

RULE MAKING ACTIVITIES

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

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

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

Department of Civil Service

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-28-13-00002-P

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

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

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

Subject: Jurisdictional Classification.

Purpose: To classify positions in the exempt class.

Text of proposed rule: Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Executive Department under the subheading "Office of General Services," by adding thereto the positions of Deputy Director Business Services Center and Deputy Director Procurement.

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us

Data, views or arguments may be submitted to: Ilene Lees, Counsel, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: ilene.lees@cs.state.ny.us

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

Regulatory Impact Statement

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

previously printed under a notice of proposed rule making, I.D. No. CVS-02-13-00002-P, Issue of January 9, 2013.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-13-00002-P, Issue of January 9, 2013.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-13-00002-P, Issue of January 9, 2013.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-13-00002-P, Issue of January 9, 2013.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-28-13-00003-P

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

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

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

Subject: Jurisdictional Classification.

Purpose: To delete a position from and classify a position in the exempt class.

Text of proposed rule: Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Department of Labor under the subheading "Workers' Compensation Board," by decreasing the number of positions of District Administrator from 8 to 7 and by adding thereto the position of Special Counsel.

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us

Data, views or arguments may be submitted to: Ilene Lees, Counsel, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: ilene.lees@cs.state.ny.us

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

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-13-00002-P, Issue of January 9, 2013.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-13-00002-P, Issue of January 9, 2013.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was

previously printed under a notice of proposed rule making, I.D. No. CVS-02-13-00002-P, Issue of January 9, 2013.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-13-00002-P, Issue of January 9, 2013.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-28-13-00004-P

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

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

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

Subject: Jurisdictional Classification.

Purpose: To classify positions in the exempt class.

Text of proposed rule: Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Executive Department under the subheading "Justice Center for the Protection of People with Special Needs," by adding thereto the positions of Assistant Counsel (14), Associate Counsel (4) and Deputy Counsel (2).

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us

Data, views or arguments may be submitted to: Ilene Lees, Counsel, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: ilene.lees@cs.state.ny.us

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

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-13-00002-P, Issue of January 9, 2013.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-13-00002-P, Issue of January 9, 2013.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-13-00002-P, Issue of January 9, 2013.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-13-00002-P, Issue of January 9, 2013.

Department of Corrections and Community Supervision

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Contraband Drugs

I.D. No. CCS-28-13-00013-P

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

Proposed Action: This is a consensus rule making to amend sections 1010.4(c), (e), 1010.7, 1010.8(a), (b) and (c) of Title 7 NYCRR.

Statutory authority: Correction Law, section 112

Subject: Contraband Drugs.

Purpose: To make technical changes that include referencing an additional test that is available within the current NIK testing tool.

Text of proposed rule: See Appendix in this issue of the Register.

Text of proposed rule and any required statements and analyses may be obtained from: Maureen E. Boll, Deputy Commissioner and Counsel, NYS Department of Corrections and Community Supervision, Harriman State Campus - Building 2 - 1220 Washington Avenue, Albany, NY 12226-2050, (518) 457-4951, email: Rules@DOCCS.ny.gov

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

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

Consensus Rule Making Determination

The Department of Corrections and Community Supervision has determined that no person is likely to object to the proposed action. Amendments to Part 1010 are being made to include a reference to the appropriate Departmental directives regarding the securing of contraband/evidence and the reporting a positive test for suspected contraband drugs. The attached forms have been updated with the current agency name and references to an additional test now available for the existing testing system has been included. As such, the Department considers these changes to be technical or non-controversial in nature. See SAPA section 102(11)(c).

The Department's authority resides in section 112 of Correction Law, which authorizes the Commissioner to promulgate rules and regulations for the management and control of the Department's correctional facilities. See Correction Law § 112(1).

Job Impact Statement

A job impact statement is not submitted because this proposed rulemaking is updating citations, updating the agency name and adding reference to a new test available within the existing testing system. Therefore, it has no adverse impact on jobs or employment opportunities.

Education Department

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Annual Professional Performance Review (APPR)

I.D. No. EDU-28-13-00007-EP

Filing No. 683

Filing Date: 2013-06-25

Effective Date: 2013-07-01

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

Proposed Action: Amendment of section 30-2.2 of Title 8 NYCRR.

Statutory authority: Education Law, sections 101 (not subdivided), 207 (not subdivided), 215 (not subdivided), 305(1) and (2) and 3012-c(1)-(9)

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

Specific reasons underlying the finding of necessity: The proposed amendment to the Rules of the Board of Regents is necessary to implement Education Law § 3012-c to implement a growth model for the 2012-2013 and 2013-2014 school years and a value-added model for the 2014-2015 school year and thereafter.

The proposed amendments were adopted as an emergency measure at the June 2013 meeting of the Board of Regents. Because the Board of Regents meets at fixed intervals, the earliest the proposed amendment can be presented for adoption on a non-emergency basis, after expiration of the 45-day public comment period provided for in State Administrative Procedure Act (SAPA) section 202(1) and (5), is the September 2013 Regents meeting. Furthermore, pursuant to SAPA, the earliest effective date of the proposed amendment, if adopted at the September meeting, would be October 2, 2013.

EMERGENCY ACTION Emergency action is necessary at the June 2013 Regents meeting for the preservation of the general welfare in order to ensure that districts are notified of any additional factors using ELL, SWD and poverty status, that will be used in the enhanced growth model for APPRs conducted in the 2012-2013 school year.

Subject: Annual Professional Performance Review (APPR).

Purpose: Amends the definitions of “teacher or principal student growth percentile score” and “value-added growth score”.

Text of emergency/proposed rule: 1. Subdivision (r) of section 30-2.2 of the Rules of the Board of Regents shall be amended, effective July 1, 2013, to read as follows:

(r) Teacher or principal student growth percentile score shall mean a measure of central tendency of the student growth percentile scores for a teacher’s or principal’s students after one or more of the following student characteristics are taken into consideration: poverty, students with disabilities and English language learners. *Additional factors related to poverty, students with disabilities and English language learners may be added by the Commissioner, subject to approval by the Board of Regents.*

2. Subdivision (v) of section 30-2.2 of the Rules of the Board of Regents shall be amended, effective July 1, 2013, to read as follows:

(v) Value-added growth score shall mean the result of a statistical model that incorporates a student’s academic history and may use other student demographics and characteristics, school characteristics and/or teacher characteristics determined by the Commissioner to isolate statistically the effect on student growth from those characteristics that are generally not in the teacher’s or principal’s control. *Any other student demographics or characteristics, other classroom or school characteristics and/or teacher characteristics to be used in the value-added growth score, other than those used in the teacher or principal student growth percentile score, shall be determined by the Commissioner, subject to approval by the Board of Regents.* The characteristics included may be different for teachers and principals, based on empirical evidence and policy determinations.

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 September 22, 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, EBA, Room 979, 89 Washington Avenue, Albany, NY 12234, (518) 418-1189, 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 101 charges the Department with the general management and supervision of the educational work of the State and establishes the Regents as head of the Department.

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

Education Law section 215 authorizes the Commissioner to require reports from schools under State educational supervision.

Education Law section 305(1) authorizes the Commissioner to enforce laws relating to the State educational system and execute Regents educational policies. Section 305(2) provides the Commissioner with general supervision over schools and authority to advise and guide school district officers in their duties and the general management of their schools.

Education Law section 3012-c establishes requirements for the conduct of annual professional performance reviews (APPR) of classroom teachers and building principals employed by school districts and boards of cooperative educational services (BOCES).

2. LEGISLATIVE OBJECTIVES:

The proposed rule is consistent with the above authority vested in the Regents and Commissioner to carry into effect State educational laws and policies, and is necessary carry out the legislative objectives of Education Law section 3012-c to implement a growth model for the 2012-2013 and 2013-2014 school years and a value-added model for the 2014-2015 school year and thereafter.

3. NEEDS AND BENEFITS:

Education Law § 3012-c requires each classroom teacher and building principal to receive an Annual Professional Performance Review (APPR) resulting in a single composite effectiveness score and a rating of “highly effective,” “effective,” “developing,” or “ineffective.” The composite score is determined as follows:

- 20% is based on student growth on State assessments or other comparable measures of student growth (increased to 25% upon Board of Regents approval of a value-added growth model);
- 20% is based on locally-selected measures of student achievement

that are determined to be rigorous and comparable across classrooms as defined by the Commissioner (decreased to 15% upon Board of Regents approval of a value-added growth model);

- The remaining 60% is based on other measures of teacher/principal effectiveness.

The proposed amendment only refers to State-provided growth scores on State used for the State growth or other comparable measures subcomponent. The proposed amendment will amend the definitions of “teacher or principal student growth percentile score” and “value-added growth score” for purposes of implementing an enhanced growth model for the 2012-2013 and 2013-2014 school years and a value-added model for the 2014-2015 school year and thereafter.

4. COSTS:

(a) Costs to State government: none.

(b) Costs to local government: none.

(c) Costs to private regulated parties: none. The rule applies to annual professional performance reviews of teachers and building principals that are conducted by school districts/BOCES and does not impose any costs on private parties.

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

The proposed amendment implements Education Law section 3012-c by amending the definitions of “teacher or principal student growth percentile score” and “value-added growth score” for purposes of implementing an enhanced growth model for the 2012-2013 and 2013-2014 school years and a value-added model for the 2014-2015 school year and thereafter. The proposed amendment does not impose any costs on the State, school districts and BOCES, or the State Education Department, beyond those costs imposed by the statute.

5. LOCAL GOVERNMENT MANDATES:

Education Law § 3012-c requires each classroom teacher and building principal to receive an APPR resulting in a single composite effectiveness score and rating of “highly effective,” “effective,” “developing,” or “ineffective.” The composite score is determined as follows:

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

- 20% is based on locally-selected measures of student achievement that are determined to be rigorous and comparable across classrooms as defined by the Commissioner (decreased to 15% upon implementation of value-added growth model);

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

The proposed amendment implements Education Law section 3012-c by amending the definitions of “teacher or principal student growth percentile score” and “value-added growth score” for purposes of implementing an enhanced growth model for the 2012-2013 and 2013-2014 school years and a value-added model for the 2014-2015 school year and thereafter. The proposed amendment does not impose any program, service, duty or responsibility on school districts and BOCES beyond those imposed by the statute.

6. PAPERWORK:

The proposed amendment implements Education Law section 3012-c, by amending the definitions of “teacher or principal student growth percentile score” and “value-added growth score” for purposes of implementing an enhanced growth model for the 2012-2013 and 2013-2014 school years and a value-added model for the 2014-2015 school year and thereafter. The proposed amendment does not impose additional paperwork or reporting requirements on school districts and BOCES beyond those imposed by the statute.

7. DUPLICATION:

The rule is necessary to implement Education Law section 3012-c and does not duplicate any existing State or Federal requirements.

8. ALTERNATIVES:

After much deliberation and discussion, the Department decided not to recommend moving forward with a proposal that the Board of Regents consider adoption of a value-added model (VAM) for the 2012-13 school year for teachers and principals in grades 4-8 ELA, Math, and/or principals of schools with grades 9-12. Instead, the Department recommends use of an “enhanced growth model” for the 2012-2013 and 2013-2014 school years and a value-added model for the 2014-2015 school year and thereafter.

In considering whether and how to enhance the 2011-12 growth model, the Department worked with its vendor American Institutes for Research, its technical advisory board, and the Metrics Workgroup of the Regents Task Force on Teacher and Principal Effectiveness (comprised of representatives of teachers, principals, superintendents of schools, school boards, school districts and board of cooperative educational services officials, and other interested parties) to identify additional factors that

should be used in defining “similar students” when comparing a student’s growth to others.

The Department created a list of proposed factors based on a statistical analysis that demonstrates the proposed factors add to the empirical ability of the growth model to measure levels of student growth compared to similarly achieving students, and they support Board of Regents policy goals without creating undesirable incentives. These factors have also been reviewed and approved by the Department’s growth model Technical Advisory Committee.

The Department has further divided the list of proposed factors into those that meet the regulatory definition of “growth model” factors (factors related to past academic history and ELL, SWD and poverty status) and those that would require the Board of Regents to approve a “value-added model.” A “value-added model” would count for 25 of the 100 points in an educator’s APPR, and includes “other student, classroom and teacher characteristics.”

The rationale for moving beyond the factors used in the 2011-12 Growth Model is that the “enhanced growth” model provides educators with results that are even more refined and useful for instructional improvement than those in the 2011-12 Growth Model because they will be even more tightly linked statistically to the educator’s actual influence on student learning (than the already tight linkage established in the existing growth model).

As a result, and in accordance with Education Law § 3012-c, 20 points of a teacher/principal’s total composite score shall be attributed to the State growth subcomponent for these teachers/principals and 20 points will be based on other locally-selected measures; the remaining 60 points will be based on the other measures of teacher and principal effectiveness as outlined in each district/BOCES’ approved APPR plan.

9. FEDERAL STANDARDS:

The rule is necessary to implement Education Law section 3012-c. There are no applicable Federal standards concerning the APPR for classroom teachers and building principals as established in Education Law section 3012-c.

10. COMPLIANCE SCHEDULE:

It is anticipated that regulated parties may achieve compliance with the proposed rule upon its effective date. The proposed amendment implements Education Law section 3012-c, by amending the definitions of “teacher or principal student growth percentile score” and “value-added growth score” for purposes of implementing an enhanced growth model for the 2012-2013 and 2013-2014 school years and a value-added model for the 2014-2015 school year and thereafter.

Regulatory Flexibility Analysis

(a) Small businesses:

The purpose of the proposed amendment relates to annual professional performance reviews (APPR) classroom teachers and building principals employed by school districts and boards of cooperative educational services (BOCES). Specifically, the proposed amendment will implement Education Law section 3012-c by amending the definitions of “teacher or principal student growth percentile score” and “value-added growth score” for purposes of implementing a growth model for the 2012-2013 and 2013-2014 school years and a value-added model for the 2014-2015 school year and thereafter. The proposed amendment does not impose any reporting, recordkeeping or other compliance requirements, and will not have an adverse economic impact, on small business. Because it is evident from the nature of the amendment that it does not affect small businesses, no further steps were needed to ascertain that fact and one was taken. Accordingly, a regulatory flexibility analysis for small businesses is not required and one has not been prepared.

(b) Local governments:

1. EFFECT OF RULE:

The rule applies to all school districts and boards of cooperative educational services (“BOCES”) in the State.

2. COMPLIANCE REQUIREMENTS:

Education Law § 3012-c requires each classroom teacher and building principal to receive an Annual Professional Performance Review (APPR) resulting in a single composite effectiveness score and a rating of “highly effective,” “effective,” “developing,” or “ineffective.” The composite score is determined as follows:

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

- 20% is based on locally-selected measures of student achievement that are determined to be rigorous and comparable across classrooms as defined by the Commissioner (decreased to 15% upon Board of Regents approval of a value-added growth model);

- The remaining 60% is based on other measures of teacher/principal effectiveness.

The proposed amendment implements Education Law section 3012-c by amending the definitions of “teacher or principal student growth

percentile score” and “value-added growth score” for purposes of implementing an enhanced growth model for the 2012-2013 and 2013-2014 school years and a value-added model for the 2014-2015 school year and thereafter. The proposed amendment does not impose any compliance requirements on school districts and BOCES beyond those imposed by the statute.

3. PROFESSIONAL SERVICES:

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

4. COMPLIANCE COSTS:

The proposed amendment implements Education Law section 3012-c by amending the definitions of “teacher or principal student growth percentile score” and “value-added growth score” for purposes of implementing an enhanced growth model for the 2012-2013 and 2013-2014 school years and a value-added model for the 2014-2015 school year and thereafter. The proposed amendment does not impose any costs on school districts and BOCES beyond those imposed by the statute.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The proposed amendment implements Education Law section 3012-c by amending the definitions of “teacher or principal student growth percentile score” and “value-added growth score” for purposes of implementing an enhanced growth model for the 2012-2013 and 2013-2014 school years and a value-added model for the 2014-2015 school year and thereafter. The rule does not impose any additional costs or technological requirements on school districts or BOCES beyond those imposed by the statute.

6. MINIMIZING ADVERSE IMPACT:

The proposed amendment implements Education Law section 3012-c by amending the definitions of “teacher or principal student growth percentile score” and “value-added growth score” for purposes of implementing an enhanced growth model for the 2012-2013 and 2013-2014 school years and a value-added model for the 2014-2015 school year and thereafter. The proposed amendment does not impose any additional compliance requirements or costs on school districts and BOCES beyond those imposed by the statute.

7. LOCAL GOVERNMENT PARTICIPATION:

Following the enactment of Education Law § 3012-c in 2010, the Department established the Regents Task Force on Teacher and Principal Effectiveness (“Task Force”). The Task Force is comprised of representatives of teachers, principals, superintendents of schools, school boards, school districts and board of cooperative educational services officials, and other interested parties. A workgroup of the Task Force, which is commonly referred to as the “Metrics Workgroup,” met periodically about the design of the growth measures used in 2011-2012 and has continued to meet regularly throughout the 2012-13 school year to consider changes to the growth model for 2012-2013. The Full Task Force met on June 3, 2013 to provide input to the Commissioner.

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 is necessary to implement Education Law section 3012-c by amending the definitions of “teacher or principal student growth percentile score” and “value-added growth score” for purposes of implementing an enhanced growth model for the 2012-2013 and 2013-2014 school years and a value-added model for the 2014-2015 school year and thereafter. Education Law § 3012-c requires each classroom teacher and building principal to receive an Annual Professional Performance Review (APPR) resulting in a single composite effectiveness score and a rating of “highly effective,” “effective,” “developing,” or “ineffective.” The composite score is determined as follows:

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

- 20% is based on locally-selected measures of student achievement that are determined to be rigorous and comparable across classrooms as defined by the Commissioner (decreased to 15% upon Board of Regents approval of a value-added growth model);

- The remaining 60% is based on other measures of teacher/principal effectiveness.

Accordingly, 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.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed amendment applies to all school districts and boards of

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cooperative educational services (BOCES) and to the evaluation of certain teachers and principals across the State with a State-provided growth score pursuant to Education Law § 3012-c, 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:

Education Law § 3012-c requires each classroom teacher and building principal to receive an Annual Professional Performance Review (APPR) resulting in a single composite effectiveness score and a rating of “highly effective,” “effective,” “developing,” or “ineffective.” The composite score is determined as follows:

- 20% is based on student growth on State assessments or other comparable measures of student growth (increased to 25% upon Board of Regents approval of a value-added growth model);
- 20% is based on locally-selected measures of student achievement that are determined to be rigorous and comparable across classrooms as defined by the Commissioner (decreased to 15% upon Board of Regents approval of a value-added growth model);
- The remaining 60% is based on other measures of teacher/principal effectiveness.

The proposed amendment implements Education Law section 3012-c by amending the definitions of “teacher or principal student growth percentile score” and “value-added growth score” for purposes of implementing an enhanced growth model for the 2012-2013 and 2013-2014 school years and a value-added model for the 2014-2015 school year and thereafter. The proposed amendment does not impose any compliance requirements on school districts and BOCES beyond those costs imposed by the statute.

The proposed rule does not impose any additional professional services requirements on school districts or BOCES, including those in rural areas.

3. COSTS:

The proposed amendment implements Education Law section 3012-c by amending the definitions of “teacher or principal student growth percentile score” and “value-added growth score” for purposes of implementing an enhanced growth model for the 2012-2013 and 2013-2014 school years and a value-added model for the 2014-2015 school year and thereafter. The proposed amendment does not impose any costs on school districts and BOCES, including those in rural areas, beyond those imposed by the statute.

4. MINIMIZING ADVERSE IMPACT:

The proposed amendment implements Education Law section 3012-c by amending the definitions of “teacher or principal student growth percentile score” and “value-added growth score” for purposes of implementing an enhanced growth model for the 2012-2013 and 2013-2014 school years and a value-added model for the 2014-2015 school year and thereafter. The proposed amendment does not impose any additional compliance requirements or costs on school districts and BOCES, including those in rural areas, beyond those imposed by the statute. Since the statute applies to all school districts and BOCES throughout the State, it was not possible to establish different compliance and reporting requirements for regulated parties in rural areas, or to exempt them from the rule’s provisions.

5. RURAL AREA PARTICIPATION:

Following the enactment of Education Law § 3012-c in 2010, the Department established the Regents Task Force on Teacher and Principal Effectiveness (“Task Force”). The Task Force is comprised of representatives of teachers, principals, superintendents of schools, school boards, school districts and board of cooperative educational services officials, and other interested parties. A workgroup of the Task Force, which is commonly referred to as the “Metrics Workgroup,” met periodically about the design of the growth measures used in 2011-2012 and has continued to meet regularly throughout the 2012-13 school year to consider changes to the growth model for 2012-2013. The Full Task Force met on June 3, 2013 to provide input to the Commissioner.

Job Impact Statement

The purpose of the proposed amendment relates to annual professional performance reviews (APPR) classroom teachers and building principals employed by school districts and boards of cooperative educational services (BOCES). Specifically, the proposed amendment will implement Education Law section 3012-c by amending the definitions of “teacher or principal student growth percentile score” and “value-added growth score” for purposes of implementing a growth model for the 2012-2013 and 2013-2014 school years and a value-added model for the 2014-2015 school year and thereafter. Because it is evident from the nature of the proposed amendment that it will have no impact on the number of jobs or employment opportunities in New York State, no further steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

Employment of Retired Public Employees

I.D. No. EDU-28-13-00008-EP

Filing No. 684

Filing Date: 2013-06-25

Effective Date: 2013-07-01

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

Proposed Action: Amendment of section 80-5.5 of Title 8 NYCRR.

Statutory authority: Education Law, sections 101 (not subdivided), 207 (not subdivided) and 305(1), (2) and (20); Retirement and Social Security Law, sections 211(2) and (8) and 212(3); and L. 2013, ch. 55, part Y, section 1

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

Specific reasons underlying the finding of necessity: The proposed amendment to the Regulations of the Commissioner of Education is necessary to implement the amendment to section 212(3) of Retirement and Social Security Law made by Section 1 of Part Y of Chapter 55 of the Laws of 2013, which provides the Commissioner of Education with discretion to eliminate the earnings limitations for retired police officers employed by a school district as a school resource officer. Currently, earnings for retired persons are limited to \$30,000. This new law became effective on March 28, 2013.

Emergency action is necessary at the June 2013 Regents meeting for the preservation of the general welfare in order to timely implement the provisions of the new law and to ensure that proper procedures are in place to ensure that the Commissioner can adequately process requests to eliminate the earnings limitations for retired police officers employed by a school district as a school resource officer.

Subject: Employment of Retired Public Employees.

Purpose: To implement Retirement and Social Security Law section 212(3), as added by Section 1 of Part Y of Chapter 55 of the Laws of 2013.

