for non-regulated purpose of billing and collecting for the sewer rent on behalf of the Village of Port Chester. The Commission shall consider all other related matters.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website http://www.dps.ny.gov/f96dir.htm. For questions, contact: Deborah Swatling, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2659, email: Deborah.Swatling@dps.ny.gov

Data, views or arguments may be submitted to: Jeffrey C. Cohen, Acting Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 408-1978, email: secretary@dps.ny.gov

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

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

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

(13-W-0312SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

To Consider Whether NYSEG Should be Required to Undertake Actions to Protect Its Name and to Minimize Customer Confusion

I.D. No. PSC-32-13-00012-P

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

Proposed Action: The Commission is considering whether to require New York State Electric & Gas Corporation (NYSEG) to take actions to protect its name and to minimize customer confusion in light of the use of the name ''NYSEG Solutions'' by Direct Energy Services, LLC.

Statutory authority: Public Service Law, sections 5, 65, 66, 70 and 110

Subject: To consider whether NYSEG should be required to undertake actions to protect its name and to minimize customer confusion.

Purpose: To consider whether NYSEG should be required to undertake actions to protect its name and to minimize customer confusion.

Substance of proposed rule: The Public Service Commission recently issued an "Order Instituting Proceeding and to Show Cause" (Order) in Case 13-M-0225 in light of the use of the name "NYSEG Solutions" by an energy services company, Direct Energy Services, LLC, which is not affiliated with NYSEG. In that Order, the Commission explained that it is considering confirming that the Commission-adopted Code of Conduct governing NYSEG's relationship with its affiliates does not allow the use of the NYSEG name and logo by non-affiliates of NYSEG, and requiring NYSEG to undertake measures to protect its name and minimize potential customer confusion. The Commission may also address related matters.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website http://www.dps.ny.gov/f96dir.htm. For questions, contact: Deborah Swatling, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2659, email: deborah.swatling@dps.ny.gov

Data, views or arguments may be submitted to: Jeffrey Cohen, Acting Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 408-1978, email: secretary@dps.ny.gov

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

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

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

(13-M-0225SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Sithe's Participation with Affiliates in Consolidated Debt Obligations of No More Than $2.175 Billion

I.D. No. PSC-32-13-00013-P

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

Proposed Action: The Commission is considering a petition from Sithe/Independence Power Partners, L.P. (Sithe) requesting approval, under lightened regulation, of participation with affiliates in consolidated debt obligations of no more than $2.175 billion.

Statutory authority: Public Service Law, sections 5(1)(b), (c), 69 and 82

Subject: Sithe's participation with affiliates in consolidated debt obligations of no more than $2.175 billion.

Purpose: Consideration of Sithe's participation with affiliates in consolidated debt obligations of no more than $2.175 billion.

Substance of proposed rule: The Public Service Commission is considering a petition filed on July 12, 2013 by Sithe/Independence Power Partners, L.P. (Sithe) requesting approval, under lightened regulation, of participation with affiliates in consolidated debt obligations of no more than $2.175 billion. The debt will be supported by liens on Sithe's 1060 MW electric and steam cogeneration facility located in Oswego, NY. The Commission may adopt, reject or modify, in whole or in part, the relief proposed and may resolve related matters.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website http://www.dps.ny.gov/f96dir.htm. For questions, contact: Deborah Swatling, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2659, email: Deborah.Swatling@dps.ny.gov

Data, views or arguments may be submitted to: Jeffrey C. Cohen, Acting Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 408-1978, email: secretary@dps.ny.gov

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

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

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

(13-M-0305SP1)