Text of emergency/proposed rule: 1. Subdivision (b) of section 80-5.5 of the Regulations of the Commissioner of Education is amended, effective July 1, 2013, to read as follows:

(b) Applicability.

(1) The approval of the commissioner to the employment of a retired person by any school district (other than the city school district of the City of New York), or by any board of cooperative educational services (BOCES) or any county vocational education and extension board, in the unclassified service pursuant to section 211 of the Retirement and Social Security Law, or to the employment by any school district of a retired person as a school resource officer in the classified service as authorized by section 212(3) of the Retirement and Social Security Law, shall be obtained in accordance with the requirements prescribed in this section.

(2) . . .

(c) Written request for approval.

(1) . . .

(2) The written request shall also include satisfactory documentation to establish either of the following:

(i) that the district or board has undertaken an extensive and good faith recruitment search for a certified and qualified candidate, or in the case of a school resource officer a qualified candidate, and determined that there are no available non retired persons qualified to perform the duties of such position. Satisfactory documentation of an extensive and good faith recruitment search shall include, but not be limited to, evidence that the district or board:

(a) considered all certified and qualified non retired candidates, or in the case of a school resource officer all qualified non retired candidates, before requesting approval from the commissioner under this section; and

(b) advertised for the particular position in a sufficiently broad manner appropriate for that position, based on the geographic location of the district or board and on any prior historical shortages for that position in the district or board; or

(ii) . . .

(3) Each written request for approval of employment of a retired person shall be accompanied by:

(i) a copy of the resolution of the board authorizing such employment, subject to the approval of the commissioner;

(ii) a recruitment plan, detailing how the prospective employer plans to replace the retired person with a certified, and qualified person, or in the case of a school resource officer a qualified person, by the conclusion of the approved temporary employment period. The recruitment plan shall specify the selection criteria, the media outlets the district or board will utilize to recruit a candidate and contingency plans for expanded recruitment if the initial recruitment procedures do not yield sufficient, certified non retired candidates; and

(iii)

(4)

(d)

(e)

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 September 22, 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, NYS Education Department, Office of Higher Education, EBA, 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.

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

Education Law section 101 charges the Department with the general management and supervision of all the educational work of the State and establishes the Regents as the head of the Department.

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

Education Law section 305 (1) authorizes the Commissioner of Education to enforce all laws relating to the educational system of the State and execute all educational policies determined by the Board of Regents. Section 305 (2) provides that the Commissioner shall have general supervision over all schools and shall advise and guide the school officers of all school districts in relation to their duties and the general management of schools under their control. Section 305(20) authorizes the Commissioner with such powers and duties as are charged by the Regents.

Retirement and Social Security Law section 211(2) permits a retired person to be employed in the unclassified service of a school district other than the city of New York, a board of cooperative education services or a county vocational education and extension board upon approval of the Commissioner of Education.

Retirement and Social Security Law section 211(8) authorizes the Commissioner of Education to promulgate regulations governing the employment of retired persons in public school districts, boards of cooperative educational services and county vocational education and extension boards.

Section 1 of Part Y of Chapter 55 of the Laws of 2013 amended Retirement and Social Security Law section 212(3) to provide the Commissioner of Education with discretion to waive the earnings limitations for retired police officers employed by a school district as a school resource officer. Currently, earnings for retired persons are limited to \$30,000.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment is consistent with the legislative objectives of the above statutes and is necessary to implement Section 1 of Part Y of Chapter 55 of the Laws of 2013.

3. NEEDS AND BENEFITS:

Section 1 of Part Y of Chapter 55 of the Laws of 2013 amended Retirement and Social Security Law section 212(3) to provide the Commissioner of Education with discretion to waive the earnings limitations for retired police officers employed by a school district as a school resource officer. Currently, earnings for retired persons are limited to \$30,000.

A school resource officer's primary duties are to provide a safe learning environment within schools, provide valuable resources to school staff, and maintain an atmosphere where students can reach their fullest learning potential. Working with classroom teachers, other faculty members, and the school's leadership team, school resource officers can present information and answer questions on a variety of topics, including drugs, safety concerns, crime prevention, violence prevention, laws and regulations, and general techniques for reducing crime. School resource officers may additionally assist in ongoing investigations that are occurring on school grounds in relation to criminal activity, in accordance with New York State Law and school district policy.

The current regulations only allow for the approval of section 211 waivers for individuals in "unclassified service" positions. As the position of a

school resource officer is a "classified service" position, the proposed amendment is needed to conform the current regulations relating to the waiver of earnings limitations to the new law which allows the Commissioner to waive the earnings limitation for school resource officers.

4. COSTS:

(a) Costs to the State: none.

(b) Costs to local government: none.

(c) Costs to private regulated parties: none.

(d) Cost to the regulatory agency for implementation and continuing administration of the rule: none.

The proposed amendment is necessary to implement Education Law section 212(3), as added by section 1 of Part Y of Chapter 55 of the Laws of 2013 and does not impose any additional costs on the State, local government, private regulated parties, or the State Education Department. Consistent with the statute, the proposed amendment provides for the approval of the Commissioner to the employment by any school district (other than the city school district of the City of New York) or BOCES of a retired person as a school resource officer, in accordance with existing requirements prescribed in the regulation. The proposed amendment will not impose costs beyond those currently required to comply with statutory and regulatory requirements for the employment of retired persons in school districts and BOCES.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment does not impose any additional program, service, duty or responsibility upon local governments. The proposed amendment will not impose costs beyond those currently required to comply with statutory and regulatory requirements for the employment of retired persons in school districts or BOCES. A school district (other than the City School District of the City of New York) or a BOCES that seeks to employ a retired person as a school resource officer shall follow the existing procedures in section 80-5.5 to obtain the Commissioner's approval.

6. PAPERWORK:

The proposed amendment does not impose any additional paperwork or record keeping requirements. A school district (other than the City School District of the City of New York) or a BOCES that seeks to employ a retired person as a school resource officer shall follow the existing procedures in section 80-5.5 to obtain the Commissioner's approval.

7. DUPLICATION:

The proposed amendment will not duplicate, overlap or conflict with any other State or federal statute or regulation, and is necessary to implement Education Law section 212(3), as added by section 1 of Part Y of Chapter 55 of the Laws of 2013.

8. ALTERNATIVES:

The proposed amendment is necessary to implement Education Law section 212(3), as added by section 1 of Part Y of Chapter 55 of the Laws of 2013. Consistent with the statute, the proposed amendment merely provides for the approval of the Commissioner to the employment by any school district (other than the city school district of the City of New York) or BOCES of a retired person as a school resource officer, in accordance with existing requirements prescribed in the regulation. There were no significant alternatives and none were considered.

9. FEDERAL STANDARDS:

There are no Federal standards concerning the subject matter of this amendment.

10. COMPLIANCE SCHEDULE:

The proposed amendment merely conforms the Commissioner's Regulations to a recent statutory change, and does not impose any additional compliance requirements or costs beyond those currently required to comply with statutory and regulatory requirements for the employment of retired persons in school districts and BOCES. It is anticipated that regulated parties will be able to achieve compliance with the proposed amendment by its effective date.

Regulatory Flexibility Analysis

(a) Small businesses:

The proposed amendment relates to the process for approval by the Commissioner of Education for the employment of retired police officers as a school resource officer in school districts and boards of cooperative educational services (BOCES), as required by Retirement and Social Security Law section 212(3). The proposed amendment does not impose any adverse economic impact, reporting, recordkeeping 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.

(b) Local governments:

1. EFFECT OF RULE:

The proposed amendment applies to the 695 school districts and 37 BOCES located in New York State and establishes the regulatory standards relating to the process for approval by the Commissioner of Educa-

tion for the employment of retired police officers as a school resource officer in school districts and boards of cooperative educational services, as required by Retirement and Social Security Law section 212(3).

2. COMPLIANCE REQUIREMENTS:

The proposed amendment is necessary to implement Education Law section 212(3), as added by section 1 of Part Y of Chapter 55 of the Laws of 2013, and does not impose any additional compliance requirements upon local governments beyond those currently required to comply with statutory and regulatory requirements for the employment of retired persons in school districts and BOCES. Consistent with the statute, the proposed amendment merely provides for the approval of the Commissioner to the employment by any school district (other than the city school district of the City of New York) or a BOCES of a retired person as a school resource officer. The school district or BOCES shall follow the existing procedures in section 80-5.5 to obtain the Commissioner's approval.

3. PROFESSIONAL SERVICES:

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

4. COMPLIANCE COSTS:

The proposed amendment is necessary to implement Education Law section 212(3), as added by section 1 of Part Y of Chapter 55 of the Laws of 2013 and does not impose any additional costs on local governments beyond those currently required to comply with statutory and regulatory requirements for the employment of retired persons in school districts and BOCES. Consistent with the statute, the proposed amendment provides for the approval of the Commissioner to the employment by any school district (other than the city school district of the City of New York) of a retired person as a school resource officer, in accordance with existing requirements prescribed in the regulation. The school district or BOCES shall follow the existing procedures in section 80-5.5 to obtain the Commissioner's approval.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

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

6. MINIMIZING ADVERSE IMPACT:

The proposed amendment is necessary to implement Education Law section 212(3), as added by section 1 of Part Y of Chapter 55 of the Laws of 2013 and does not impose any additional costs or compliance requirements on local governments beyond those currently required to comply with statutory and regulatory requirements for the employment of retired persons in school districts and BOCES. Consistent with the statute, the proposed amendment merely provides for the approval of the Commissioner to the employment by any school district (other than the city school district of the City of New York) of a retired person as a school resource officer, in accordance with existing requirements prescribed in the regulation. The school district or BOCES shall follow the existing procedures in section 80-5.5 to obtain the Commissioner's approval.

Because the statutory requirements apply to school districts and BOCES, it is not possible to exempt them from the proposed amendment or impose a lesser standard. The proposed amendment has been carefully drafted to meet statutory requirements while minimizing the impact on school districts and BOCES.

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.

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 conforms the Commissioner's Regulations to statutory requirements under section 1 of Part Y of Chapter 55 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.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATE OF THE NUMBER OF RURAL AREAS:

The proposed amendment applies to the 695 school districts and 37 BOCES located in New York State and establishes the regulatory standards relating to the process for approval by the Commissioner of Education for the employment of retired police officers as a school resource officer in school districts and boards of cooperative educational services, as

required by Retirement and Social Security Law section 212(3), 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 is necessary to implement Education Law section 212(3), as added by section 1 of Part Y of Chapter 55 of the Laws of 2013, and does not impose any additional compliance requirements upon entities in rural areas beyond those currently required to comply with statutory and regulatory requirements for the employment of retired persons in school districts and BOCES. Consistent with the statute, the proposed amendment merely provides for the approval of the Commissioner to the employment by any school district (other than the city school district of the City of New York) or a BOCES of a retired person as a school resource officer. The school district or BOCES shall follow the existing procedures in section 80-5.5 to obtain the Commissioner's approval.

3. COSTS:

The proposed amendment is necessary to implement Education Law section 212(3), as added by section 1 of Part Y of Chapter 55 of the Laws of 2013 and does not impose any additional costs on entities in rural areas beyond those currently required to comply with statutory and regulatory requirements for the employment of retired persons in school districts and BOCES. Consistent with the statute, the proposed amendment provides for the approval of the Commissioner to the employment by any school district (other than the city school district of the City of New York) of a retired person as a school resource officer, in accordance with existing requirements prescribed in the regulation. The school district or BOCES shall follow the existing procedures in section 80-5.5 to obtain the Commissioner's approval.

4. MINIMIZING ADVERSE IMPACT:

The proposed amendment is necessary to implement Education Law section 212(3), as added by section 1 of Part Y of Chapter 55 of the Laws of 2013 and does not impose any additional costs or compliance requirements on entities in rural areas beyond those currently required to comply with statutory and regulatory requirements for the employment of retired persons in school districts and BOCES. Consistent with the statute, the proposed amendment merely provides for the approval of the Commissioner to the employment by any school district (other than the city school district of the City of New York) of a retired person as a school resource officer, in accordance with existing requirements prescribed in the regulation. The school district or BOCES shall follow the existing procedures in section 80-5.5 to obtain the Commissioner's approval.

Because these statutory requirements apply to school districts and BOCES located in all areas of the State, it is not possible to exempt those located in rural areas from the proposed amendment or impose a lesser standard.

5. RURAL AREA PARTICIPATION:

The proposed rule was submitted for comment to the Department's Rural Education Advisory Committee that includes representatives of school districts in rural areas.

Job Impact Statement

The proposed amendment relates to the process for approval by the Commissioner of Education for the employment of retired police officers as a school resource officer in school districts and boards of cooperative educational services (BOCES), as required by Retirement and Social Security Law section 212(3). Because it is evident from the nature of the rule that it will not affect job and employment opportunities, no affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required, and one has not been prepared.

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

Protection of People with Special Needs Act (L. 2012, Ch. 501)

I.D. No. EDU-28-13-00009-EP

Filing No. 685

Filing Date: 2013-06-25

Effective Date: 2013-06-30

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

Proposed Action: Amendment of sections 200.7 and 200.15 of Title 8 NYCRR.

Statutory authority: Education Law, sections 101 (not subdivided), 207 (not subdivided), 4002(1)-(3), 4212(a), 4314(a), 4358(a), 4403(11), 4308(3), 4355(3), 4401(2), 4402(1)-(7), 4403(3), (11) and (13) and 4410(1)-(13); and L. 2012, ch. 501

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

Specific reasons underlying the finding of necessity: The proposed amendment is necessary to conform the Commissioner's Regulations to Chapter 501 of the Laws of 2012 and the regulations, guidelines and procedures established by the Justice Center, which becomes effective June 30, 2013.

Because the Board of Regents meets at fixed intervals, and generally does not meet in the month of August, the earliest the proposed amendment could be presented for regular 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 September 16-17, 2013 Regents meeting. Furthermore, pursuant to SAPA, the earliest effective date of the proposed amendment, if adopted at the September meeting, would be October 2, 2013, the date a Notice of Adoption would be published in the State Register. However, Chapter 501 takes effect on June 30, 2013, and residential schools are required to comply with the statutory requirements as of that date.

Emergency action is therefore necessary for the preservation of the general welfare in order to immediately conform the Regulations of the Commissioner to the requirements of Chapter 501, so that such requirements may be fully implemented by the Department, residential schools, and other affected parties by the June 30, 2013 effective date of the statute, and thereby ensure that students attending residential schools are protected against abuse, neglect and significant incidents that may jeopardize their health, safety and welfare.

It is anticipated that the proposed amendment will be presented for adoption as a permanent rule at the September 16-17, 2013 Regents meeting, after publication of the proposed amendment in the State Register and expiration of the 45-day public comment period prescribed by the State Administrative Procedure Act for State agency rule makings.

Subject: Protection of People with Special Needs Act (L. 2012, ch. 501).

Purpose: To conform Commissioner's Regulations relating to students attending residential schools to L. 2012, ch. 501.

Substance of emergency/proposed rule (Full text is posted at the following State website: <http://www.p12.nysed.gov/specialed/timely.htm>): The Board of Regents has adopted amendments to sections 200.7 and 200.15 of the Commissioner's Regulations as an emergency rule, effective June 30, 2013, relating to Chapter 501 of the Laws of 2012: "Protection of People with Special Needs Act." The following is a summary of the substance of the emergency amendments. It is anticipated that the amendments will be adopted as a permanent rule at the September 16-17, 2013 Regents meeting, after publication of a Notice of Proposed Rule Making in the State Register on July 10, 2013 and expiration of the 45-day public comment period pursuant to the State Administrative Procedure Act.

Consistent with Chapter 501, section 200.7(b)(3) is amended to add that the code of conduct developed by the Justice Center must govern the conduct of custodians with respect to the safety, dignity and welfare of students in residential schools. Section 200.7(b)(6) is amended to require preschool programs and municipalities who contract for related services approved pursuant to section 4410 of the Education Law to conduct personnel screenings in accordance with the provisions of sections 424-a and 495 of the Social Services Law.

Section 200.15 is amended to conform State regulations to Chapter 501 of the NYS Laws of 2012 relating to definitions abuse, neglect and significant incidents; personnel screening procedures; staff supervision; procedures for the protection of students in in-State and out-of-State residential schools from reportable incidents; staff orientation to procedures regarding the protection of students; instruction of students in techniques and procedures to protect themselves from reportable incidents; incident review committees; and access to residential schools and their records necessary to carry out the provisions of Chapter 501.

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 September 22, 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: James P. DeLorenzo, Assistant Commissioner P-12, State Education Department, Office of Special Education, State Education Building, Room 309, 89 Washington Ave., Albany, NY 12234, (518) 402-3353, email: spedpubliccomment@mail.nysed.gov

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

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

Education Law section 207 authorizes the Regents and Commissioner to adopt rules and regulations to carry out State laws regarding education.

Education Law section 4002 establishes responsibilities for education of students in child-care institutions.

Education Law sections 4212(a), 4314(a), 4358(a) and 4403(11) authorize Commissioner's Regulations concerning standards for the protection of children in residential care.

Education Law sections 4308(3) and 4355(3) authorize Commissioner's Regulations regarding admission to the State School for the Blind and State School for the Deaf.

Education Law section 4401 authorizes the Commissioner to approve private day and residential programs serving students with disabilities.

Education Law section 4402 establishes the district's duties regarding education of students with disabilities.

Education Law section 4403 outlines the Department's and district's responsibilities regarding special education programs/services to students with disabilities. Section 4403(3) authorizes Department to adopt regulations as Commissioner deems in its best interests. Section 4403(11) authorizes the Commissioner to promulgate regulations concerning standards for the protection of children in residential care from abuse and maltreatment. Section 4403(12) authorizes and directs the State Education Department to cooperate with other departments, divisions and agencies of the state when a report is received to protect the health and safety of children in residential placement.

Education Law section 4410 establishes requirements for education services and programs for preschool children with disabilities. Section 4410(13) authorizes the Commissioner to adopt regulations.

Chapter 501 of the Laws of 2012 establishes the Justice Center for the Protection of People with Special Needs and procedures for the protection of vulnerable persons from abuse, neglect and significant incidents, including pupils in residential care.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment conforms the Commissioner's Regulations to Chapter 501 of the Laws of 2012 and carries out the legislative objectives in the aforementioned statutes to increase protections for students with disabilities in residential care.

3. NEEDS AND BENEFITS:

The proposed amendment is necessary to conform the Commissioner's Regulations to Chapter 501 of the Laws of 2012 and the regulations, guidelines and procedures established by the Justice Center.

Chapter 501 requires the establishment of comprehensive protections for vulnerable persons against abuse, neglect and other harmful conduct. The Act created a Justice Center with responsibilities for effective incident reporting and investigation systems, fair disciplinary processes, informed and appropriate staff hiring procedures, and strengthened monitoring and oversight systems. The Justice Center operates a 24/7 hotline for reporting allegations of reportable incidents (i.e., abuse, neglect and significant incidents) in accordance with Chapter 501's provisions for uniform definitions, mandatory reporting and minimum standards for incident management programs. Working in collaboration with the State Education Department (SED) and other relevant state oversight agencies, the Justice Center is charged with developing and delivering appropriate training for caregivers, their supervisors and investigators.

A Vulnerable Persons' Central Register (VPCR) contains the names of individuals found to have committed substantiated acts of abuse or neglect using a preponderance of evidence standard. All persons found to have committed such acts have the right to a hearing before an administrative law judge to challenge those findings. Persons having committed egregious or repeated acts of abuse or neglect are placed on a staff exclusion list and prohibited from future employment caring for vulnerable persons, and may be subject to criminal prosecution. Less serious acts of misconduct are subject to progressive discipline and retraining. Job applicants with criminal records who seek employment serving vulnerable persons will be individually evaluated as to suitability for such positions.

Pursuant to Chapter 501, the Justice Center is charged with recommending policies and procedures to SED for the protection of students with disabilities in residential care. This effort involves the development of requirements and guidelines in areas including but not limited to incident management, rights of people receiving services, and training of custodians. In accordance with Chapter 501, these requirements and guidelines must be reflected, wherever appropriate, in SED's regulations.

Consequently, the proposed amendments incorporate the requirements in regulations and guidelines recently developed by the Justice Center.

Chapter 501 further requires SED, in consultation with the Justice Center, to promulgate regulations relating to an incident management program.

4. COSTS:

- a. Costs to State government: None.
- b. Costs to local governments: None.
- c. Costs to regulated parties: None.
- d. Costs to SED of implementation and continuing compliance: None.

The proposed amendment is necessary to conform the Commissioner's Regulations to recent changes to the Education Law, Social Services Law, and Executive Law (as amended by Chapter 501 of the Laws of 2012) and does not impose any additional costs beyond those imposed by federal and State statutes and regulations.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment is necessary to conform the Commissioner's Regulations to recent changes in State statute (as amended by Chapter 501 of the Laws of 2012), and does not impose any additional program, service, duty or responsibility upon local governments beyond those imposed by federal and State statutes and regulations.

Consistent with Chapter 501, section 200.7(b)(3) is amended to add that the code of conduct developed by the Justice Center must govern the conduct of custodians with respect to the safety, dignity and welfare of students in residential schools. Section 200.7(b)(6) is amended to require preschool programs and municipalities who contract for related services approved pursuant to section 4410 of the Education Law to conduct personnel screenings in accordance with the provisions of sections 424-a and 495 of the Social Services Law.

Section 200.15 is amended to conform State regulations to Chapter 501 of the NYS Laws of 2012 relating to definitions abuse, neglect and significant incidents; personnel screening procedures; staff supervision; procedures for the protection of students in in-State and out-of-State residential schools from reportable incidents; staff orientation to procedures regarding the protection of students; instruction of students in techniques and procedures to protect themselves from reportable incidents; incident review committees; and access to residential schools and their records necessary to carry out the provisions of Chapter 501.

6. PAPERWORK:

Consistent with Chapter 501 of the Laws of 2012, the proposed amendment would add additional paperwork requirements pertaining to reporting reportable incidents to the Justice Center. However, many of the new requirements will predominantly utilize electronic format. The proposed rule adds requirements for in-State residential schools to provide parents with written information regarding reporting responsibilities and processes and to provide a written report of the findings of the investigation of a significant incident to parents or guardians of student(s) named in the report, and the school district of the student(s). In-State residential schools will also be required to provide staff at the time of initial employment, and at least annually thereafter, with a copy of the code of conduct developed by the Justice Center; submit reports of incident patterns and trends to SED; and provide copies of records to the Justice Center when a request is made to the Justice Center for public inspection and copying of records relating to the abuse and neglect of students. The proposed amendment also adds additional paperwork requirements for out-of-State residential schools to forward the findings of abuse and neglect investigations not conducted by the Justice Center to the Justice Center, SED, and the student's committee on special education and, as appropriate, the social services district in NYS.

7. DUPLICATION:

The proposed amendment will not duplicate, overlap or conflict with any other State or federal statute or regulation, and is necessary to implement Chapter 501 of the Laws of 2012.

8. ALTERNATIVES:

The proposed amendment is necessary to conform the Commissioner's Regulations to Chapter 501 of the Laws of 2012, and there are no alternatives and none were considered.

9. FEDERAL STANDARDS:

The proposed amendment is necessary to conform the Commissioner's Regulations to recent changes in State statute and does not exceed any minimum federal standards.

10. COMPLIANCE SCHEDULE:

It is anticipated that regulated parties will be able to achieve compliance with the proposed amendment by the June 30, 2013 effective date.

Regulatory Flexibility Analysis

1. EFFECT OF RULE:

The proposed amendment applies to all approved in-State residential schools, State-operated schools, State-supported schools which have a residential component, special act school districts, approved out-of-State residential schools, and preschool programs and municipalities who contract

for related services approved pursuant to section 4410 of the Education Law. In total, the proposed amendment affects approximately 618 public and private providers of special education. The 618 providers includes 115 providers who are public school programs and 57 counties that contract for related services. Not more than 160 programs are small businesses employing less than 100 employees. Most of the provisions of the proposed amendment affect only residential programs of which there are 63 that are located in New York State and 24 that are located out of State. Of the 61 residential programs located in NYS, 17 are located in rural areas. There are approximately 10 special act school districts in the State.

2. COMPLIANCE REQUIREMENTS:

The proposed amendment is necessary to conform the Commissioner's Regulations to recent changes in State statute (as amended by Chapter 501 of the Laws of 2012), and does not impose any additional compliance requirements on small businesses and local governments beyond those imposed by State statutes and regulations.

Consistent with Chapter 501, section 200.7(b)(3) is amended to add that the code of conduct developed by the Justice Center must govern the conduct of custodians with respect to the safety, dignity and welfare of students in residential schools. Section 200.7(b)(6) is amended to require preschool programs and municipalities who contract for related services approved pursuant to section 4410 of the Education Law to conduct personnel screenings in accordance with the provisions of sections 424-a and 495 of the Social Services Law.

Section 200.15 is amended to conform State regulations to Chapter 501 of the Laws of 2012 relating to definitions abuse, neglect and significant incidents; personnel screening procedures; staff supervision; procedures for the protection of students in in-State and out-of-State residential schools from reportable incidents; staff orientation to procedures regarding the protection of students; instruction of students in techniques and procedures to protect themselves from reportable incidents; incident review committees; and access to residential schools and their records necessary to carry out the provisions of Chapter 501.

3. PROFESSIONAL SERVICES:

The proposed amendment is necessary to conform the Commissioner's Regulations Chapter 501 of the Laws of 2012, and does not impose any additional professional service requirements on small businesses or local governments.

4. COMPLIANCE COSTS:

The proposed amendment is necessary to conform the Commissioner's Regulations to recent changes to the Education Law, Social Services Law and Executive Law (as amended by Chapter 501 of the Laws of 2012) and the regulations, guidelines and procedures established by the Justice Center, and does not impose any additional costs beyond those imposed by such statutes and regulations.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The proposed amendment does not impose any new technological requirements. Economic feasibility is addressed above under compliance costs.

6. MINIMIZING ADVERSE IMPACT:

The proposed amendment is necessary to conform the Commissioner's Regulations to recent changes to the Education Law, Social Services Law and Executive Law (as amended by Chapter 501 of the Laws of 2012) and the regulations, guidelines and procedures established by the Justice Center. The proposed amendment has been carefully drafted to meet State statutory requirements and does not impose any additional costs or compliance requirements on small businesses and local governments beyond those imposed by such statutes and regulations.

7. SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION:

Copies of the proposed amendment have been provided to District Superintendents and the chief officers of the Big 5 city school districts with the request that they distribute them to school districts within their supervisory districts for review and comment.

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 implements and conforms the Commissioner's Regulations to statutory requirements under Chapter 501 of the Laws of 2012, 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.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBERS OF RURAL AREAS:

The proposed amendment applies to all approved in-State residential

schools, State-operated schools, State-supported schools which have a residential component, special act school districts, approved out-of-State residential schools, and preschool programs and municipalities who contract for related services approved pursuant to section 4410 of the Education Law, including those located in the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with population density of 150 per square miles or less. In total, the proposed amendment affects approximately 618 public and private providers of special education of which not more than 172 are located in rural areas of New York State. The 618 providers includes 115 providers who are public school programs and 57 counties that contract for related services. Not more than 160 programs are small businesses employing less than 100 employees. Most of the provisions of the proposed amendment affect only residential programs of which there are 63 that are located in New York State and 24 that are located out of State. Of the 61 residential programs located in NYS, 17 are located in rural areas.

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

The proposed amendment is necessary to conform the Commissioner's Regulations to recent changes in State statute (as amended by Chapter 501 of the Laws of 2012), and does not impose any compliance requirements upon small businesses and local governments in rural areas beyond those imposed by State statutes and regulations.

Consistent with Chapter 501, section 200.7(b)(3) is amended to add that the code of conduct developed by the Justice Center must govern the conduct of custodians with respect to the safety, dignity and welfare of students in residential schools. Section 200.7(b)(6) is amended to require preschool programs and municipalities who contract for related services approved pursuant to section 4410 of the Education Law to conduct personnel screenings in accordance with the provisions of sections 424-a and 495 of the Social Services Law.

Section 200.15 is amended to conform State regulations to Chapter 501 of the New York State Laws of 2012 relating to definitions abuse, neglect and significant incidents; personnel screening procedures; staff supervision; procedures for the protection of students in in-State and out-of-State residential schools from reportable incidents; staff orientation to procedures regarding the protection of students; instruction of students in techniques and procedures to protect themselves from reportable incidents; incident review committees; and access to residential schools and their records necessary to carry out the provisions of Chapter 501.

3. COSTS:

The proposed amendment is necessary to conform the Commissioner's Regulations to Chapter 501 of the Laws of 2012 and does not impose any additional costs beyond those imposed by federal statutes and regulations and State statutes.

4. MINIMIZING ADVERSE IMPACT:

The proposed amendment is necessary to conform the Commissioner's Regulations to Chapter 501 of the Laws of 2012. The proposed amendment has been carefully drafted to meet State statutory requirements and does not impose any additional costs or compliance requirements on small businesses and local governments in rural areas beyond those imposed by federal law and regulations and State statutes. Since these requirements apply to all in-State residential schools, State-operated schools, State-supported schools which have a residential component, special act school districts, approved out-of-State residential schools, and preschool programs and municipalities who contract for related services approved pursuant to section 4410 of the Education Law in the State, it is not possible to adopt different standards for such entities in rural areas.

5. RURAL AREA PARTICIPATION:

The proposed amendment was submitted for discussion and comment to the Department's Rural Education Advisory Committee, which includes representatives of school districts 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 implements and conforms the Commissioner's Regulations to statutory requirements under Chapter 501 of the Laws of 2012, 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 recent changes to the Education Law, Social Services Law

and Executive Law, as amended by Chapter 501 of the New York State Laws of 2012 ("Protection of People with Special Needs Act"), and the regulations, guidelines and procedures established by the Justice Center, to ensure that students attending residential schools are protected against abuse, neglect and significant incidents that may jeopardize their health, safety and welfare.

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

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Teacher and School District Leader Certification Examinations

I.D. No. EDU-28-13-00010-P

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

Proposed Action: Amendment of sections 80-3.3, 80-3.4, 80-3.10, 80-5.13 and 80-5.15; and addition of section 80-5.20(a)(1)(v) to Title 8 NYCRR.

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

Subject: Teacher and school district leader certification examinations.

Purpose: To adopt technical changes to the certification examination requirements for certain teachers and school district leaders.

Text of proposed rule: 1. Clause (b) of subparagraph (i) of paragraph (2) of subdivision (b) of section 80-3.3 of the Regulations of the Commissioner of Education is amended, effective October 2, 2013, to read as follows:

(b) Except as otherwise provided in this section, for candidates applying for certification on or after May 1, 2014 or candidates who applied for certification on or before April 30, 2014 but did not meet all the requirements for an initial certificate on or before April 30, 2014, such candidates shall submit evidence of having achieved a satisfactory level of performance on the New York State Teacher Certification Examination teacher performance assessment, the educating all students test, the academic literacy skills test and the content specialty test(s) in the area of the certificate, except that a candidate seeking an initial certificate in the title of Speech and Language Disabilities (all grades) shall not be required to achieve a satisfactory level of performance on the content specialty test or the teacher performance assessment and a candidate seeking an initial certificate in the title of Educational Technology Specialist (all grades) shall not be required to achieve a satisfactory level of performance on the teacher performance assessment.

2. Subparagraph (ii) of paragraph (1) of subdivision (c) of section 80-3.3 of the Regulations of the Commissioner of Education is amended, effective October 2, 2013, to read as follows:

(ii) Examination. The candidate shall meet the examination requirement by meeting the requirements in one of the following clauses:

(a) (1) A candidate who has completed all requirements for initial certification on or before April 30, 2014 and who applies for certification on or before April 30, 2014, shall submit evidence of having achieved a satisfactory level of performance on the New York State Teacher Certification Examination written assessment of teaching skills, on or before April 30, 2014 or achieve a satisfactory level of performance on the [teacher performance assessment and the] educating all students test.

(2) A candidate who applies for certification on or after May 1, 2014 or a candidate who applies for certification on or before April 30, 2014 but does not meet all the requirements for an initial certificate on or before April 30, 2014, shall submit evidence of having achieved a satisfactory level of performance on the [New York State Teacher Certification Examination teacher performance assessment and the] educating all students test.

(b) . . .

3. Subparagraph (ii) of paragraph (2) of subdivision (c) of section 80-3.3 of the Regulations of the Commissioner of Education is amended, effective October 2, 2013, to read as follows:

(ii) Examination. The candidate shall meet the examination requirement by meeting the requirements in one of the following clauses:

(a) (1) A candidate who has completed all requirements for initial certification on or before April 30, 2014 and who applies for certification on or before April 30, 2014, shall submit evidence of having

achieved a satisfactory level of performance on the New York State Teacher Certification Examination communication and quantitative skills test and the written assessment of teaching skills on or before April 30, 2014 or evidence of having achieved a satisfactory level of performance on the communication and quantitative skills test[, the teacher performance assessment] and the educating all students test.

(2) A candidate who applies for certification on or after May 1, 2014 or a candidate who applies for certification on or before April 30, 2014 but does not meet all the requirements for an initial certificate on or before April 30, 2014, shall submit evidence of having achieved a satisfactory level of performance on the New York State Teacher Certification Examination communication and quantitative skills test [the teacher performance assessment] and the educating all students test.

4. Subparagraph (iii) of paragraph (1) of subdivision (c) of section 80-3.4 of the Regulations of the Commissioner of Education is amended, effective October 2, 2013, as follows:

(iii) Examination.

(a) A candidate who has completed all requirements for a professional certificate and who applies for certification on or before April 30, 2014, shall submit evidence of having achieved a satisfactory level of performance on the New York State Teacher Certification Examination liberal arts and sciences test on or before April 30, 2014 or evidence of having achieved a satisfactory level of performance on the New York State Teacher Certification [Examination] academic literacy skills test *and the teacher performance assessment for career and technical subjects, when developed and available.*

(b) A candidate who applies for certification on or after May 1, 2014 or who applies for certification on or before April 30, 2014 but does not meet all the requirements for a professional certificate on or before April 30, 2014, shall submit evidence of having achieved a satisfactory level of performance on the New York State Teacher Certification [Examination] academic literacy skills test *and the teacher performance assessment(s) for career and technical subjects, when developed and available.*

5. Subparagraph (iii) of paragraph (2) of subdivision (c) of section 80-3.4 of the Regulations of the Commissioner of Education is amended, effective October 2, 2013, as follows:

(iii) Examination.

(a) A candidate who has completed all other requirements for a professional certificate and who applies for certification on or before April 30, 2014, shall submit evidence of having achieved a satisfactory level of performance on the New York State Teacher Certification Examination liberal arts and sciences test on or before April 30, 2014 or a satisfactory level of performance on the New York State Teacher Certification [Examination] academic literacy skills test *and the teacher performance assessment(s) for career and technical subjects when the Department determines that the test is available and required.*

(b) A candidate who applies for certification on or after May 1, 2014 or who applies for certification on or before April 30, 2014 but does not meet all the requirements for a professional certificate on April 30, 2014, shall submit evidence of having achieved a satisfactory level of performance on the New York State Teacher Certification [Examination] academic literacy skills test *and the teacher performance assessment(s) for career and technical subjects when the Department determines that the test is available and required.*

6. A new clause (c) is added to subparagraph (i) of paragraph (3) of subdivision (b) of section 80-3.10 of the Regulations of the Commissioner of Education is amended, effective October 2, 2013, to read as follows:

(c) *Examination requirement. Any candidate applying for a professional certificate as a school district leader on or after May 1, 2015, shall also achieve a satisfactory level of performance on the educating all students test.*

7. A new paragraph (4) is added to subdivision (b) of section 80-5.15 of the Regulations of the Commissioner of Education, effective October 2, 2013, to read as follows:

(4) *Examination requirement. Any candidate applying for a professional certificate as a school district leader on or after May 1, 2015, shall also achieve a satisfactory level of performance on the educating all students test.*

8. Clauses (a) and (b) of subparagraph (ii) of subdivision (b) of section 80-5.13 of the Regulations of the Commissioner of Education is amended, effective October 2, 2013, to read as follows:

(a) A candidate who applies for an initial certificate on or before April 30, 2014, and who has completed all other requirements for an initial certificate or who has completed all requirements for an initial certificate except completion of their registered Transitional B program, on or before April 30, 2014 shall submit evidence of having achieved a satisfactory level of performance on the New York State Teacher certification examination written assessment of teaching skills test, and any other examination required for the provisional or initial certificate, as applicable, and/or a bilingual education extension of such certificate, as applicable, on or

before April 30, 2014 or a satisfactory level of performance on teacher performance assessment, *if applicable for that certificate title*, and any other examination required for the provisional or initial certificate, as applicable, and/or a bilingual education extension of such certificate, as applicable.

(b) A candidate who applies for certification on or after May 1, 2014 or who applies for certification on or before April 30, 2014 but does not meet all the requirements for a professional certificate on April 30, 2014, shall submit evidence of having achieved a satisfactory level of performance on the teacher performance assessment, *if applicable for that certificate title*, and any other examination required for the provisional or initial certificate, as applicable, and/or a bilingual education extension of such certificate, as applicable.

8. A new subparagraph (v) is added to paragraph (1) of subdivision (a) of section 80-5.20 of the Regulations of the Commissioner of Education, effective October 2, 2013, to read as follows:

(v) *Examination requirement.*

(a) *Any candidate applying for a professional certificate as a school district leader through endorsement of a certificate of another state or territory pursuant to the provisions of this section on or after October 2, 2013, shall achieve a satisfactory level of performance on the school district leader examination.*

(b) *Any candidate applying for a professional certificate as a school district leader through endorsement of a certificate of another state or territory on or after May 1, 2014 or who applies for certification on or before April 30, 2014 but does not meet all the requirements for a professional certificate on April 30, 2014, shall submit evidence of having achieved a satisfactory level of performance on the educating all students test.*

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

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

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

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

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

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

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

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

2. LEGISLATIVE OBJECTIVES:

The proposed amendment is consistent with the above legislative objectives and is necessary to implement Regents policy relating to certification examinations for certain teachers and school building leaders.

3. NEEDS AND BENEFITS:

At their December 2012 meeting, the Board of Regents adopted regulations regarding requirements for new certification exams for teachers and school building leaders.

As a result of meetings with the field and the assessment developers, a series of recommendations and suggestions have been made regarding several of the assessments specific to certain certification areas and titles. The changes below reflect these technical changes that should be made to ensure that all teacher and leader candidates are prepared to take on their job responsibilities once hired.

Requirements for Initial Certificates in CTE Fields - Option A and B Pathways

In December, regulations were amended to require candidates who apply for CTE certification on or after May 1, 2014 or candidates who apply for CTE certification on or before April 30, 2014 but do not meet all the requirements for an initial certificate on or before April 30, 2014, to pass the edTPA for initial certification.

However, given the vast selection of specified CTE subject areas (there are 40 specific certification areas) available within the CTE field,

combined with relatively low rates of certificates issued, the creation of individual edTPAs for each specific subject area was not practical. The Department is currently working to develop a general performance assessment for general CTE certificate areas or clusters, consistent with National Standards, that would apply to all those seeking a CTE certificate in New York. In addition, since the majority of individuals seeking to obtain CTE certification come directly from the field rather than an education program, requiring the edTPA for initial certification can act as a barrier to job entry, given that these individuals do not have access to a classroom prior to obtaining certification.

Therefore, the proposed amendment eliminates the requirement for candidates to complete the edTPA for initial certification and instead requires a performance assessment for CTE teachers seeking their professional certification when it becomes available.

Requirements for School District Leader Candidates

Candidates who apply for School District Leader certification are currently required to successfully complete a New York State educational leadership program and achieve a satisfactory level of performance on the school district leadership examination.

However, the Department believes that school district leaders should possess the skills and knowledge needed to adequately meet the diverse needs of students and to ensure that all students are successful. In addition, it is important for school district leaders to be aware of, and understand, the benefits of fostering strong home-school relationships, specifically as it relates to academic success. It is essential for school district leaders to understand the rights and responsibilities of various stakeholders, such as teachers, children, and parents, in a variety of situations and also have the ability to lead and direct the work at the school building level. Therefore, the proposed amendment requires a candidate who applies for a professional School District Leader certificate on or after May 1, 2015 to pass the Educating All Students examination.

In addition, any candidate applying for a School District Leader certificate under the endorsement pathway on or after October 2, 2013, shall achieve a satisfactory level of performance on the School District Leader examination. Candidates applying for a School District Leader certificate on or after May 1, 2014 or candidates applying for certification on or before April 30, 2014 but who do not meet all the requirements for a professional certificate on April 30, 2014, shall submit evidence of having achieved a satisfactory level of performance on the Educating All Students examination.

Requirements for Initial Certification in Education Technology Specialist

In December, regulations were amended to require that candidates applying for certification on or after May 1, 2014, or candidates who applied for certification on or before April 30, 2014, but did not meet all of the requirements for an initial certificate on or before April 30, 2014, pass the edTPA, EAS, ALST, and the CST.

An Education Technology Specialist's role in a school is to help train and support the work of the teacher. He/she is expected to help the teacher learn how to employ technology in support of student learning. He/she is not expected to engage with students directly. As a result, candidates for the Education Technology Specialist must complete a practicum, rather than student teaching. The proposed amendment removes the edTPA requirement for these candidates.

Requirements for Initial certification of Speech and Language Disabilities

In December, regulations were amended to require that candidates applying for certification on or after May 1, 2014, or candidates who applied for certification on or before April 30, 2014, but did not meet all of the requirements for an initial certificate on or before April 30, 2014, pass the edTPA, EAS, and the ALST. These candidates are required to pass the Speech and Language Pathology (PRAXIS) examination which is also required for a professional license as a Speech and Language Pathologist.

Because the role of these teachers is often that of a related services position, rather than one in which they deliver content, it is unlikely that their student teaching will be in a role in which they instruct a class. Therefore, the proposed amendment removes the edTPA requirement for these candidates.

However, pursuant to Section 80-3.9 of the Commissioner's Regulations, speech-language pathologists licensed under Title VIII who apply for an initial certificate as a teacher of speech and language disabilities (all grades) are not subject to the examination requirements for such teachers. These candidates are required to have a passing score on the Speech and Language Pathology (PRAXIS) examination in order to be licensed.

4. COSTS:

- (a) Costs to State government: none.
- (b) Costs to local governments: none.
- (c) Costs to private regulated parties: none.
- (d) Costs to the State Education Department for implementation continued administration of this rule: none.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment does not impose any mandatory program, service, duty, or responsibility upon local government, including school districts or BOCES.

6. PAPERWORK:

There are no additional paperwork requirements beyond those currently imposed.

7. DUPLICATION:

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

8. ALTERNATIVES:

The proposed amendment is necessary to implement the policy of the Board of Regents relating to certification examinations for certain teachers and school building leaders and reflect the recommendations and suggestions made as a result of meetings with the field and the assessment developers. There were no significant alternatives and none were considered.

9. FEDERAL STANDARDS:

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

10. COMPLIANCE SCHEDULE:

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

Regulatory Flexibility Analysis

(a) Small businesses:

The purpose of the proposed amendment is to adopt technical amendments to the Commissioner's Regulations relating to certification examination requirements for certain teachers and school building leaders. The proposed rule does not impose any reporting, recordkeeping or other compliance requirements, and will not have an adverse economic impact, on small business. Because it is evident from the nature of the amendment that it does not affect small businesses, no further steps were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses is not required and one has not been prepared.

(b) Local governments:

1. EFFECT OF RULE:

The proposed amendment relates to certification examination requirements for certain teachers and school building leaders.

2. COMPLIANCE REQUIREMENTS:

At their December 2012 meeting, the Board of Regents adopted regulations regarding requirements for new certification exams for teachers and school building leaders.

As a result of meetings with the field and the assessment developers, a series of recommendations and suggestions have been made regarding several of the assessments specific to certain certification areas and titles. The changes below reflect these technical changes that should be made to ensure that all teacher and leader candidates are prepared to take on their job responsibilities once hired.

Requirements for Initial Certificates in CTE Fields - Option A and B Pathways

In December, regulations were amended to require candidates who apply for CTE certification on or after May 1, 2014 or candidates who apply for CTE certification on or before April 30, 2014 but do not meet all the requirements for an initial certificate on or before April 30, 2014, to pass the edTPA for initial certification.

However, given the vast selection of specified CTE subject areas (there are 40 specific certification areas) available within the CTE field, combined with relatively low rates of certificates issued, the creation of individual edTPAs for each specific subject area was not practical. The Department is currently working to develop a general performance assessment for general CTE certificate areas or clusters, consistent with National Standards, that would apply to all those seeking a CTE certificate in New York. In addition, since the majority of individuals seeking to obtain CTE certification come directly from the field rather than an education program, requiring the edTPA for initial certification can act as a barrier to job entry, given that these individuals do not have access to a classroom prior to obtaining certification.

Therefore, the proposed amendment eliminates the requirement for candidates to complete the edTPA for initial certification and instead requires a performance assessment for CTE teachers seeking their professional certification when it becomes available.

Requirements for School District Leader Candidates

Candidates who apply for School District Leader certification are currently required to successfully complete a New York State educational leadership program and achieve a satisfactory level of performance on the school district leadership examination.

However, the Department believes that school district leaders should possess the skills and knowledge needed to adequately meet the diverse needs of students and to ensure that all students are successful. In addition,

it is important for school district leaders to be aware of, and understand, the benefits of fostering strong home-school relationships, specifically as it relates to academic success. It is essential for school district leaders to understand the rights and responsibilities of various stakeholders, such as teachers, children, and parents, in a variety of situations and also have the ability to lead and direct the work at the school building level. Therefore, the proposed amendment requires a candidate who applies for a professional School District Leader certificate on or after May 1, 2015 to pass the Educating All Students examination.

In addition, any candidate applying for a School District Leader certificate under the endorsement pathway on or after October 2, 2013, shall achieve a satisfactory level of performance on the School District Leader examination. Candidates applying for a School District Leader certificate on or after May 1, 2014 or candidates applying for certification on or before April 30, 2014 but who do not meet all the requirements for a professional certificate on April 30, 2014, shall submit evidence of having achieved a satisfactory level of performance on the Educating All Students examination.

Requirements for Initial Certification in Education Technology Specialist

In December, regulations were amended to require that candidates applying for certification on or after May 1, 2014, or candidates who applied for certification on or before April 30, 2014, but did not meet all of the requirements for an initial certificate on or before April 30, 2014, pass the edTPA, EAS, ALST, and the CST.

An Education Technology Specialist's role in a school is to help train and support the work of the teacher. He/she is expected to help the teacher learn how to employ technology in support of student learning. He/she is not expected to engage with students directly. As a result, candidates for the Education Technology Specialist must complete a practicum, rather than student teaching. The proposed amendment removes the edTPA requirement for these candidates.

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Because the role of these teachers is often that of a related services position, rather than one in which they deliver content, it is unlikely that their student teaching will be in a role in which they instruct a class. Therefore, the proposed amendment removes the edTPA requirement for these candidates.

However, pursuant to Section 80-3.9 of the Commissioner's Regulations, speech-language pathologists licensed under Title VIII who apply for an initial certificate as a teacher of speech and language disabilities (all grades) are not subject to the examination requirements for such teachers. These candidates are required to have a passing score on the Speech and Language Pathology (PRAXIS) examination in order to be licensed.

3. PROFESSIONAL SERVICES:

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

4. COMPLIANCE COSTS:

The proposed amendment does not impose any additional compliance costs on school districts or BOCES.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

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

6. MINIMIZING ADVERSE IMPACT:

The proposed amendment does not impose any additional compliance requirements or costs on school districts or BOCES. The proposed amendment is necessary to implement policy of the Board of Regents relating to certification examinations for certain teachers and school building leaders and reflects the recommendations and suggestions made as a result of meetings with the field and the assessment developers.

At their December 2012 meeting, the Board of Regents adopted regulations regarding requirements for new certification exams for teachers and school building leaders. As a result of meetings with the field and the assessment developers, a series of recommendations and suggestions have been made regarding several of the assessments specific to certain certification areas and titles. The proposed amendment reflects these technical changes that should be made to ensure that all teacher and leader candidates are prepared to take on their job responsibilities once hired.

7. LOCAL GOVERNMENT PARTICIPATION:

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

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

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

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

As a result of meetings with the field and the assessment developers, a series of recommendations and suggestions have been made regarding several of the assessments specific to certain certification areas and titles. The changes below reflect these technical changes that should be made to ensure that all teacher and leader candidates are prepared to take on their job responsibilities once hired.

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However, given the vast selection of specified CTE subject areas (there are 40 specific certification areas) available within the CTE field, combined with relatively low rates of certificates issued, the creation of individual edTPAs for each specific subject area was not practical. The Department is currently working to develop a general performance assessment for general CTE certificate areas or clusters, consistent with National Standards, that would apply to all those seeking a CTE certificate in New York. In addition, since the majority of individuals seeking to obtain CTE certification come directly from the field rather than an education program, requiring the edTPA for initial certification can act as a barrier to job entry, given that these individuals do not have access to a classroom prior to obtaining certification.

Therefore, the proposed amendment eliminates the requirement for candidates to complete the edTPA for initial certification and instead requires a performance assessment for CTE teachers seeking their professional certification when it becomes available.

Requirements for School District Leader Candidates

Candidates who apply for School District Leader certification are currently required to successfully complete a New York State educational leadership program and achieve a satisfactory level of performance on the school district leadership examination.

However, the Department believes that school district leaders should possess the skills and knowledge needed to adequately meet the diverse needs of students and to ensure that all students are successful. In addition, it is important for school district leaders to be aware of, and understand, the benefits of fostering strong home-school relationships, specifically as it relates to academic success. It is essential for school district leaders to understand the rights and responsibilities of various stakeholders, such as teachers, children, and parents, in a variety of situations and also have the ability to lead and direct the work at the school building level. Therefore, the proposed amendment requires a candidate who applies for a professional School District Leader certificate on or after May 1, 2015 to pass the Educating All Students examination.

In addition, any candidate applying for a School District Leader certificate under the endorsement pathway on or after October 2, 2013, shall achieve a satisfactory level of performance on the School District Leader examination. Candidates applying for a School District Leader certificate on or after May 1, 2014 or candidates applying for certification on or before April 30, 2014 but who do not meet all the requirements for a professional certificate on April 30, 2014, shall submit evidence of having achieved a satisfactory level of performance on the Educating All Students examination.

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An Education Technology Specialist's role in a school is to help train and support the work of the teacher. He/she is expected to help the teacher learn how to employ technology in support of student learning. He/she is not expected to engage with students directly. As a result, candidates for the Education Technology Specialist must complete a practicum, rather than student teaching. The proposed amendment removes the edTPA requirement for these candidates.

Requirements for Initial certification of Speech and Language Disabilities

In December, regulations were amended to require that candidates applying for certification on or after May 1, 2014, or candidates who applied for certification on or before April 30, 2014, but did not meet all of the requirements for an initial certificate on or before April 30, 2014, pass the edTPA, EAS, and the ALST. These candidates are required to pass the Speech and Language Pathology (PRAXIS) examination which is also required for a professional license as a Speech and Language Pathologist.

Because the role of these teachers is often that of a related services position, rather than one in which they deliver content, it is unlikely that their student teaching will be in a role in which they instruct a class. Therefore, the proposed amendment removes the edTPA requirement for these candidates.

However, pursuant to Section 80-3.9 of the Commissioner's Regulations, speech-language pathologists licensed under Title VIII who apply for an initial certificate as a teacher of speech and language disabilities (all grades) are not subject to the examination requirements for such teachers. These candidates are required to have a passing score on the Speech and Language Pathology (PRAXIS) examination in order to be licensed.

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

3. COSTS:

The proposed amendment does not impose any costs on entities in rural areas.

4. MINIMIZING ADVERSE IMPACT:

The proposed amendment does not impose any additional compliance requirements or costs on school districts or BOCES. The proposed amendment is necessary to implement the policy of the Board of Regents relating to certification examinations for certain teachers and school building leaders and reflects the recommendations and suggestions made as a result of meetings with the field and the assessment developers.

At their December 2012 meeting, the Board of Regents adopted regulations regarding requirements for new certification exams for teachers and school building leaders. As a result of meetings with the field and the assessment developers, a series of recommendations and suggestions have been made regarding several of the assessments specific to certain certification areas and titles. The proposed amendment reflects these technical changes that should be made to ensure that all teacher and leader candidates are prepared to take on their job responsibilities once hired.

In order to implement Regents policy, the certification examination requirements must be of uniform applicability throughout the State, including those candidates residing in rural areas. Therefore, it was not possible to establish different requirements for entities in rural areas, or to exempt them from the amendment's provisions.

5. RURAL AREA PARTICIPATION:

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

Job Impact Statement

The purpose of the proposed amendment is to adopt technical amendments to the Commissioner's Regulations relating to certification examination requirements for certain teachers and school building leaders. Because it is evident from the nature of the proposed amendment that it will have no impact on the number of jobs or employment opportunities in New York State, no further steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Regents Research Paper

I.D. No. EDU-28-13-00011-P

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

Proposed Action: Addition of section 100.5(a)(9) to Title 8 NYCRR.

Statutory authority: Education Law, sections 101 (not subdivided), 207 (not subdivided), 208 (not subdivided), 209 (not subdivided), 305(1) and (2), 308 (not subdivided), 309 (not subdivided) and 3204(3)

Subject: Regents research paper.

Purpose: Establish completion of a Regents Research Paper as a requirement for a Regents or Local Diploma.

Text of proposed rule: Subdivision (a) of section 100.5 of the Regulations of the Commissioner of Education is amended, effective October 2, 2013, as follows:

(a) General requirements for a Regents or a local high school diploma.

Except as provided in paragraph (d)(6) of this section, the following general requirements shall apply with respect to a Regents or local high school diploma. Requirements for a diploma apply to students depending upon the year in which they first enter grade nine. A student who takes more than four years to earn a diploma is subject to the requirements that apply to the year that student first entered grade nine. Students who take less than four years to complete their diploma requirements are subject to the provisions of subdivision (e) of this section relating to accelerated graduation.

- (1) . . .
- (2) . . .
- (3) . . .
- (4) . . .
- (5) . . .
- (6) . . .
- (7) . . .
- (8) . . .

(9) *All students first entering grade nine in September 2013 and thereafter, shall satisfactorily complete a Regents Research Paper in a format as prescribed by the commissioner including, but not limited to, the following:*

(i) *The Regents Research Paper shall be submitted, in the English language, as a word-processed document consistent with the publication guidelines of the discipline pertaining to the subject of the paper.*

(ii) *The Regents Research Paper shall cite a minimum of four informational texts as sources gathered from multiple authoritative print and/or digital sources. Literature texts, while admissible as sources, shall not be counted toward this minimum source requirement.*

(iii) *The Regents Research Paper shall be a minimum of five typed pages (approximately 1,250 words of text), exclusive of works cited, graphics, and cover page.*

(iv) *The final student draft of the Regents Research Paper shall be accompanied by a procedural checklist that meets State requirements.*

(v) *Hand-written papers and other accommodations may be allowed where appropriate (e.g., for students with disabilities whose individualized education program or students whose plan under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. section 794) specifies such accommodation) or in extenuating circumstances, as determined by the principal.*

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

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

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

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

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

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

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

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

Education Law section 308 authorizes the Commissioner to enforce and give effect to any provision in the Education Law or in any other general or special law pertaining to the school system of the State or any rule or direction of the Regents.

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

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

2. LEGISLATIVE OBJECTIVES:

The proposed rule is consistent with the authority conferred by the above statutes and is necessary to implement policy enacted by the Board of Regents relating to State learning standards, State assessments, graduation and diploma requirements, and higher levels of student achievement.

3. NEEDS AND BENEFITS:

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.

To ensure implementation of the CCLS in line with the Regents Reform Agenda and the State's RTTT application, all students first entering Grade 9 in the 2013-2014 school year and thereafter must be provided with a high school English course of study aligned to the CCLS and pass the new Regents Exam in ELA (Common Core) to meet graduation requirements.

The proposed addition of section 100.5(a)(9) of the Commissioner's regulations would establish a Regents Research Paper requirement as an opportunity for students to demonstrate necessary college and career readiness skills and CCLS writing standards that cannot be measured in an examination setting due to time constraints. The rule would require the completion of a Regents Research Paper for graduation with a Regents or local high school diploma, beginning with those students who first enter grade 9 in September 2013 and thereafter, and would establish the following minimum standards for the Regents Research Paper:

1) The Regents Research Paper shall be submitted, in the English language, as a word-processed document consistent with the publication guidelines of the discipline pertaining to the subject of the paper.

2) The Regents Research Paper shall cite a minimum of four informational texts as sources gathered from multiple authoritative print and/or digital sources. Literature texts, while admissible as sources, shall not be counted toward this minimum source requirement.

3) The Regents Research Paper shall be a minimum of five typed pages (approximately 1,250 words of text), exclusive of works cited, graphics, and cover page.

4) The final student draft of the Regents Research Paper shall be accompanied by a procedural checklist that meets State requirements.

5) Hand-written papers and other accommodations may be allowed where appropriate (e.g., for students with disabilities whose individualized education program or students whose plan under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. section 794) specifies such accommodation) or in extenuating circumstances, as determined by the principal.

4. COSTS:

(a) Costs to State government: None.

(b) Costs to local government: None.

(c) Costs to private regulated parties: None.

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

The proposed rule would require the completion of a Regents Research Paper for graduation with a Regents or local high school diploma, beginning with those students who first enter grade 9 in September 2013 and thereafter. The rule does not impose any direct costs on school districts. Instruction and guidance in the research process would occur in English class to address the CCLS. The educator(s) within the school responsible for coordination, logistics, and scoring of the paper could be determined locally by the school district or building principal. It is anticipated that any indirect costs associated with these actions will be minimal and capable of being absorbed using existing school resources.

5. LOCAL GOVERNMENT MANDATES:

The proposed rule would require the completion of a Regents Research Paper for graduation with a Regents or local high school diploma, beginning with those students who first enter grade 9 in September 2013 and thereafter. The proposed rule does not impose any additional program, service, duty or responsibility upon school districts, charter schools or other local governments. Instruction and guidance in the research process would occur in English class to address the CCLS. The educator(s) within the school responsible for coordination, logistics, and scoring of the paper could be determined locally by the school district or building principal.

6. PAPERWORK:

The proposed rule establishes the following minimum standards for the Regents Research Paper:

1. The Regents Research Paper shall be submitted, in the English language, as a word-processed document consistent with the publication guidelines of the discipline pertaining to the subject of the paper.

2. The Regents Research Paper shall cite a minimum of four informa-

tional texts as sources gathered from multiple authoritative print and/or digital sources. Literature texts, while admissible as sources, shall not be counted toward this minimum source requirement.

3. The Regents Research Paper shall be a minimum of five typed pages (approximately 1,250 words of text), exclusive of works cited, graphics, and cover page.

4. The final student draft of the Regents Research Paper shall be accompanied by a procedural checklist that meets State requirements.

5. Hand-written papers and other accommodations may be allowed where appropriate (e.g., for students with disabilities whose individualized education program or students whose plan under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. section 794) specifies such accommodation) or in extenuating circumstances, as determined by the principal.

7. DUPLICATION:

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

8. ALTERNATIVES:

The proposed rule would require completion of a Regents Research Paper for graduation with a Regents or local high school diploma, beginning with those students who first enter grade 9 in September 2013.

The Department considered an alternate proposal that would require satisfactory completion of a Regents Research Paper as a prerequisite for admission to the Regents Examination in English Language Arts (ELA) (Common Core), beginning with the January 2015 test administration. However, this proposal was rejected because it was seen as too restrictive, in that it would limit the Research Paper to the ELA curriculum.

The proposed rule would allow for application of the Research Paper to other subject areas in the high school curriculum. While it is expected that instruction and guidance in the research process would occur in English class to address the CCLS, the educator(s) within the school responsible for coordination, logistics, and scoring of the paper could be determined locally by the school district or building principal. The Department will encourage schools to identify disciplines through which authentic research and writing is occurring and opportunities for teachers to share the work of instruction, implementation, and assessment. The Department strongly recommends that collaboration take place among teachers across disciplines, school library media specialists, public libraries, and community partners, to ensure equity in instruction and assessment. In addition, the paper can be used for other course purposes (e.g., as one factor in a student's course grade).

9. FEDERAL STANDARDS:

There are no related federal standards.

10. COMPLIANCE SCHEDULE:

It is anticipated regulated parties will be able to achieve compliance with the proposed rule by its effective date. The Research Paper will be a graduation requirement for a Regents or local diploma that is applicable to students who first enter grade 9 in September 2013 and thereafter. Therefore, Research Papers will not need to be completed until at least four years from September 2013. Furthermore, the Department intends to take steps to provide sufficient notice of the proposed rule to ensure that school districts and students are made aware of the rule's requirements so they may timely prepare for and implement this requirement. The Department will also take steps to share a variety of resources to school districts to provide guidance with implementation.

Regulatory Flexibility Analysis

Small Businesses:

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

Local Government:

1. EFFECT OF RULE:

The proposed rule applies to each of the 695 public school districts in the State, and to charter schools that are authorized to issue Regents diplomas with respect to State assessments and high school graduation and diploma requirements. At present, there are 34 charter schools authorized to issue Regents diplomas.

2. COMPLIANCE REQUIREMENTS:

The proposed rule would require the completion of a Regents Research Paper for graduation with a Regents or local high school diploma, beginning with those students who first enter grade 9 in September 2013 and thereafter. The proposed rule does not impose any compliance requirements upon school districts, charter schools or other local governments. Instruction and guidance in the research process would occur in English class to address the CCLS. The educator(s) within the school responsible for coordination, logistics, and scoring of the paper could be determined locally by the school district or building principal.

3. PROFESSIONAL SERVICES:

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

4. COMPLIANCE COSTS:

The proposed rule would require the completion of a Regents Research Paper for graduation with a Regents or local high school diploma, beginning with those students who first enter grade 9 in September 2013 and thereafter. The rule does not impose any direct costs on school districts. Instruction and guidance in the research process would occur in English class to address the CCLS. The educator(s) within the school responsible for coordination, logistics, and scoring of the paper could be determined locally by the school district or building principal. It is anticipated that any indirect costs associated with these actions will be minimal and capable of being absorbed using existing school resources.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The proposed rule does not impose any new technological requirements on school districts or charter schools. Economic feasibility is addressed in the Costs section above.

6. MINIMIZING ADVERSE IMPACT:

The proposed amendment does not impose any additional costs or compliance requirements on school districts or charter schools. Instruction and guidance in the research process would occur in English class to address the CCLS. The educator(s) within the school responsible for coordination, logistics, and scoring of the paper could be determined locally by the school district or building principal.

The proposed amendment is necessary to ensure implementation of the Common Core Learning Standards (CCLS) adopted by the Board of Regents in January 2011. To ensure implementation of the CCLS in line with the Regents Reform Agenda and the State's approved Race to the Top (RTTT) application, the proposed rule requires that all students entering grade nine in September 2013 and thereafter must complete a Regents Research Paper for graduation with a Regents or local high school diploma. Because the Regents policy upon which the proposed rule is based applies to all school districts in the State and to charter schools authorized to issue Regents diplomas, it is not possible to establish differing compliance or reporting requirements or timetables or to exempt school districts or charter schools from coverage by the proposed rule.

The Department intends to take steps to provide sufficient notice of the proposed rule to ensure that school districts and students are made aware of the rule's requirements so they may timely prepare for and implement this requirement. The Department will also take steps to share a variety of resources to school districts to provide guidance with implementation.

7. LOCAL GOVERNMENT PARTICIPATION:

Copies of the proposed rule 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 is necessary to implement long-range Regents policy providing for a transition to the Common Core Learning Standards adopted at the January 2011 Regents meeting. The Research Paper will be a graduation requirement for a Regents or local diploma that is applicable to students who first enter grade 9 in September 2013 and thereafter. Therefore, Research Papers will not need to be completed until at least four years from September 2013. Accordingly, there is no need for a shorter review period. To ensure implementation of the Common Core State Standards in line with the Regents Reform Agenda and the State's approved Race to the Top (RTTT) application, all students first entering Grade 9 in September 2013 and thereafter must complete a Regents Research Paper for graduation with a Regents or local high school diploma.

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 rule applies to all school districts in the State, including those located in the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square mile or less. The proposed rule also applies to charter schools in such areas, to the extent they offer instruction in the high school grades and issue Regents diplomas. At present, there is one charter school located in a rural area that is authorized to issue Regents diplomas.

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

The proposed rule would require the completion of a Regents Research Paper for graduation with a Regents or local high school diploma, beginning with those students who first enter grade 9 in September 2013 and thereafter. The proposed rule does not impose any compliance requirements upon schools in rural areas. Instruction and guidance in the research process would occur in English class to address the CCLS. The educator(s) within the school responsible for coordination, logistics, and scoring of the paper could be determined locally by the school district or building principal.

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

3. COMPLIANCE COSTS:

The proposed rule would require the completion of a Regents Research Paper for graduation with a Regents or local high school diploma, beginning with those students who first enter grade 9 in September 2013 and thereafter. The rule does not impose any direct costs on schools in rural areas. Instruction and guidance in the research process would occur in English class to address the CCLS. The educator(s) within the school responsible for coordination, logistics, and scoring of the paper could be determined locally by the school district or building principal. It is anticipated that any indirect costs associated with these actions will be minimal and capable of being absorbed using existing school resources.

4. MINIMIZING ADVERSE IMPACT:

The proposed amendment does not impose any additional costs or compliance requirements on schools in rural areas. Instruction and guidance in the research process would occur in English class to address the CCLS. The educator(s) within the school responsible for coordination, logistics, and scoring of the paper could be determined locally by the school district or building principal.

The proposed amendment is necessary to ensure implementation of the Common Core Learning Standards (CCLS) adopted by the Board of Regents in January 2011. To ensure implementation of the CCLS in line with the Regents Reform Agenda and the State's approved Race to the Top (RTTT) application, the proposed rule requires that all students entering grade nine in September 2013 and thereafter must complete a Regents Research Paper for graduation with a Regents or local high school diploma. Because the Regents policy upon which the proposed rule is based applies to all school districts in the State and to charter schools authorized to issue Regents diplomas, it is not possible to establish differing compliance or reporting requirements or timetables or to exempt schools in rural areas from coverage by the proposed amendment.

The Department intends to take steps to provide sufficient notice of the proposed rule to ensure that school districts and students are made aware of the rule's requirements so they may timely prepare for and implement this requirement. The Department will also take steps to share a variety of resources to school districts to provide guidance with implementation.

5. RURAL AREA PARTICIPATION:

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

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 is necessary to implement long-range Regents policy providing for a transition to the Common Core Learning Standards adopted at the January 2011 Regents meeting. The Research Paper will be a graduation requirement for a Regents or local diploma that is applicable to students who first enter grade 9 in September 2013 and thereafter. Therefore, Research Papers will not need to be completed until at least four years from September 2013. Accordingly, there is no need for a shorter review period. To ensure implementation of the Common Core State Standards in line with the Regents Reform Agenda and the State's approved Race to the Top (RTTT) application, all students first entering Grade 9 in September 2013 and thereafter must complete a Regents Research Paper for graduation with a Regents or local high school diploma.

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 rule relates to State learning standards, State assessments, graduation and diploma requirements, and higher levels of student achievement, and will not have an adverse impact on jobs or employment

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

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

Special Education Space Plans

I.D. No. EDU-28-13-00012-P

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

Proposed Action: Amendment of sections 155.2, 155.12 and 200.2 of Title 8 NYCRR.

Statutory authority: Education Law, sections 101 (not subdivided), 207 (not subdivided), 305(1), (2) and (20), 308 (not subdivided), 309 (not subdivided), 2215(17), 4402(2), 4403(3); and L. 2013, ch. 57, sections 2-a and 2-b

Subject: Special education space plans.

Purpose: Conform the Commissioner's Regulations to L. 2013, ch. 57, sections 2-a and 2-b.

Text of proposed rule: 1. Paragraph (2) of subdivision (b) of 155.2 of the Regulations of the Commissioner of Education is amended, effective October 2, 2013 as follows:

(2) Plans and specifications for portions of facilities which require approval by other departments of the State shall be approved by the appropriate agencies having jurisdiction as a condition of commissioner's approval of plans and specifications of a facility. All plans and specifications for the creation of new instructional space must be accompanied by commissioner approval, on a form prescribed by the commissioner, that ensures that such plans and specifications are consistent with the [region's special education space requirements plan developed pursuant to section 200.2(g) of this Title] *needs of participating students with disabilities for placement in the least restrictive environment and for the stability and continuity of their program placements.*

2. Paragraph (6) of subdivision (b) of section 155.12 of the Regulations of the Commissioner of Education is amended, effective October 2, 2013 as follows:

(6) for a district seeking aid for lease expense pursuant to subdivision 6 of section 3602 of the Education Law, a certification by the superintendent of schools that:

(i) the leased school or facility meets requirements for access by individuals with disabilities to both facilities and programs by complying with section 200.2 of this Title [and is consistent with the special education space requirements plan developed pursuant to section 200.2(g) of this Title]; and

(ii) . . .

3. Paragraph (2) of subdivision (c) of section 200.2 of the Regulations of the Commissioner of Education is amended, effective October 2, 2013 as follows:

(2) Each such plan shall include, but need not be limited to, the following:

(i) . . .

(ii) . . .

(iii) . . .

(iv) . . .

(v) . . .

(vi) . . .

(vii) . . .

(viii) the date on which such plan was adopted by the board of education[; and].

[(ix) a description of how the district plan is consistent with the special education space requirements plan developed pursuant to subdivision (g) of this section.]

4. Paragraph (3) of subdivision (c) of section 200.2 of the Regulations of the Commissioner of Education is amended, effective October 2, 2013, as follows:

(3) Any change to the allocation of space for special education programs [which is not consistent with the regional special education space requirements plan developed pursuant to subdivision (g) of this section] shall be made [pursuant to the provisions of paragraph (g)(5) of this section] *in consideration of the needs of participating students with disabilities for placement in the least restrictive environment and for the stability and continuity of their program placements.*

5. Subdivision (g) of section 200.2 of the Regulations of the Commissioner of Education is repealed, effective October 2, 2013.

6. A new subdivision (g) of section 200.2 of the Regulations of the Commissioner of Education is added, effective October 2, 2013 as follows:

(g) Facilities for special education programs. The district superintendent of schools shall determine the adequacy and appropriateness of the facilities space available to house special education programs in the geographic area served by the board of cooperative educational services, consistent with the least restrictive environment requirement and to ensure the stability and continuity of program placements for students with disabilities, including procedures that ensure that special education programs and services located in appropriate facilities will not be relocated without adequate consideration of the needs of participating students with disabilities.

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

Data, views or arguments may be submitted to: James P. DeLorenzo, Assistant Commissioner, State Education Department, Office of Special Education, State Education Building, Room 309, 89 Washington Avenue, Albany, NY 12234, (518) 402-3353, email: spedpubliccomment@mail.nysed.gov

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

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

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

Education Law section 305(1) and (2) provide the Commissioner, as chief executive officer of the State education system, with general supervision over schools and institutions subject to the provisions of education law, and responsibility for executing Regents policies. Section 305(20) authorizes the Commissioner with such powers and duties as are charged by the Regents.

Education Law section 308 authorizes the Commissioner to enforce and give effect to any provision in the Education Law or in any other general or special law pertaining to the school system of the State or any rule or direction of the Regents.

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

Education Law section 1950 establishes boards of cooperative educational services.

Education Law section 2215 establishes the general powers and duties of district superintendents.

Education Law 4402 establishes districts' duties regarding education of students with disabilities.

Education Law 4403 outlines Department's and district's responsibilities regarding special education programs/services to students with disabilities. Section 4403(3) authorizes Department to adopt regulations as Commissioner deems in their best interests.

Section 2-a of Chapter 57 of the Laws of 2013 added a new Education Law section 2215(17) to require the district superintendent of a board of cooperative educational services (BOCES) to determine the adequacy and appropriateness of the facilities space available to house special education programs in the geographic area served by the board of cooperative educational services, consistent with the least restrictive environment requirement and to ensure the stability and continuity of program placements for students with disabilities, including procedures that ensure that special education programs and services located in appropriate facilities will not be relocated without adequate consideration of the needs of participating students with disabilities.

Section 2-b of Chapter 57 repealed Education Law section 1950(17), which required every BOCES to submit a special education facilities plan.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment is necessary to conform the Commissioner's Regulations to sections 2-a and 2-b of Chapter 57 of the Laws of 2013.

3. NEEDS AND BENEFITS:

The proposed amendment is necessary to conform the Regulations of the Commissioner of Education to be consistent with a recent change to State law (L. 2013, Ch. 57, § 2-a and 2-b), which repealed the requirement for every board of cooperative educational services (BOCES) to submit a special education space plan to the Commissioner, and requires

the district superintendent of each BOCES to determine the adequacy and appropriateness of the facilities space available to house special education programs in the geographic area served by the (BOCES). The facilities space must be consistent with the least restrictive environment requirement and ensure the stability and continuity of program placements for students with disabilities, including procedures that ensure that special education programs and services located in appropriate facilities will not be relocated without adequate consideration of the needs of participating students with disabilities.

4. COSTS:

- a. Costs to State government: None.
- b. Costs to local governments: None.
- c. Costs to regulated parties: None.
- d. Costs to the State Education Department of implementation and continuing compliance: None.

The proposed amendment is necessary to conform the Commissioner's Regulations to sections 2-a and 2-b of Chapter 57 of the Laws of 2013, and does not impose any additional costs on the State, local governments, private regulated parties or the State Education Department. Consistent with the statute, the proposed amendment will eliminate costs to the State, to BOCES, and to local school district and approved private schools that are associated with participation in space plan meetings, and the preparation and submission of special education space plans.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment is necessary to conform the Commissioner's Regulations to sections 2-a and 2-b of Chapter 57 of the Laws of 2013 and does not impose any additional program, service, duty or responsibility upon local governments. Consistent with the statute, the proposed amendment will lessen administrative burdens to the State, to BOCES, and to local school district and approved private schools that are associated with participation in space plan meetings, and the preparation and submission of special education space plans.

Section 155.2, as amended, removes the reference to the special education space requirements plan and establishes that specifications for the creation of new instructional space must be consistent with the needs for placement in the least restrictive environment and for the stability and continuity of program placements for participating students with disabilities.

Section 155.12, as amended, removes the reference to the special education space requirements plan.

Section 200.2, as amended, removes the reference to the special education space requirements plan and establishes that it is the duty of the district superintendent to determine the adequacy and appropriateness of the facilities space available to house special education programs in the geographic area served by the (BOCES), consistent with the needs for placement in the least restrictive environment and for the stability and continuity of program placements for participating students with disabilities.

6. PAPERWORK:

The proposed amendment conforms the Commissioner's Regulations to sections 2-a and 2-b of Chapter 57 of the Laws of 2013 and does not impose any additional paperwork requirements. Consistent with the statute, the proposed amendment will lessen paperwork burdens to the State and BOCES by eliminating a requirement that each BOCES submit a special education space requirements plan to the Commissioner every five years for the purpose of determining the need for additional facilities space for all special education programs in the geographic area served by the board of cooperative educational services.

7. DUPLICATION:

The proposed amendment will not duplicate, overlap or conflict with any other State or federal statute or regulation, but will ensure consistency with recent changes to State statute.

8. ALTERNATIVES:

Since the proposed amendment is necessary to conform the Commissioner's Regulations to sections 2-a and 2-b of Chapter 57 of the Laws of 2013, there are no significant alternatives and none were considered.

9. FEDERAL STANDARDS:

The proposed amendment does not exceed any minimum standards of the federal government for the same or similar subject areas and is not required by federal law or regulations, but will ensure consistency with recent changes to State statute.

10. COMPLIANCE SCHEDULE:

The proposed amendment merely conforms the Commissioner's Regulations to a recent statutory change, and does not impose any compliance requirements or costs. It is anticipated that regulated parties will be able to achieve compliance with the proposed amendment by its effective date.

Regulatory Flexibility Analysis

Small Businesses:

The proposed amendment is necessary to conform the Regulations of

the Commissioner of Education to be consistent with a recent change to State law (L. 2013, Ch. 57, § 2-a and 2-b), which repealed the requirement for every board of cooperative educational services (BOCES) to submit a special education space plan to the Commissioner, and requires the district superintendent of each BOCES to determine the adequacy and appropriateness of the facilities space available to house special education programs in the geographic area served by the (BOCES), consistent with the least restrictive environment requirement and to ensure the stability and continuity of program placements for students with disabilities. The proposed amendment does not impose any adverse economic impact, reporting, recordkeeping 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 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.

Local Governments:

1. EFFECT OF RULE:

The proposed amendment applies to each of the 695 public school districts and 37 boards of cooperative educational services (BOCES) in the State.

2. COMPLIANCE REQUIREMENTS:

The proposed amendment is necessary to conform the Commissioner's Regulations to sections 2-a and 2-b of Chapter 57 of the Laws of 2013 and does not impose any additional compliance requirements on local governments. Consistent with the statute, the proposed amendment provides mandate relief to BOCES by eliminating the requirement that each BOCES submit a special education space requirements plan to the Commissioner every five years for the purpose of determining the need for additional facilities space for all special education programs in the geographic area served by the board of cooperative educational services. The repeal of the BOCES special space requirements plan will lessen administrative burdens to the State, to BOCES, and to local school district and approved private schools associated with participation in space plan meetings, and the preparation and submission of special education space plans.

3. PROFESSIONAL SERVICES:

The proposed amendment does not impose any additional professional service requirements on local governments.

4. COMPLIANCE COSTS:

The proposed amendment is necessary to conform the Commissioner's Regulations to sections 2-a and 2-b of Chapter 57 of the Laws of 2013, and does not impose any additional costs on local governments. Consistent with the statute, the proposed amendment will eliminate costs to BOCES and local school districts that are associated with participation in space plan meetings, and the preparation and submission of special education space plans.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The proposed amendment removes references to special education space requirements plans and establishes that it is the duty of the district superintendent to determine the adequacy and appropriateness of the facilities space available to house special education programs in the geographic area served by the (BOCES), in order to ensure consistency with recent changes in State statute, and does not impose any new technological requirements or costs on local governments.

6. MINIMIZING ADVERSE IMPACT:

The proposed amendment is necessary to conform the Commissioner's Regulations to sections 2-a and 2-b of Chapter 57 of the Laws of 2013, and does not impose any additional costs or compliance requirements on the State, local governments, private regulated parties or the State Education Department. Consistent with the statute, the proposed amendment will eliminate costs and reduce administrative burdens to BOCES and local school districts that are associated with participation in space plan meetings, and the preparation and submission of special education space plans.

Sections 155.2, as amended, removes the reference to the special education space requirements plan and establishes that specifications for the creation of new instructional space must be consistent with the needs for placement in the least restrictive environment and for the stability and continuity of program placements for participating students with disabilities.

Section 155.12, as amended, removes the reference to the special education space requirements plan.

Section 200.2, as amended, removes the reference to the special education space requirements plan and establishes that it is the duty of the district superintendent to determine the adequacy and appropriateness of the facilities space available to house special education programs in the geographic area served by the (BOCES), consistent with the needs for placement in the least restrictive environment and for the stability and continuity of program placements for participating students with disabilities.

The Department complies with a federal requirement to collect and publicly report on each school district's least restrictive environment placements for students with disabilities. This reporting requirement can ensure that each school district provides appropriate educational space for students with disabilities in the least restrictive environment, which is the intended purpose of special education space planning requirements.

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.

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 conforms the Commissioner's Regulations to statutory requirements under sections 2-a and 2-b of Chapter 57 of the Laws of 2012 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.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBERS OF RURAL AREAS:

The proposed amendment will apply to all public school districts and boards of cooperative educational services (BOCES) in the State, including those located in the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with population density of 150 per square miles or less.

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

The proposed amendment is necessary to conform the Commissioner's Regulations to sections 2-a and 2-b of Chapter 57 of the Laws of 2013 and does not impose any additional compliance requirements or professional services requirements on entities in rural areas. Consistent with the statute, the proposed amendment provides mandate relief to BOCES by eliminating the requirement that each BOCES submit a special education space requirements plan to the Commissioner every five years for the purpose of determining the need for additional facilities space for all special education programs in the geographic area served by the board of cooperative educational services. The repeal of the BOCES special space requirements plan will lessen administrative burdens to the State, to BOCES, and to local school district and approved private schools associated with participation in space plan meetings, and the preparation and submission of special education space plans.

3. COSTS:

The proposed amendment is necessary to conform the Commissioner's Regulations to sections 2-a and 2-b of Chapter 57 of the Laws of 2013, and does not impose any additional costs on entities in rural areas. Consistent with the statute, the proposed amendment will eliminate costs to BOCES and local school districts that are associated with participation in space plan meetings, and the preparation and submission of special education space plans.

4. MINIMIZING ADVERSE IMPACT:

The proposed amendment is necessary to conform the Commissioner's Regulations to sections 2-a and 2-b of Chapter 57 of the Laws of 2013, and does not impose any compliance requirements or costs on entities in rural areas. Consistent with the statute, the proposed amendment will eliminate costs and reduce administrative burdens to BOCES and local school districts that are associated with participation in space plan meetings, and the preparation and submission of special education space plans.

Section 155.2, as amended, removes the reference to the special education space requirements plan and establishes that specifications for the creation of new instructional space must be consistent with the needs for placement in the least restrictive environment and for the stability and continuity of program placements for participating students with disabilities.

Section 155.12, as amended, removes the reference to the special education space requirements plan.

Section 200.2 is amended to repeal the requirements for a special education space plan and add to the duties of the district superintendent to determine the adequacy and appropriateness of the facilities space available to house special education programs in the geographic area served by the (BOCES), consistent with the needs for placement in the least restrictive environment and for the stability and continuity of program placements for participating students with disabilities.

The statute which the proposed amendment implements applies to

BOCES and school districts throughout the State, including those in rural areas. Therefore, it was not possible to establish different requirements for entities in rural areas, or to exempt them from the amendment's provisions.

5. RURAL AREA PARTICIPATION:

The proposed amendment was submitted for comment to the Department's Rural Education Advisory Committee, which includes representatives of school districts 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 conforms the Commissioner's Regulations to statutory requirements under sections 2-a and 2-b of Chapter 57 of the Laws of 2012 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 Regulations of the Commissioner of Education to be consistent with a recent change to State law (L. 2013, Ch. 57, §§ 2-a and 2-b), which repealed the requirement for every board of cooperative educational services (BOCES) to submit a special education space plan to the Commissioner, and requires the district superintendent of each BOCES must determine the adequacy and appropriateness of the facilities space available to house special education programs in the geographic area served by the BOCES, consistent with the least restrictive environment requirement and to ensure the stability and continuity of program placements for students with disabilities. The proposed amendment will not have a substantial impact on jobs and employment opportunities. Because it is evident from the nature of the amendment that it will not affect job and employment opportunities, no affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required, and one has not been prepared.

Department of Environmental Conservation

PROPOSED RULE MAKING HEARING(S) SCHEDULED

CO₂ Budget Trading Program

I.D. No. ENV-28-13-00025-P

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

Proposed Action: Amendment of Parts 200 and 242 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 1-0101, 1-0303, 3-0301, 19-0103, 19-0105, 19-0107, 19-0301, 19-0303, 19-0305, 71-2103 and 71-2105

Subject: CO₂ Budget Trading Program.

Purpose: To lower the emissions cap established under Part 242 starting in 2014, declining by 2.5 percent per year through 2020.

Public hearing(s) will be held at: 2:00 p.m., Aug. 26, 2013 at Department of Environmental Conservation, 625 Broadway, Public Assembly Rm. 129A, Albany, NY; 2:00 p.m., Aug. 27, 2013 at Department of Environmental Conservation, Region 8 Office, Conference Rm., 6274 E. Avon-Lima Rd. (Rtes. 5 and 20), Avon, NY; and 2:00 p.m., Aug. 29, 2013 at Department of Environmental Conservation, Region 2 Office, One Hunters Point Plaza, 47-40 21st St., Rm. 834, Long Island City, NY.

Interpreter Service: Interpreter services will be made available to hearing impaired persons, at no charge, upon written request submitted within reasonable time prior to the scheduled public hearing. The written request must be addressed to the agency representative designated in the paragraph below.

Accessibility: All public hearings have been scheduled at places reasonably accessible to persons with a mobility impairment.

Substance of proposed rule (Full text is posted at the following State website: www.dec.ny.gov): The New York State CO₂ Budget Trading Program, 6 NYCRR Part 242 (CO₂ Budget Trading Program or Part 242), is designed to stabilize and then reduce anthropogenic emissions of carbon dioxide (CO₂), a greenhouse gas (GHG), from CO₂ budget sources in an economically efficient manner. The proposed revisions to Part 242, including most notably the proposed reduction in the annual CO₂ emission budgets, are designed to further these objectives.

While the proposed revisions to Part 242 maintain annual base budgets for CO₂, the most significant proposed revision to Part 242 is the approximately 45 percent reduction in the amount of such annual base budgets. In particular, the proposed revisions to Section 242-5.1 establish that, for allocation year 2014, the Statewide CO₂ Budget Trading Program base budget will be reduced from 64,310,805 tons to 35,228,822 tons¹. The annual base budgets under Part 242 then decrease thereafter, as follows: to 34,348,101 tons in 2015, to 33,489,399 tons in 2016, to 32,837,536 tons in 2017, to 32,016,597 tons in 2018, to 31,216,182 tons in 2019, and to 30,435,778 tons for 2020. Each year thereafter, the annual CO₂ Budget Trading Program base budget will remain at 30,435,778 tons.

In addition to the proposed reduction in the annual CO₂ Budget Trading Program base budgets, the proposed revisions to Part 242 also include a new Section 242-5.2 for annual CO₂ Budget Trading Program adjusted budgets. The CO₂ Budget Trading Program adjusted budget is defined as the annual amount of CO₂ allowances allocated each year. In order to account for the existing private bank of CO₂ emissions allowances already acquired, and in order to help create a binding cap, the proposed revisions to Part 242 provides for two distinct budget adjustments. The First Control Period Interim Adjustment for Banked Allowances will reduce the budget for 100 percent of the first control period private bank of allowances (vintages 2009, 2010, and 2011) held by market participants after the first control period. The first adjustment will reduce New York's budget (the annual cap) by this amount, multiplied by New York's portion of the RGGI regional cap (approximately 38.93 percent), in each allocation year over the seven year period 2014-2020. The Second Control Period Interim Adjustment for Banked Allowances will reduce the budget for 100 percent of the surplus 2012 and 2013 vintage allowances held by market participants as of the end of 2013. The second adjustment will reduce New York's budget (the annual cap) by this amount, multiplied by New York's portion of the RGGI regional cap (approximately 38.93 percent) in each allocation year over the six year period 2015-2020. These are referred to as the CO₂ Budget Trading Program adjusted budget(s).

The proposed revisions to Part 242 also include the creation of the Cost Containment Reserve (CCR), which will help provide additional flexibility and cost containment for the Program. The CCR allocation and the rules for the sale of CO₂ CCR allowances are set forth in subdivision 242-5.3(b) of the proposed revisions to Part 242. CO₂ CCR allowances are separate from and additional to CO₂ allowances allocated from the CO₂ Budget Trading Program base and adjusted budgets. The CCR allowances will be triggered and released at auctions at \$4/ton in 2014, \$6/ton in 2015, \$8/ton in 2016, and \$10/ton in 2017. Each year after 2017 the CCR trigger price will increase by 2.5 percent.

If the CCR trigger price is reached, up to 10 million additional CCR allowances will be available for purchase at auction regionally under the RGGI program, except in 2014, when the reserve will be limited to five million allowances in the RGGI region. New York's portion of the regional CCR is approximately 38.93 percent, such that the State's portion of the CCR in Part 242 is limited in 2014 to 1,946,639 CO₂ CCR allowances in 2014 and 3,893,277 CO₂ CCR allowances in 2015 and each calendar year thereafter.

The proposed revisions to Part 242 create a new interim compliance obligation, set forth in proposed paragraph 242-1.5(c)(2). An interim control period is defined as a one-year period, consisting of each of the first and second calendar years of each three year control period. In addition to demonstrating full compliance at the end of each three-year control period, at the end of each interim control period, regulated entities must now demonstrate that they are holding CO₂ allowances equal to at least 50 percent of their CO₂ emissions during the previous year.

Under the proposed revisions to Part 242, the second control period, which commenced on January 1, 2012, still concludes on December 31, 2014. Likewise, under the proposed revisions to Part 242, the CO₂ allowance transfer deadline for the second control period will remain March 1, 2015. Subsequent control periods begin on January 1st and conclude on the December 31st three years later. In each of the first two calendar years of each three year control period the owners and operators of each source subject to the revised Program shall hold a number of CO₂ allowances available for compliance deductions, as of the CO₂ allowance transfer deadline (midnight of March 1st or, if March 1st is not a business day, midnight of the first business day thereafter), in the source's compliance account that is not less than 50 percent of the total tons of CO₂ emissions for that interim control period. For example, the first interim control pe-

riod will be the year 2015 and the second interim control period will be the year 2016 under the proposed revisions to Part 242, with associated CO₂ allowance transfer deadlines of March 1, 2016 and March 2017 respectively. At the end of the control period in 2017, all sources must demonstrate full compliance and account for 100 percent of their control period emissions with an allowance transfer deadline of March 1, 2018. Under the proposed revisions to Part 242, a compliance certification report is still required at the end of each control period; however, a report is not required at the end of each interim control period. Moreover, pursuant to the proposed revisions, the so-called treble damages provision in paragraph 242-6.5(d)(1), which applies to excess emissions, will not apply to excess interim emissions.

The proposed revisions to Part 242 do not change the applicability provisions of the regulation, and maintain the limited exemption for units with electrical output to the electric grid restricted by permit conditions pursuant to subdivision 242-1.4(b). The proposed revisions do, however, eliminate the provision in paragraph 242-1.4(b)(4) to reduce the CO₂ Budget Trading Program base budget and remove the tons equal to the exempt unit's average annual emissions from the previous three calendar years. These allowances will now be available to the market.

The Department will continue to allocate most of the CO₂ Budget Trading Program adjusted budget to the energy efficiency and clean energy technology account. Although New York State Energy Research and Development Authority's (NYSERDA) CO₂ Allowance Auction Program (21 NYCRR Part 507) will not be revised as part of this rulemaking, NYSERDA will continue to administer the energy efficiency and clean technology account so that allowances will be sold in an open and transparent allowance auction. The proceeds of the auctions will be used to promote the purposes of the energy efficiency and clean technology account and for administrative costs associated with the CO₂ Budget Trading Program.

The Reserve Price is the minimum acceptable price for each CO₂ allowance in a specific auction. Under the proposed revisions to Part 242, the reserve price at an auction is either the Minimum Reserve Price (MRP) or the CCR trigger price, depending on the level of demand for allowances at the auction. The proposed revisions to Part 242 provide that the MRP will be set at \$2.00 in 2014 and increase by 2.5 percent each year thereafter. The provisions for a current market reserve price are eliminated under the proposed revisions.

Under the proposed revisions to Part 242, the Department has maintained the inclusion of two set-asides in subdivisions 242-5.3(c) and (d). In particular, the department shall continue to allocate 700,000 and 1,500,000 tons each year, respectively, from the CO₂ Budget Trading Program adjusted budgets to these two set-asides.

While the amount of allowances set-aside remains the same, the revisions to Part 242 include a proposal to modify the existing "voluntary renewable energy market set-aside" in subdivision 242-5.3(c) to include eligible biomass. This revision expands eligibility for retiring CO₂ allowances from the set-aside to include CO₂ budget sources that co-fire eligible biomass as a compliance mechanism. Therefore, when a CO₂ budget source deducts CO₂ emissions from its compliance obligation as a result of co-firing eligible biomass, the Department proposes to also allow for the retirement of the corresponding number of CO₂ allowances from the set-aside. The proposed revisions to the Program maintain the existing provisions for voluntary renewable energy purchases. The Department will continue to retire allowances under the voluntary renewable energy market and eligible biomass set-aside for voluntary renewable energy purchases.

Similarly, while the amount of allowances set-aside remains the same, under the proposed revisions to Part 242, the long-term contract set-aside in subdivision 242-5.3(d) will continue to be available to CO₂ budget sources that can make the necessary demonstration to the Department's satisfaction. The changes proposed in this subdivision are merely intended to clarify the operation and administration of the set-aside, consistent with the Department's interpretation of subdivision 242-5.3(d) pursuant to Declaratory Ruling 19-18, which the Department issued on November 5, 2009.

The proposed revisions to Part 242 delete the existing stage one and stage two triggers and associated provisions. These price triggers raised the allowable percentage of offsets to be used for compliance, allowed for the use of international CO₂ emission credit retirements, and created the potential extension of the control period to four years. The offset price triggers and the potential extension of the control period to four years are replaced by the CCR mechanism, to provide measurable cost control in an efficient, transparent and predictable manner. For CO₂ offset allowances, the proposed revisions retain the number of CO₂ offset allowances that are available to be deducted for compliance with a CO₂ budget source's CO₂ budget emissions limitation for a control period at 3.3 percent of the CO₂ budget source's CO₂ emissions for that control period.

The proposed revisions to Part 242 eliminate the provision to award

early reduction allowances, in existing subdivision 242-5.2(b), as those provisions are no longer applicable. Finally, the proposed revisions to Part 200 include updated cites for the portions of Federal statute and regulations, as well as other documents, that are incorporated by reference into the proposed revisions to Part 242.

¹ This amount reflects New York State's portion of the regional cap of 91,000,000 tons for 2014, proposed by the states participating in the Regional Greenhouse Gas Initiative (RGGI).

Text of proposed rule and any required statements and analyses may be obtained from: Michael Sheehan, P.E., NYSDEC, Division of Air Resources, 625 Broadway, Albany, NY 12233-3251, (518) 402-8396, email: 242co2btp@gw.dec.state.ny.us

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

Public comment will be received until: September 9, 2013.

Additional matter required by statute: Pursuant to Article 8 of the State Environmental Quality Review Act, a Short Environmental Assessment Form, Positive Declaration, Draft Supplemental Generic Environmental Impact Statement and a Coastal Assessment Form have been prepared and are on file.

Summary of Regulatory Impact Statement

The Regional Greenhouse Gas Initiative (RGGI) is a cooperative, historic effort among New York and eight Participating States¹ and is the first mandatory, market-based carbon dioxide (CO₂) emissions reduction program in the United States. Recently, New York along with the Participating States, completed a comprehensive program review and announced a proposal to lower the regional emissions cap established under RGGI to 91 million tons in 2014, declining 2.5 percent a year through 2020.² To implement the updated RGGI program in New York State, the Department of Environmental Conservation (Department) proposes to revise 6 NYCRR Part 242, CO₂ Budget Trading Program (the Program) and 6 NYCRR Part 200, General Provisions.

The statutory authority to revise the Program to reduce the CO₂ emissions cap, provide for the budget adjustments, add a cost containment reserve, and create an interim compliance obligation derives primarily from the Department's authority to use all available practical and reasonable methods to prevent and control air pollution, as set out in the Environmental Conservation Law (ECL) at Sections 1-0101, 1-0303, 3-0301, 19-0103, 19-0105, 19-0107, 19-0301, 19-0303, 19-0305, 71-2103, 71-2105. Although the Allowance Auction Program (21 NYCRR Part 507) will not be revised as part of this rulemaking, the statutory sections that grant NYSERDA authority to implement the Allowance Auction Program, which were outlined in the Regulatory Impact Statement accompanying such rulemaking, are briefly outlined in the full Regulatory Impact Statement as background and context for the proposed Program revisions.

The warming climate represents an enormous environmental challenge for the State, because unabated, climate change will continue to have serious adverse impacts on the State's natural resources, public health and infrastructure. New York power plants represent approximately one-fifth of all GHG emissions in the State.³ In 2012, New York power plants subject to the Program emitted approximately 35 million tons of CO₂ into the atmosphere.

The Department complied with Sections 202-a, 202-b and 202-bb of the State Administrative Procedures Act through an extensive Regional program review process that included public participation by all Participating States. New York coordinated an additional stakeholder process to gather input from the public within its borders. New York and the Participating States had committed to a comprehensive program review during the initial development of RGGI and agreed to evaluate: program success; program impacts; additional emissions reductions; imports and emissions leakage; and offsets. The Participating States initiated program review in the fall of 2010 with the announcement of the first stakeholder meeting, and concluded the process in February, 2013. New York conducted an in-state separate stakeholder process designed to provide updates on the status of the regional process and to afford additional opportunity for New York's stakeholders to provide comment.

Mitigating the impacts of a changing climate represents one of the most pressing environmental challenges for the State, the nation and the world. Extensive scientific data demonstrates the need for immediate worldwide action to reduce emissions from burning fossil fuels and supports the conclusion that great benefits will accrue if fossil fuel-fired emissions are reduced through programs like RGGI.

A naturally occurring greenhouse effect has regulated the earth's climate system for millions of years. CO₂ and other naturally occurring GHGs trap heat in our atmosphere, maintaining the average temperature of the planet approximately 60°F higher than it normally would be. An enhanced greenhouse effect and associated climate change results as large

quantities of anthropogenic GHGs, especially CO₂ from the burning of fossil fuels, are added to the atmosphere. Since the mid-1700's, atmospheric concentrations of GHGs have increased substantially due to human activities such as fossil fuel use and land-use change. Today, atmospheric CO₂ concentrations have reached 400 parts per million - nearly 40 percent higher than preindustrial levels.⁴

The need for the reduction of CO₂ emissions is clearly supported by numerous direct impacts that have been observed in New York State. Temperatures in New York State have risen during the twentieth century, with the greatest warming coming in recent decades - temperatures have risen by approximately 0.6°F per decade since 1970, with winter warming more than 1.1°F per decade.⁵ This warming includes an increase in the number of extreme hot days (days at or above 90°F) and a decrease in the number of cold days (days at or below 32°F). New York experienced record high nighttime temperatures in the summer of 2010.⁶ Sea level in the coastal waters of New York State and up the Hudson River has been steadily rising over the 20th century. Tide-gauge observations in New York indicate that rates of relative sea level rise were significantly greater than the global mean, ranging from 2.41 to 2.77 millimeters per year (0.9 to 1.1 inches per decade).⁷

Predictions of future impacts associated with emissions in New York further support the need for a substantial reduction in the CO₂ emissions cap. 'Responding to Climate Change in New York State: The ClimAID Integrated Assessment for Effective Climate Change Adaptation' (ClimAID) project examines how sea level rise, changes in precipitation patterns, and more frequent severe weather conditions will affect New York's economy, environment, community life and human health. The ClimAID project predicts the following: Air temperatures are expected to rise across New York, by 1.5°F to 3°F by the 2020s, 3°F to 5.5°F by the 2050s, and 4°F to 9°F by the 2080s. Annual average precipitation in New York is projected to increase by up to five percent by the 2020s, up to 10 percent by the 2050s and up to 15 percent by the 2080s, with the greatest increases in the northern part of the State. A recent study based upon 60 years of tide-gauge records indicates that the rate of increase for sea level rise along approximately 1000 km of the east coast of the United States, including New York, remains at approximately three to four times higher than the global average.⁸ Extreme climate events, such as heat waves and heavy rainstorms, significantly impact New York's communities and natural resources.

The need for the significantly reduced CO₂ emissions cap and budget adjustments are further supported by the ClimAID Study⁹ which enumerates a number of predictions specifically for New York's valued resources such as: 1) Rising air temperatures intensify the water cycle by driving increased evaporation and precipitation. The resulting altered patterns of precipitation include more rain falling in heavy events, often with longer dry periods in between; 2) high water levels, strong winds, and heavy precipitation resulting from strong coastal storms already cause billions of dollars in damage and disrupt transportation and power distribution systems. Barrier islands are being dramatically altered by strong coastal storms, such as Hurricane Sandy, as ocean waters over wash dunes, create new inlets, and erode beaches; 3) within the next several decades, New York State is likely to see widespread shifts in species composition in the State's forests and other natural landscapes; 4) lakes, streams, inland wetlands and associated aquatic species will be highly vulnerable to changes in the timing, supply, and intensity of rainfall and snowmelt, groundwater recharge and duration of ice cover; 5) increased summer heat stress will negatively affect cool-season crops and livestock unless farmers take adaptive measures such as shifting to more heat-tolerant crop varieties and improving cooling capacity of livestock facilities; 6) demand for health services and the need for public health surveillance and monitoring will increase; 7) over the next few decades, heat waves and heavy precipitation events are likely to increase transportation problems such as flooded streets and delays in mass transit; 8) communication service delivery is vulnerable to hurricanes, lightning, ice, snow, wind storms, and other extreme weather events, some of which are projected to change in frequency and/or intensity; 9) impacts of climate change on energy demand are likely to be more significant than impacts on supply. Climate change will adversely affect system operations, increase the difficulty of ensuring adequate supply during peak demand periods, and exacerbate problematic conditions, such as the urban heat island effect.

The reduction in the CO₂ emissions cap to current levels represents a critical step to combat the significant challenges presented by climate change and to advance sound energy policies that foster energy efficiency and energy independence. The proposed Program revisions will cap regional emissions at 91 million tons annually beginning in 2014 and will reduce that level by 2.5 percent each year through 2020. Further, to account for the existing private bank of CO₂ emissions allowances already acquired at auction, and to help create a binding cap, the proposed Program revisions provide two distinct budget (cap) adjustments. To provide additional flexibility and cost containment the proposed Program revisions

also create the Cost Containment Reserve (CCR). Finally, the proposed Program revisions create an interim compliance obligation. The Department proposes to maintain the amount of CO₂ allowances allocated to the two existing set-aside accounts under the Program and proposes a modification to the existing voluntary renewable energy market set-aside to include eligible biomass, and minor clarifications to the long term contract (LTC) set-aside.

The Department, NYSERDA and the New York State Department of Public Service (DPS) analyzed costs and impacts associated with compliance with the proposed revisions to the Program. CO₂ allowance prices (the cost of complying with RGGI) are projected to increase from approximately \$6.02/ton (2010 dollars) in 2014 to about \$6.73/ton in 2016 and to about \$8.41/ton in 2020. Under the Program Case, New York's wholesale electricity prices (including both energy and capacity costs) are projected to be \$1.64/MWh higher in 2016 and \$2.12/MWh higher in 2020, than the Reference Case. RGGI is projected to increase wholesale electricity prices in New York State by about 3.0 percent in 2016 and 3.9 percent in 2020. For a typical New York residential customer (using 750 kWh per month), the projected increase in wholesale electricity prices in 2016 translates into a monthly retail bill increase of about 1.0 percent or \$0.86. In 2020, the projected increase in wholesale electricity prices translates into a monthly residential retail bill increase of about 0.8 percent or \$0.71. For commercial customers, the projected retail price impact of RGGI is about 1.1 percent in 2016 and 0.7 percent in 2020 (\$7.87 and \$5.00 per month, respectively). For industrial customers, the projected retail price impact of RGGI is about 1.7 percent in 2016 and 1.2 percent in 2020. A macro-economic impact study of the Program was also conducted. The study concluded that the economic impacts of RGGI on the economies of the participating states, including New York, were generally positive, albeit relatively small.

There will be costs associated with the administration of the Program. The Department will continue to incur staff costs associated with the implementation of the revised Program. NYSERDA will also continue to incur costs to administer and evaluate the use of auction proceeds from the Program. It should be noted, that the Department's costs and NYSERDA's administrative and evaluation rates are expected to remain unchanged as a result of the Program revisions. A significant portion of Program costs are allocated to the operation and administration of COATS and conducting allowance auctions. It is anticipated that these costs will not change in the future.

Under the existing Program and the proposed revisions to the Program, the owners and operators of each source and each unit at the source shall retain the following documents for a period of ten years from the date the document is created: account certificate of representation form; Emissions monitoring information; copies of all reports and compliance certifications; copies of all documents used to complete a permit application; copies of all documents used to complete a consistency application; and copies of all documents required as part of an auction application.

For each control period in which one or more units at a source are subject to the CO₂ budget emission limitation, the CO₂ authorized account representative of the source shall submit to the Department, a compliance certification report for each source covering all such units. This must be submitted by the March 1st following the relevant control period for all units subject to the Program.

The Department examined the "No Action" alternative which would leave the current Program in place and the Program cap and flexibility provisions within it would remain unchanged. Since the "No Action" alternative would leave the Program unchanged and would not address the issue of over allocation, it was not selected. The Department also considered different regional emissions cap levels as additional alternatives, rather than the 91 million ton regional emission cap that is proposed to be implemented under the revised Program. Lastly, flexibility provided for under the Program provided through the expansion of allowable offset usage, the addition of international offsets and an extension of the compliance period were evaluated. During program review, the Participating States recognized complexity associated with these provisions and their inability to provide immediate cost containment for the Program. Accordingly, the proposed revisions to the Program include a new CCR.

The proposed revisions to the Program are protective of public health and the environment in the absence of similar federal emission standards. The potential adverse impact to global air quality and New York State's environment from CO₂ emissions necessitates that New York State take action now to minimize CO₂ emissions that contribute to climate change. Due in part to the lack of a federal program, the Department has determined that fossil fuel-fired electricity generators must reduce emissions of CO₂ now.

The proposed revisions to the Program do not change the applicability provisions of the current Program. Therefore, sources already subject to the current Program will remain subject to the proposed revisions to the Program. While the second control period under the current Program will

remain unchanged and will include years 2012-2014 with a CO₂ allowance transfer deadline of March 1, 2015, the proposed Program revisions will require affected sources and units to comply with the emission limitations of the Program beginning on January 1, 2014.

The proposed revisions to the Program create a modified compliance schedule called an interim compliance period which is defined as each of the first two years of each three-year control period. The first interim control period under the revised Program will take place in year 2015; the second interim control period will take place in year 2016. In each of the first two calendar years of each three year control period (e.g., 2015 and 2016), the owners and operators of each source subject to the revised Program shall hold a number of CO₂ allowances available for compliance deductions, as of the CO₂ allowance transfer deadline (midnight of March 1st or, if March 1st is not a business day, midnight of the first business day thereafter), in the source's compliance account that is not less than 50 percent of the total tons of CO₂ emissions for that interim control period. A unit is subject to the interim control period requirements of the Program starting on the later of January 1, 2015 or date the unit commences operation.

¹ In addition to New York, the RGGI Participating States include: Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, Rhode Island, and Vermont.

² The Participating States released the Updated Model Rule on February 7, 2013.

³ "Patterns and Trends New York State Energy Profiles: 1996-2010," Final Report, April 2012. http://www.nyscrda.ny.gov/BusinessAreas/Energy-Data-and-Prices-Planning-and-Policy/Energy-Prices-Data-and-Reports/EA-Reports-and-Studies/Patterns-and-Trends.aspx?sc_database=web

⁴ National Research Council of the National Academies. Climate Change: Evidence, Impacts, and Choices. 2012. Available at <http://nas-sites.org/americasclimatechoices/more-resources-on-climate-change/climate-change-lines-of-evidence-booklet/>.

⁵ Rosenzweig, C., W. Solecki, A. DeGaetano, M. O'Grady, S. Hassol, P. Grabhorn (Eds.). 'Responding to Climate Change in New York State: The ClimAID Integrated Assessment for Effective Climate Change Adaptation'. New York State Energy Research and Development Authority (NYSERDA). <http://www.nyscrda.ny.gov/climaid>

⁶ Natural Resources Defense Council (NRDC). 'The Worst Summer Ever? Record Temperatures Heat Up the United States'. September 2010. NRDC. <http://www.nrdc.org/globalwarming/hottestsummer/>

⁷ Titus, J.G. 'Coastal Sensitivity to Sea-Level Rise: A Focus on the Mid-Atlantic Region. Synthesis and Assessment Product 4.1'. U.S. Climate Change Science Program. 2009. <http://www.epa.gov/climatechange/effects/coastal/sap4-1.html>

⁸ Sallenger, A.H., Doran, K.S., Howd, P.A. Hotspot of accelerated sea-level rise on the Atlantic coast of North America. *Nature Climate Change*. Published online June 24, 2012. doi: 10.1038/NCLIMATE1597.

⁹ Rosenzweig, 'op.cit'

Regulatory Flexibility Analysis

The Regional Greenhouse Gas Initiative (RGGI) is a cooperative, historic effort among New York and eight Participating States¹ and is the first mandatory, market-based carbon dioxide (CO₂) emissions reduction program in the United States. Since its inception in 2008, RGGI has utilized a market-based mechanism to cap and cost-effectively reduce emissions that cause climate change. Recently, New York along with the Participating States, completed a comprehensive program review and announced a proposal to lower the regional emissions cap established under RGGI to 91 million tons in 2014, declining 2.5 percent a year through 2020.² Accordingly, New York and the Participating States committed to propose revisions, pursuant to state-specific regulatory processes, to their respective CO₂ Budget Trading Programs to further reduce CO₂ emissions from power plants in the region. To implement the updated RGGI program in New York State, the Department of Environmental Conservation (Department) proposes to revise 6 NYCRR Part 242, CO₂ Budget Trading Program (the Program) and 6 NYCRR Part 200, General Provisions.

The only local government affected by the proposed revisions to the Program is the Jamestown Board of Public Utilities (JBPU), a municipally owned utility which owns and operates the S. A. Carlson Generating Station (SACGS). The emissions monitoring at SACGS currently meets the monitoring provisions of the proposed Program revisions, 40 CFR Part 75; no additional monitoring costs will be incurred. Additionally, the costs associated with JBPU's compliance with the proposed Program revisions will be similar to those incurred by other privately held sources. JBPU's exposure to compliance costs in addition to those already incurred for compliance with the Program will depend upon JBPU's need to solicit

consultants or contractors for its compliance. No small businesses will be directly affected by the adoption of the proposed revisions.

The proposed Program revisions, which will cap regional CO₂ emissions at 91 million tons annually beginning in 2014, represent a nearly 45 percent reduction from the existing cap currently in place under the Program. After 2020, the cap will remain at 78 million tons annually. Further, to account for the existing private bank of CO₂ emissions allowances already acquired at auction, and to help create a binding cap, the proposed Program revisions provide two distinct budget adjustments, namely the First and Second Control Period Interim Adjustments.

The proposed Program revisions also create the Cost Containment Reserve (CCR) from which CCR allowances will be triggered and released at auctions at \$4/ton in 2014, \$6/ton in 2015, \$8/ton in 2016, and \$10/ton in 2017. Each year after 2017, the CCR trigger price will increase by 2.5 percent. If the trigger price is reached, up to 10 million additional CCR allowances will be available for purchase at auction, except in 2014, when the reserve will be limited to five million allowances. The existing price triggers for expanding use of offsets and the one year compliance period extension will be eliminated in favor of the CCR.

Finally, the proposed Program revisions create an interim compliance obligation in part to align it with the annual compliance obligations under federal programs such as the Clean Air Interstate Rule and the Title IV Acid Rain Program. In addition to demonstrating full compliance at the end of each three-year compliance period, regulated entities must now demonstrate that they are holding allowances equal to at least 50 percent of their emissions at end of each of the first two years in each three year compliance period. The proposed Program revisions also include minor revisions such as setting the reserve price at \$2.00 in 2014, to rise at 2.5 percent per year in subsequent years, updating all references, and the deleting early reduction allowance provisions.

1. Effects on Small Businesses and Local Governments. No small businesses will be directly affected by the adoption of the proposed Program revisions. As noted above, however, the only local government affected by the proposed revisions to the Program is the JBPU, a municipally owned utility which owns and operates the SACGS. The costs associated with the proposed revisions to the Program will be similar to those incurred by other privately held sources and will depend upon JBPU's need to solicit consultants or contractors for its compliance.

2. Compliance Requirements. The JBPU, as owner and operator of the SACGS, will need to comply with the proposed revisions to the Program, as described below.

The proposed Program revisions do not change the applicability provisions of the current Program. Therefore, sources already subject to the Program will remain subject to the proposed Program revisions. While the second control period under the current Program will remain unchanged and will include years 2012-2014 with a CO₂ allowance transfer deadline of March 1, 2015, the proposed Program revisions will require affected sources to comply with the emission limitations beginning on January 1, 2014.

The proposed Program revisions create an interim compliance period which is defined as each of the first two years of each three-year control period. In each of the first two calendar years of each three year control period (e.g., 2015 and 2016), the owners and operators of each source subject to the revised Program shall hold a number of CO₂ allowances available for compliance deductions in the source's compliance account that is not less than 50 percent of the total tons of CO₂ emissions for that interim control period. A unit is subject to the interim control period requirements of the Program starting on the later of January 1, 2015 or date the unit commences operation.

Accordingly, at the end of each control period, (e.g., 2017), the owners and operators of each source subject to the revised Program shall hold a number of CO₂ allowances available for compliance deductions, as of the CO₂ allowance transfer deadline in the source's compliance account that is not less than the total tons of CO₂ emissions for the control period less the CO₂ allowances deducted for the previous two interim control periods. Additionally, for each control period in which a CO₂ budget source is subject to the proposed Program revisions, the CO₂ authorized account representative of the source must continue to submit to the Department by the March 1st following the relevant control period, a compliance certification report for each source covering all such units.³

3. Professional Services. The JBPU is the only local government affected by the proposed revisions to the Program and like other privately held sources may need to solicit professional consultants and contractors for its compliance with the proposed revisions to the Program. The Department also confirmed that no capital improvements to plant operations will be needed for JBPU's compliance with the proposed Program revisions.

4. Compliance Costs. Emissions monitoring at JBPU's SACGS currently meets the monitoring provisions of the current Program and no additional monitoring costs will be incurred under the proposed revisions to the Program. Notwithstanding this, like any other owner or operator of

any source subject to the revised Program, the JBPU will need to purchase CO₂ allowances equal to the number of tons of CO₂ emitted. The Department limited the analysis of control costs to the purchase of allowances needed to comply with the proposed revisions to the Program and predicts that CO₂ allowances will cost between \$6.00 in 2014 and \$9.00 in 2020 (in 2010 \$) per ton for CO₂ under the Program Case.

In order to estimate total costs for SACGS under the proposed revisions to the Program, the Department reviewed 2009 through 2012 emissions from Jamestown's affected unit. During that time period, SACGS's emissions ranged from a low of 4,261 tons to a high of 117,311 tons. Based on these emissions values, allowances needed to cover emissions are estimated to cost between a low of \$25,600 and a potential high of \$1 million, annually. These costs will eventually be passed on to the JBPU consumers.

The JBPU has a range of compliance options and can utilize the flexibility mechanisms inherent in the proposed revisions to the Program. Since the revised program has a three year control period with the compliance obligation at the end of the control period, the emission peaks associated with electricity generation will be averaged out and more long term planning options will be available to SACGS. Although the proposed Program revisions include an Interim Control Period that require JBPU to cover 50 percent of their emissions in each of the first two years of a three year control period, it is not anticipated that this interim requirement will significantly reduce the flexibility available to JBPU. The JBPU will also incur costs associated with the administration of the revised Program.

5. Economic and Technological Feasibility. The JBPU has the option to do any combination of the following to comply with the proposed revisions to the Program: increase the efficiency of the natural gas-fired turbine, co-fire biofuel, purchase allowances, or purchase offsets. The addition of the CCR under the proposed Program revisions, in fact, adds more immediate relief to all affected sources, including the JBPU, by adding allowances to the market when the CCR triggers are hit. Any or all of these options are technologically and economically feasible to apply to SACGS.

6. Minimizing Adverse Impact. The promulgation of the proposed revisions to the Program and the amendments to 6 NYCRR Part 200 do not directly affect small businesses. Only one local government is affected by the proposed revisions to the Program, the JBPU. The proposed revisions to the Program constitute an emissions allowance based cap-and-trade program. Cap and trade systems are the most cost effective means for implementing emission reductions from large stationary sources. By continuing to implement the Program and proposed Program revisions, the Department will minimize any associated adverse economic impacts on the JBPU.

7. Small Business and Local Government Participation. The JBPU was included on every stakeholder invitation sent to the Department's list serve and the Department conducted public forums after the stakeholder notifications were mailed. The Department's records from those stakeholder meetings do not reflect that the JBPU attended those meetings nor is the Department otherwise aware of whether or not the JBPU attended them.

8. Cure Period. The proposed revisions to the Program will be effective on January 1, 2014. No additional cure period or other additional opportunity for ameliorative action is included in the Program revisions. First, sources that will be subject to the proposed Program revisions are already subject to the existing Program, and have been since the regulation was initially promulgated in 2008 (or since they commenced operation). Second, because of the cap-and-trade nature of the revisions to the Program which includes periodic compliance deadlines, sources have flexibility to emit any amount of CO₂ during a control period, provided such emissions are covered by an adequate amount of CO₂ allowances by the relevant CO₂ allowance transfer deadline. For example, the second control period under the existing Program dates from years 2012-2014, with a CO₂ allowance transfer deadline of March 1, 2015. This is unchanged under the proposed revisions to the Program, and will continue to provide sources with flexibility and time to comply with the proposed revisions to the Program. Finally, while the proposed revisions include a new annual interim compliance requirement, the first interim compliance period will be year 2015 with a CO₂ allowance transfer deadline of March 1, 2016. This provides additional time for sources to plan for compliance with the proposed new interim compliance obligation. For these reasons, no additional cure period or other additional opportunity for ameliorative action is necessary for the proposed Program revisions.

¹ In addition to New York, the RGGI Participating States include: Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, Rhode Island, and Vermont.

² The Participating States released the Updated Model Rule on February 7, 2013.

³ Sources will not be required to submit a compliance certification report for any interim control periods.

Rural Area Flexibility Analysis

The Regional Greenhouse Gas Initiative (RGGI) is a cooperative, historic effort among New York and eight Participating States¹ and is the first mandatory, market-based carbon dioxide (CO₂) emissions reduction program in the United States. Since its inception in 2008, RGGI has utilized a market-based mechanism to cap and cost-effectively reduce emissions that cause climate change. Recently, New York along with the Participating States, completed a comprehensive program review and announced a proposal to lower the regional emissions cap established under RGGI to 91 million tons in 2014, declining 2.5 percent a year through 2020.² Accordingly, New York and the Participating States committed to propose revisions, pursuant to state-specific regulatory processes, to their respective CO₂ Budget Trading Programs to further reduce CO₂ emissions from power plants in the region. To implement the updated RGGI program in New York State, the Department of Environmental Conservation (Department) proposes to revise 6 NYCRR Part 242, CO₂ Budget Trading Program (the Program) and 6 NYCRR Part 200, General Provisions.

The promulgation of the proposed revisions to Part 242 and the amendments to Part 200 will apply equally to affected sources statewide; rural areas will not be disproportionately impacted. The Department will implement the proposed Program revisions through a cap-and-trade program because allowance based cap-and-trade systems are the most cost effective means for implementing emission reductions from large stationary sources. The regulatory flexibility inherent in a cap-and-trade program that allows for interstate trading of emission allowances best enables the Department to balance the competing interests of the protection of the public health and welfare with continued industrial development of the State. By revising the Program, the Department is further able to balance these competing interests and minimize any potential adverse impacts of the revised Program on a statewide basis.

The Proposed Program Revisions

The proposed Program revisions, which will cap regional CO₂ emissions at 91 million tons annually beginning in 2014, represent a nearly 45 percent reduction from the existing cap currently in place under the Program. After 2020, the cap will remain at 78 million tons annually. Further, to account for the existing private bank of CO₂ emissions allowances already acquired at auction, and to help create a binding cap, the proposed Program revisions provide two distinct budget adjustments, namely the First and Second Control Period Interim Adjustment for Banked Allowances.

The proposed Program revisions also create the Cost Containment Reserve (CCR), which will help provide additional flexibility and cost containment for the revised Program. The CCR allowances will be triggered and released at auctions at \$4/ton in 2014, \$6/ton in 2015, \$8/ton in 2016, and \$10/ton in 2017. Each year after 2017, the CCR trigger price will increase by 2.5 percent. If the trigger price is reached, up to 10 million additional CCR allowances will be available for purchase at auction, except in 2014, when the reserve will be limited to 5 million allowances. The existing price triggers for expanding use of offsets and the one year compliance period extension will be eliminated in favor of the CCR.

Finally, the proposed Program revisions create an interim compliance obligation in part to align it with the annual compliance obligations under federal programs such as the Clean Air Interstate Rule and the Title IV Acid Rain Program. The proposed Program revisions also include minor revisions such as setting the reserve price at \$2.00 in 2014, to rise at 2.5 percent per year in subsequent years, updating all references, and the deleting early reduction allowance provisions. The majority of the proceeds from the sale of New York's allowances will continue to be dedicated to strategic energy or consumer benefits, such as energy efficiency and clean energy technologies.

The nature of the proposed Program revisions, generally described above and discussed more thoroughly in the accompanying Regulatory Impact Statement (RIS), is such that they clearly will minimize any potential adverse impacts of the revised Program on a statewide basis.

TYPES AND ESTIMATED NUMBER OF RURAL AREAS AFFECTED

The promulgation of the proposed Program revisions and the amendments to Part 200, will apply equally to affected public and private sources statewide; rural areas will not be disproportionately impacted.

REPORTING, RECORDKEEPING AND OTHER COMPLIANCE REQUIREMENTS

The proposed Program revisions will not change the applicability provisions of the current Program. Therefore, sources already subject to the current Program will remain subject to the proposed Program revisions. While the second control period under the current Program will remain unchanged and includes years 2012-2014 with a CO₂ allowance transfer deadline of March 1, 2015, the proposed Program revisions will require affected sources and units to comply with the emission limitations of the Program beginning on January 1, 2014.

As noted above, the proposed Program revisions will create an interim compliance period which is defined as each of the first two years of each three-year control period. The first interim control period under the revised Program will take place in year 2015; the second interim control period will take place in year 2016. For each interim control period, (e.g., 2015 and 2016), the owners and operators of each source subject to the revised Program shall hold a number of CO₂ allowances available for compliance deductions in the source's compliance account that is not less than 50 percent of the total tons of CO₂ emissions for that interim control period, as of the CO₂ allowance transfer deadline. A unit will be subject to the interim control period requirements of the revised Program starting on the later of January 1, 2015 or date the unit commences operation. Likewise, at the end of each control period, (e.g., 2017), the owners and operators of each source subject to the revised Program shall hold a number of CO₂ allowances available for compliance deductions in the source's compliance account that is not less than the total tons of CO₂ emissions for the entire control period less the CO₂ allowances deducted for the previous two interim control periods, as of the CO₂ allowance transfer deadline.

Additionally, for each control period in which a CO₂ budget source is subject to the proposed revisions to Program, the CO₂ authorized account representative of the source must continue to submit to the Department by the March 1st following the relevant control period, a compliance certification report for each source covering all such units.³ As noted above, since the second control period for the Program remains unchanged, the first CO₂ allowance transfer deadline under the proposed revisions to the Program will occur on March 1, 2015.

COSTS

The Department, New York State Energy Research Development Authority (NYSERDA) and New York State Department of Public Service (DPS) analyzed costs, including statewide impacts to jobs, total Gross State Product and total Personal Income, associated with compliance with the proposed revisions to Part 242. As discussed below, this analysis concludes that the proposed Program revisions will not disproportionately affect sources in rural areas of the State and best enables the Department to balance the competing interests of the protection of the public health and welfare with continued industrial development on a statewide basis. By revising the Program, the Department is able to balance these competing interests and minimize any potential adverse impacts of the revised Program.

To evaluate the potential cost impacts of the reduced CO₂ emissions cap and budget adjustments, Integrated Planning Model (IPM®⁴) was used to compare a future case with the proposed Program (Program Case) to a Reference Case (Business As Usual scenario) to project how the regional electricity system would function if the Program remained unchanged and proposed revisions were not implemented. The modeling assumptions and input data were developed through a stakeholder process, including representatives from the electricity generation sector, business and industry, environmental advocates and consumer interest groups. Subsequently, modeling results were presented to stakeholders for review and comment throughout the development of the proposed Program revisions. For a greater explanation of NYSERDA's analysis and a summary of the (IPM®) modeling conducted by ICF International (ICF), see Regulatory Impact Statement pages 45-62.

Utilizing the New York's Investments of RGGI Allowance Proceeds and output data from IPM®, the REMI macroeconomic study estimates that the impact of the reduced CO₂ emissions cap, budget adjustments and the remainder of the proposed Program revisions⁵ on jobs, the economy and customer bills^{6,7}, in New York will be very small and generally positive. The REMI study estimates a cumulative, positive change in employment in New York associated with the proposed Program revisions will be about 80,500 additional job-years over the period 2012 to 2040. A job-year is equivalent to one person employed for one year. Further, the REMI study estimates that the cumulative changes in New York's Gross State Product and Personal Income associated with the proposed Program revisions will increase approximately \$5.8 billion and \$4.7 billion, respectively.⁸ Although these cumulative changes are minimal, they represent positive impacts for total State employment, total Gross State Product and total Personal Income.

MINIMIZING ADVERSE IMPACT

The Department will implement the proposed Program revisions through a cap-and-trade program because allowance based cap and trade systems are the most cost effective means for implementing emission reductions from large stationary sources. The regulatory flexibility inherent in a cap-and-trade program that allows for interstate trading of emission allowances will not disproportionately affect sources in rural areas of the State and best enables the Department to balance the competing interests of the protection of the public health and welfare with continued industrial development of the State. By revising the Program, the Department is further able to balance these competing interests and minimize any potential adverse employment impacts of the revised Program.

RURAL AREA PARTICIPATION

The Department complied with Sections 202-a, 202-b and 202-bb of the State Administrative Procedures Act through an extensive Regional program review process that included public participation by all Participating States. New York coordinated an additional stakeholder process to gather input from the public within its borders. New York and the Participating States had committed to a comprehensive program review during the initial development of RGGI and agreed to evaluate: program success; program impacts; additional emissions reductions; imports and emissions leakage; and offsets. The Participating States initiated program review in the fall of 2010 with the announcement of the first stakeholder meeting and concluded the process in February, 2013. The Participating States and RGGI Incorporated (RGGI, Inc.)⁹ conducted more than a dozen stakeholder meetings and webinars during this period whereby they obtained public input on a number of program elements. Prior to each stakeholder meeting, agency staff and RGGI, Inc. distributed pertinent written material to the over 250 participants on the list serve and posted meeting documents on the RGGI, Inc. website. The stakeholder meetings were open to the public and all interested parties were encouraged to provide comment. All stakeholder comments were ultimately considered in the development of the Draft Updated Model Rule, which contained detailed regulatory text, and was released to the stakeholders for comment on November 20, 2012. On February 7, 2013, the Participating States released the final version of the Updated Model Rule, which contained additional updates based on stakeholder feedback received on the Draft Updated Model Rule.

New York conducted an in-state stakeholder process designed to provide updates on the status of the regional process and to afford additional opportunity for New York's stakeholders to provide comment. The Department held seven meetings and staff availability sessions in New York and when possible, the Department sent list-serve notices to over 250 New York stakeholders announcing regional meetings and webinars. This included, for example, presentations by Department representatives, regarding RGGI program review and the proposed revisions to the Program, at the Business Council's¹⁰ Spring Environmental Conference on April 18, 2013 and Annual Meeting in Bolton Landing on September 19, 2012.

¹ In addition to New York, the RGGI Participating States include: Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, Rhode Island, and Vermont.

² The Participating States released the Updated Model Rule on February 7, 2013.

³ Sources will not be required to submit a compliance certification report for any interim control periods.

⁴ IPM® is a nationally recognized modeling tool used by the U.S. Environmental Protection Agency (EPA), state energy and environmental agencies, and private sector firms such as utilities and generation companies.

⁵ The estimated impact of the RGGI Program is the increment calculated as the difference between the Reference Case and the "91 Cap Bank MR IPM Scenario."

⁶ REMI Economic Impacts Analysis," by the Northeast States for Coordinated Air Use Management (NESCAUM), dated May 29, 2013. http://www.dec.ny.gov/docs/administration__pdf/remi91cap2013.pdf.

⁷ "IPM Potential Scenario Customer Bill Analysis," by the Analysis Group, dated May 24, 2013. http://www.dec.ny.gov/docs/administration__pdf/custbillanaly2013.pdf

⁸ This is provided in 2010 dollars, calculated as the present value of estimated annual changes over the period 2012 to 2040, discounted at three percent per year to account for the time-value of money.

⁹ RGGI, Inc. is a 501(c)(3) non-profit corporation created to provide technical and administrative services to the Participating States.

¹⁰ The Business Council of New York State, Inc., is the leading business organization in New York State, representing the interests of large and small firms throughout the state. Its membership is made up of thousands of member companies, as well as local chambers of commerce and professional and trade associations.

Job Impact Statement

1. Nature of Impact: The Regional Greenhouse Gas Initiative (RGGI) is a cooperative, historic effort among New York and eight Participating States¹ and is the first mandatory, market-based carbon dioxide (CO₂) emissions reduction program in the United States. Since its inception in 2008, RGGI has utilized a market-based mechanism to cap and cost-effectively reduce emissions that cause climate change. Recently, New York along with the Participating States, completed a comprehensive program review and announced a proposal to lower the regional emissions

cap established under RGGI to 91 million tons in 2014, declining 2.5 percent a year through 2020.² Accordingly, New York and the Participating States committed to propose revisions, pursuant to state-specific regulatory processes, to their respective CO₂ Budget Trading Programs to further reduce CO₂ emissions from power plants in the region. To implement the updated RGGI program in New York State, the Department of Environmental Conservation (Department) proposes to revise 6 NYCRR Part 242, CO₂ Budget Trading Program (Part 242 or the Program) and 6 NYCRR Part 200, General Provisions.

The Department, New York State Energy Research Development Authority (NYSERDA) and the New York State Department of Public Service (DPS) analyzed costs, including impacts to jobs, total Gross State Product and total Personal Income, associated with compliance with the proposed revisions to Part 242. As discussed below, this analysis concludes that the proposed revisions to the Program will not have an adverse impact on jobs and employment opportunities in New York. At the direction of New York and Participating States, Northeast States Coordinated Air Use Management (NESCAUM) conducted a macroeconomic impact study called "Regional Economic Models, Inc. Policy Insight™ (REMI)," which estimates the impact of the reduced CO₂ emissions cap, budget adjustments and the remainder of the proposed Program revisions³ on jobs in the RGGI region. Utilizing data inputs from extensive Integrated Planning Model (IPM®) modeling conducted by ICF International (ICF), REMI estimates that the cumulative, positive change in employment in New York associated with the proposed Program revisions will be approximately 80,500 additional job-years over the period 2012 to 2040 (a job-year is equivalent to one person employed for one year). Further, the study estimates that the cumulative changes in New York's Gross State Product and Personal Income associated with the proposed Part 242 revisions will increase approximately \$5.8 billion and \$4.7 billion, respectively⁴. These cumulative changes, while small, represent positive impacts for total State employment, total Gross State Product and total Personal Income.

The proposed Program revisions, which will cap regional CO₂ emissions at 91 million tons annually beginning in 2014, represent a nearly 45 percent reduction from the existing cap currently in place under the Program. After 2020, the cap will remain at 78 million tons annually. Further, to account for the existing private bank of CO₂ emissions allowances already acquired at auction, and to help create a binding cap, the proposed Program revisions provide two distinct budget adjustments. The First Control Period Interim Adjustment for Banked Allowances will reduce the budget for 100 percent of the first control period private bank of allowances (vintages 2009, 2010, and 2011) held by market participants after the first control period. The Second Control Period Interim Adjustment for Banked Allowances will reduce the budget for 100 percent of the surplus 2012 and 2013 vintage allowances held by market participants as of the end of 2013.

The proposed revisions to Part 242 also create the Cost Containment Reserve (CCR), which will help provide additional flexibility and cost containment for the Program. The CCR allowances will be triggered and released at auctions at \$4/ton in 2014, \$6/ton in 2015, \$8/ton in 2016, and \$10/ton in 2017. Each year after 2017, the CCR trigger price will increase by 2.5 percent. If the trigger price is reached, up to 10 million additional CCR allowances will be available for purchase at auction, except in 2014, when the reserve will be limited to five million allowances. The existing price triggers for expanding use of offsets and the one year compliance period extension will be eliminated in favor of the CCR.

Finally, the proposed Program revisions create an interim compliance obligation in part to align it with the annual compliance obligations under federal programs such as the Clean Air Interstate Rule and the Title IV Acid Rain Program. This program revision also helps to address the potential for a budget source to avoid its compliance obligation as a result of the business closing or falling into bankruptcy prior to the third year compliance obligation. In addition to demonstrating full compliance at the end of each three-year compliance period, regulated entities must now demonstrate that they are holding allowances equal to at least 50 percent of their emissions at the end of each of the first two years in each three year compliance period. The proposed Program revisions also include minor revisions such as setting the reserve price at \$2.00 in 2014, to rise at 2.5 percent per year in subsequent years, updating all references, and the deleting early reduction allowance provisions. The majority of the proceeds from the sale of New York's allowances will be continue to be dedicated to strategic energy or consumer benefits, such as energy efficiency and clean energy technologies.

The nature of the proposed Program revisions, generally described above and discussed more thoroughly in the accompanying Regulatory Impact Statement, is such that they clearly will not have an adverse impact on jobs and employment opportunities.

2. Categories and Numbers Affected: As indicated above, the Department, NYSERDA and DPS analyzed costs, including impacts to jobs,

total Gross State Product and total Personal Income, associated with compliance with the proposed revisions to Part 242. Modeling analysis and review was coordinated by RGGI Inc. and New York staff, and included input from energy and environmental representatives from the Participating States and each regional Independent Systems Operator.

To evaluate potential cost impacts of the reduced CO₂ emissions cap and budget adjustments, IPM®⁵ was used to compare a future case with the proposed Program revisions (Program Case) to a Reference Case (Business As Usual scenario) to project how the regional electricity system would function if the Program remained unchanged and proposed revisions were not implemented. The modeling assumptions and input data were developed with input from a stakeholder process, including representatives from the electricity generation sector, business and industry, environmental advocates and consumer interest groups. Subsequently, modeling results were presented to stakeholders for review and comment throughout the development of the proposed Program revisions. For a greater explanation of NYSERDA's analysis and a summary of the Integrated Planning Model (IPM®) modeling conducted by ICF International (ICF), see Regulatory Impact Statement pages 45-62.

Utilizing New York's Investments of RGGI Allowance Proceeds and output data from IPM®, the REMI macroeconomic study estimates that the impact of the reduced CO₂ emissions cap, budget adjustments and the remainder of the proposed Program revisions⁶ on jobs, the economy and electricity customer bills^{7,8}, in New York will be very small and generally positive. The REMI study estimates a cumulative, positive change in employment in New York associated with the proposed Program revisions of about 80,500 additional job-years over the period 2012 to 2040. A job-year is equivalent to one person employed for one year. Further, the REMI study estimates that the cumulative changes in New York's Gross State Product and Personal Income associated with the proposed Program revisions will increase approximately \$5.8 billion and \$4.7 billion, respectively⁹. Although these cumulative changes are minimal, they represent positive impacts for total State employment, total Gross State Product and total Personal Income.

3. Regions of Adverse Impact: A Statewide analysis of the impacts of these revisions on electricity prices in New York State was performed. The analysis predicts that under the Program Case, New York's wholesale electricity prices (including both energy and capacity costs) are projected to be \$1.64/MWh higher in 2016 and \$2.12/MWh higher in 2020, than the Reference Case. The proposed revisions to the Program are projected to increase wholesale electricity prices in New York State by about 3.0 percent in 2016 and 3.9 percent in 2020.

4. Minimizing Adverse Impact: The Department will implement the proposed Program revisions through a cap-and-trade program because allowance based cap-and-trade systems are the most cost effective means for implementing emission reductions from large stationary sources. The regulatory flexibility inherent in a cap-and-trade program that allows for interstate trading of emission allowances best enables the Department to balance the competing interests of the protection of the public health and welfare with continued industrial development of the State. By revising the Program, the Department is further able to balance these competing interests and minimize any potential adverse employment impacts of the revised Program.

5. Self-Employment Opportunities: Not applicable.

¹ In addition to New York, the RGGI Participating States include: Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, Rhode Island, and Vermont.

² The Participating States released the Updated Model Rule on February 7, 2013.

³ The estimated impact of the RGGI Program is the increment calculated as the difference between the Reference Case and the "91 Cap Bank MR IPM Scenario."

⁴ This is provided in 2010 dollars, calculated as the present value of estimated annual changes over the period 2012 to 2040, discounted at three percent per year to account for the time-value of money.

⁵ IPM® is a nationally recognized modeling tool used by the U.S. Environmental Protection Agency (EPA), state energy and environmental agencies, and private sector firms such as utilities and generation companies.

⁶ The estimated impact of the RGGI Program is the increment calculated as the difference between the Reference Case and the "91 Cap Bank MR IPM Scenario."

⁷ REMI Economic Impacts Analysis," by the Northeast States for Coordinated Air Use Management (NESCAUM), dated May 29, 2013. http://www.dec.ny.gov/docs/administration_pdf/remi91cap2013.pdf.

⁸ "IPM Potential Scenario Customer Bill Analysis," by the Analysis Group, dated May 24, 2013. http://www.dec.ny.gov/docs/administration_pdf/custbillanaly2013.pdf

⁹ See footnote 4.

Department of Financial Services

EMERGENCY RULE MAKING

Business Conduct of Mortgage Loan Servicers

I.D. No. DFS-28-13-00023-E

Filing No. 686

Filing Date: 2013-06-25

Effective Date: 2013-06-26

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

Action taken: Addition of Part 419 to Title 3 NYCRR.

Statutory authority: Banking Law, art. 12-D

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

Specific reasons underlying the finding of necessity: The legislature required the registration of mortgage loan servicers as part of the Mortgage Lending Reform Law of 2008 (Ch. 472, Laws of 2008, hereinafter, the "Mortgage Lending Reform Law") to help address the existing foreclosure crisis in the state. By registering servicers and requiring that servicers engage in the business of mortgage loan servicing in compliance with rules and regulations adopted by the Superintendent, the legislature intended to help ensure that servicers conduct their business in a manner acceptable to the Department. However, since the passage of the Mortgage Lending Reform Law, foreclosures continue to pose a significant threat to New York homeowners. The Department continues to receive complaints from homeowners and housing advocates that mortgage loan servicers' response to delinquencies and their efforts at loss mitigation are inadequate. These rules are intended to provide clear guidance to mortgage loan servicers as to the procedures and standards they should follow with respect to loan delinquencies. The rules impose a duty of fair dealing on loan servicers in their communications, transactions and other dealings with borrowers. In addition, the rule sets standards with respect to the handling of loan delinquencies and loss mitigation. The rule further requires specific reporting on the status of delinquent loans with the Department so that it has the information necessary to assess loan servicers' performance.

In addition to addressing the pressing issue of mortgage loan delinquencies and loss mitigation, the rule addresses other areas of significant concern to homeowners, including the handling of borrower complaints and inquiries, the payment of taxes and insurance, crediting of payments and handling of late payments, payoff balances and servicer fees. The rule also sets forth prohibited practices such as engaging in deceptive practices or placing homeowners' insurance on property when the servicers has reason to know that the homeowner has an effective policy for such insurance.

Subject: Business conduct of mortgage loan servicers.

Purpose: To implement the purpose and provisions of the Mortgage Lending Reform Law of 2008 with respect to mortgage loan servicers.

Substance of emergency rule: Section 419.1 contains definitions of terms that are used in Part 419 and not otherwise defined in Part 418, including "Servicer", "Qualified Written Request" and "Loan Modification".

Section 419.2 establishes a duty of fair dealing for Servicers in connection with their transactions with borrowers, which includes a duty to pursue loss mitigation with the borrower as set forth in Section 419.11.

Section 419.3 requires compliance with other State and Federal laws relating to mortgage loan servicing, including Banking Law Article 12-D, RESPA, and the Truth-in-Lending Act.

Section 419.4 describes the requirements and procedures for handling to consumer complaints and inquiries.

Section 419.5 describes the requirements for a servicer making payments of taxes or insurance premiums for borrowers.

Section 419.6 describes requirements for crediting payments from borrowers and handling late payments.

Section 419.7 describes the requirements of an annual account statement which must be provided to borrowers in plain language showing the unpaid principal balance at the end of the preceding 12-month period, the interest paid during that period and the amounts deposited into and disbursed from escrow. The section also describes the Servicer's obligations with respect to providing a payment history when requested by the borrower or borrower's representative.

Section 419.8 requires a late payment notice be sent to a borrower no later than 17 days after the payment remains unpaid.

Section 419.9 describes the required provision of a payoff statement that contains a clear, understandable and accurate statement of the total amount that is required to pay off the mortgage loan as of a specified date.

Section 419.10 sets forth the requirements relating to fees permitted to be collected by Servicers and also requires Servicers to maintain and update at least semi-annually a schedule of standard or common fees on their website.

Section 419.11 sets forth the Servicer's obligations with respect to handling of loan delinquencies and loss mitigation, including an obligation to make reasonable and good faith efforts to pursue appropriate loss mitigation options, including loan modifications. This Section includes requirements relating to procedures and protocols for handling loss mitigation, providing borrowers with information regarding the Servicer's loss mitigation process, decision-making and available counseling programs and resources.

Section 419.12 describes the quarterly reports that the Superintendent may require Servicers to submit to the Superintendent, including information relating to the aggregate number of mortgages serviced by the Servicer, the number of mortgages in default, information relating to loss mitigation activities, and information relating to mortgage modifications.

Section 419.13 describes the books and records that Servicers are required to maintain as well as other reports the Superintendent may require Servicers to file in order to determine whether the Servicer is complying with applicable laws and regulations. These include books and records regarding loan payments received, communications with borrowers, financial reports and audited financial statements.

Section 419.14 sets forth the activities prohibited by the regulation, including engaging in misrepresentations or material omissions and placing insurance on a mortgage property without written notice when the Servicer has reason to know the homeowner has an effective policy in place.

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 September 22, 2013.

Text of rule and any required statements and analyses may be obtained from: Sam L. Abram, NYS Department of Financial Services, 1 State Street, New York, NY 10004, (212) 709-1658, email: sam.abram@dfs.gov

Regulatory Impact Statement

1. Statutory authority.

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

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

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

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

Subsection (3) of Section 590 was amended by the Subprime Law to clarify the power of the banking board to promulgate rules and regulations and to extend the rulemaking authority regarding regulations for the protection of consumers and regulations to define improper or fraudulent business practices to cover mortgage loan servicers, as well as mortgage bankers, mortgage brokers and exempt organizations. The functions and powers of the banking board have since been transferred to the Superintendent of Financial Services, pursuant to Part A of Chapter 62 of the Laws of 2011, Section 89.

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

New Subsection (1) of Section 595-b was added by the Mortgage Lending

Reform Law and requires the Superintendent to promulgate regulations and policies governing the grounds to impose a fine or penalty with respect to the activities of a mortgage loan servicer. Also, the Mortgage Lending Reform Law amends the penalty provision of Subdivision (1) of Section 598 to apply to mortgage loan servicers as well as to other entities.

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

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

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

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

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

The fee amounts for mortgage loan servicer registration and branch applications are established in accordance with Banking Law Section 18-a.

2. Legislative objectives.

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

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

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

Part 418 of the Superintendent's Regulations, initially adopted on an emergency basis on July 1 2009, addresses the first component of the mortgage servicing statute by setting standards and procedures for applications for registration as a mortgage loan servicer, for approving and denying applications to be registered as a mortgage loan servicer, for approving changes of control, for suspending, terminating or revoking the registration of a mortgage loan servicer as well as setting financial responsibility standards for mortgage loan servicers.

Part 419 addresses the business practices of mortgage loan servicers in connection with their servicing of residential mortgage loans. This part addresses the obligations of mortgage loan servicers in their communications, transactions and general dealings with borrowers, including the handling of consumer complaints and inquiries, handling of escrow payments, crediting of payments, charging of fees, loss mitigation procedures and provision of payment histories and payoff statements. This part also imposes certain recordkeeping and reporting requirements in order to enable the Superintendent to monitor servicers' conduct and prohibits certain practices such as engaging in deceptive business practices.

Collectively, the provisions of Part 418 and 419 implement the intent of the Legislature to register and supervise mortgage loan servicers.

3. Needs and benefits.

The Mortgage Lending Reform Law adopted a multifaceted approach to the lack of supervision of the mortgage loan industry, particularly with respect to servicing and foreclosure. It addressed a variety of areas in the residential mortgage loan industry, including: i. loan originations; ii. loan foreclosures; and iii. the conduct of business by residential mortgage loans servicers.

Until July 1, 2009, when the mortgage loan servicer registration provi-

sions first became effective, the Department regulated the brokering and making of mortgage loans, but not the servicing of these mortgage loans. Servicing is vital part of the residential mortgage loan industry; it involves the collection of mortgage payments from borrowers and remittance of the same to owners of mortgage loans; to governmental agencies for taxes; and to insurance companies for insurance premiums. Mortgage servicers also act as agents for owners of mortgages in negotiations relating to loss mitigation when a mortgage becomes delinquent. As “middlemen,” moreover, servicers also play an important role when a property is foreclosed upon. For example, the servicer may typically act on behalf of the owner of the loan in the foreclosure proceeding.

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

More than 2,000,000 loans on residential one-to-four family properties are being serviced in New York. Of these over 9% were seriously delinquent as of the first quarter of 2012. Despite various initiatives adopted at the state level and the creation of federal programs such as Making Home Affordable to encourage loan modifications and help at risk homeowners, the number of loans modified, have not kept pace with the number of foreclosures. Foreclosures impose costs not only on borrowers and lenders but also on neighboring homeowners, cities and towns. They drive down home prices, diminish tax revenues and have adverse social consequences and costs.

As noted above, Part 418, initially adopted on an emergency basis on July 1 2009, relates to the first component of the mortgage servicing statute – the registration of mortgage loan servicers. It was intended to ensure that only those persons and entities with adequate financial support and sound character and general fitness will be permitted to register as mortgage loan servicers. It also provided for the suspension, revocation and termination of licenses involved in wrongdoing and establishes minimum financial standards for mortgage loan servicers.

Part 419 addresses the business practices of mortgage loan servicers and establishes certain consumer protections for homeowners whose residential mortgage loans are being serviced. These regulations provide standards and procedures for servicers to follow in their course of dealings with borrowers, including the handling of borrower complaints and inquiries, payment of taxes and insurance premiums, crediting of borrower payments, provision of annual statements of the borrower’s account, authorized fees, late charges and handling of loan delinquencies and loss mitigation. Part 419 also identifies practices that are prohibited and imposes certain reporting and record-keeping requirements to enable the Superintendent to determine the servicer’s compliance with applicable laws, its financial condition and the status of its servicing portfolio.

Since the adoption of Part 418, 67 entities have been approved for registration or have pending applications and nearly 400 entities have indicated that they are a mortgage banker, broker, bank or other organization exempt from the registration requirements.

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

These regulations will improve accountability and the quality of service in the mortgage loan industry and will help promote alternatives to foreclosure in the state.

4. Costs.

The requirements of Part 419 do not impose any direct costs on mortgage loan servicers. Although mortgage loan servicers may incur some additional costs as a result of complying with Part 419, the overwhelming majority of mortgage loan servicers are banks, operating subsidiaries or affiliates of banks, large independent servicers or other financial services entities that service millions, and even billions, of dollars in loans and have the experience, resources and systems to comply with these requirements. Moreover, any additional costs are likely to be mitigated by the fact that many of the requirements of Part 419, including those relating to the handling of residential mortgage delinquencies and loss mitigation (419.11) and quarterly reporting (419.12), are consistent with or substantially similar to standards found in other federal or state laws, federal mortgage modification programs or servicers own protocols.

For example, Fannie Mae and Freddie Mac, which own or insure ap-

proximately 90% of the nation’s securitized mortgage loans, have similar guidelines governing various aspects of mortgage servicing, including handling of loan delinquencies. In addition, over 100 mortgage loan servicers participate in the federal Making Home Affordable (MHA) program which requires adherence to standards for handling of loan delinquencies and loss mitigation similar to those contained in these regulations. Those servicers not participating in MHA have, for the most part, adopted programs which parallel many components of MHA.

Reporting on loan delinquencies and loss mitigation has likewise become increasingly common. The OCC publish quarterly reports on credit performance, loss mitigation efforts and foreclosures based on data provided by national banks and thrifts. And, states such as Maryland and North Carolina have adopted similar reporting requirements to those contained in section 419.12.

Many of the other requirements of Part 419 such as those related to handling of taxes, insurance and escrow payments, collection of late fees and charges, crediting of payments derive from federal or state laws and reflect best industry practices. The periodic reporting and bookkeeping and record keeping requirements are also standard among financial services businesses, including mortgage bankers and brokers (see, for example section 410 of the Superintendent’s Regulations).

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

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

5. Local government mandates.

None.

6. Paperwork.

Part 419 requires mortgage loan servicers to keep books and records related to its servicing for a period of three years and to produce quarterly reports and financial statements as well as annual and other reports requested by the Superintendent. It is anticipated that the quarterly reporting relating to mortgage loan servicing will be done electronically and would therefore be virtually paperless. The other recordkeeping and reporting requirements are consistent with standards generally required of mortgage bankers and brokers and other regulated financial services entities.

7. Duplication.

The regulation does not duplicate, overlap or conflict with any other regulations. The various federal laws that touch upon aspects of mortgage loan servicing are noted in Section 9 “Federal Standards” below.

8. Alternatives.

The Mortgage Lending Reform Law required the registration of mortgage loan servicers and empowered the Superintendent to prescribe rules and regulations to guide the business of mortgage servicing. The purpose of the regulation is to carry out this statutory mandate to register mortgage loan servicers and regulate the manner in which they conduct business. The Department circulated a proposed draft of Part 419 and received comments from and met with industry and consumer groups. The current Part 419 reflects the input received. The alternative to these regulations is to do nothing or to wait for the newly created federal bureau of consumer protection to promulgate national rules, which could take years, may not happen at all or may not address all the practices covered by the rule. Thus, neither of those alternatives would effectuate the intent of the legislature to address the current foreclosure crisis, help at-risk homeowners vis-à-vis their loan servicers and ensure that mortgage loan servicers engage in fair and appropriate servicing practices.

9. Federal standards.

Currently, mortgage loan servicers are not required to be registered by any federal agencies, and there are no comprehensive federal rules governing mortgage loan servicing. Federal laws such as the Real Estate Settlement Procedures Act of 1974, 12 U.S.C. § 2601 et seq. and regulations adopted thereunder, 24 C.F.R. Part 3500, and the Truth-in-Lending Act, 15 U.S.C. section 1600 et seq. and Regulation Z adopted thereunder, 12 C.F.R. section 226 et seq., govern some aspects of mortgage loan servicing, and there have been some recent amendments to those laws and regulations regarding mortgage loan servicing. For example, Regulation Z, 12 C.F.R. section 226.36(c), was recently amended to address the crediting of payments, imposition of late charges and the provision of payoff statements. In addition, the recently enacted Dodd-Frank Wall Street Reform and Protection Act of 2010 (Dodd-Frank Act) establishes requirements for the handling of escrow accounts, obtaining force-placed insurance, responding to borrower requests and providing information related to the owner of the loan. Additionally, the newly created Bureau of Consumer Financial Protection established by the Dodd-Frank Act may soon propose additional regulations for mortgage loan servicers.

10. Compliance schedule.

Similar emergency regulations first became effective on October 1, 2010.

Regulatory Flexibility Analysis

1. Effect of the Rule:

The rule will not have any impact on local governments. The Mortgage Lending Reform Law of 2008 (Ch. 472, Laws of 2008, hereinafter, the "Mortgage Lending Reform Law") requires all mortgage loan servicers, whether registered or exempt from registration under the law, to service mortgage loans in accordance with the rules and regulations promulgated by the Banking Board or Superintendent. The functions and powers of the Banking Board have since been transferred to the Superintendent of Financial Services, pursuant to Part A of Chapter 62 of the Laws of 2011, Section 89. Of the 67 entities which have been approved for registration or have pending applications and the nearly 400 entities which have indicated that they are exempt from the registration requirements, it is estimated that very few are small businesses.

2. Compliance Requirements:

The provisions of the Mortgage Lending Reform Law relating to mortgage loan servicers has two main components: it requires the registration by the Department of servicers who are not a bank, mortgage banker, mortgage broker or other exempt organizations (the "MLS Registration Regulations"), and it authorizes the Department to promulgate rules and regulations that are necessary and appropriate for the protection of consumers, to define improper or fraudulent business practices, or otherwise appropriate for the effective administration of the provisions of the Mortgage Lending Reform Law relating to mortgage loan servicers (the "Mortgage Loan Servicer Business Conduct Regulations").

The provisions of the Mortgage Lending Reform Law requiring registration of mortgage loan servicers which are not mortgage bankers, mortgage brokers or exempt organizations became effective on July 1, 2009. Part 418 of the Superintendent's Regulations, initially adopted on an emergency basis on July 1 2009, sets for the standards and procedures for applications for registration as a mortgage loan servicer, for approving and denying applications to be registered as a mortgage loan servicer, for approving changes of control, for suspending, terminating or revoking the registration of a mortgage loan servicer as well as the financial responsibility standards for mortgage loan servicers.

Part 419 implements the provisions of the Mortgage Lending Reform Law by setting the standards by which mortgage loan servicers conduct the business of mortgage loan servicing. The rule sets the standards for handling complaints, payments of taxes and insurance, crediting of borrower payments, late payments, account statements, delinquencies and loss mitigation, fees and recordkeeping.

3. Professional Services:

None.

4. Compliance Costs:

The requirements of Part 419 do not impose any direct costs on mortgage loan servicers. Although mortgage loan servicers may incur some additional costs as a result of complying with Part 419, the overwhelming majority of mortgage loan servicers are banks, operating subsidiaries or affiliates of banks, large independent servicers or other financial services entities that service millions, and even billions, of dollars in loans and have the experience, resources and systems to comply with these requirements. Moreover, any additional costs are likely to be mitigated by the fact that many of the requirements of Part 419, including those relating to the handling of residential mortgage delinquencies and loss mitigation (419.11) and quarterly reporting (419.12), are consistent with or substantially similar to standards found in other federal or state laws, federal mortgage modification programs or servicers own protocols.

For example, Fannie Mae and Freddie Mac, which own or insure approximately 90% of the nation's securitized mortgage loans, have similar guidelines governing various aspects of mortgage servicing, including handling of loan delinquencies. In addition, over 100 mortgage loan servicers participate in the federal Making Home Affordable (MHA) program which requires adherence to standards for handling of loan delinquencies and loss mitigation similar to those contained in these regulations. Those servicers not participating in MHA have, for the most part, adopted programs which parallel many components of MHA.

Reporting on loan delinquencies and loss mitigation has likewise become increasingly common. The OCC publishes quarterly reports on credit performance, loss mitigation efforts and foreclosures based on data provided by national banks and thrifts. And, states such as Maryland and North Carolina have adopted similar reporting requirements to those contained in section 419.12.

Many of the other requirements of Part 419 such as those related to handling of taxes, insurance and escrow payments, collection of late fees and charges, crediting of payments derive from federal or state laws and reflect best industry practices. The periodic reporting and bookkeeping and record keeping requirements are also standard among financial ser-

vices businesses, including mortgage bankers and brokers (see, for example section 410 of the Superintendent's Regulations).

Compliance with the rule should improve the servicing of residential mortgage loans in New York, including the handling of mortgage delinquencies, help prevent unnecessary foreclosures and reduce consumer complaints regarding the servicing of residential mortgage loans.

5. Economic and Technological Feasibility:

For the reasons noted in Section 4 above, the rule should impose no adverse economic or technological burden on mortgage loan servicers that are small businesses.

6. Minimizing Adverse Impacts:

As noted in Section 1 above, most servicers are not small businesses. Many of the requirements contained in the rule derive from federal or state laws, existing servicer guidelines utilized by Fannie Mae and Freddie Mac and best industry practices.

Moreover, the ability by the Department to regulate mortgage loan servicers is expected to reduce costs associated with responding to consumers' complaints, decrease unnecessary expenses borne by mortgagors, help borrowers at risk of foreclosure and decrease the number of foreclosures in this state.

7. Small Business and Local Government Participation:

The Department distributed a draft of proposed Part 419 to industry representatives, received industry comments on the proposed rule and met with industry representatives in person. The Department likewise distributed a draft of proposed Part 419 to consumer groups, received their comments on the proposed rule and met with consumer representatives to discuss the proposed rule in person. The rule reflects the input received from both industry and consumer groups.

Rural Area Flexibility Analysis

Types and Estimated Numbers: Since the adoption of the Mortgage Lending Reform Law of 2008 (Ch. 472, Laws of 2008, hereinafter, the "Mortgage Lending Reform Law"), which required mortgage loan servicers to be registered with the Department unless exempted under the law, 67 entities have pending applications or have been approved for registration and nearly 400 entities have indicated that they are a mortgage banker, broker, bank or other organization exempt from the registration requirements. Only one of the non-exempt entities applying for registration is located in New York and operating in a rural area. Of the exempt organizations, all of which are required to comply with the conduct of business contained in Part 419, approximately 400 are located in New York, including several in rural areas. However, the overwhelming majority of exempt organizations, regardless of where located, are banks or credit unions that are already regulated and are thus familiar with complying with the types of requirements contained in this regulation.

Compliance Requirements: The provisions of the Mortgage Lending Reform Law relating to mortgage loan servicers has two main components: it requires the registration by the Department of servicers that are not a bank, mortgage banker, mortgage broker or other exempt organization (the "MLS Registration Regulations"), and it authorizes the Department to promulgate rules and regulations that are necessary and appropriate for the protection of consumers, to define improper or fraudulent business practices, or otherwise appropriate for the effective administration of the provisions of the Mortgage Lending Reform Law relating to mortgage loan servicers (the "MLS Business Conduct Regulations").

The provisions of the Mortgage Lending Reform Law of 2008 requiring registration of mortgage loan servicers which are not mortgage bankers, mortgage brokers or exempt organizations became effective on July 1, 2009. Part 418 of the Superintendent's Regulations, initially adopted on an emergency basis on July 1, 2010, sets forth the standards and procedures for applications for registration as a mortgage loan servicer, for approving and denying applications to be registered as a mortgage loan servicer, for approving changes of control, for suspending, terminating or revoking the registration of a mortgage loan servicer as well as the financial responsibility standards for mortgage loan servicers.

Part 419 implements the provisions of the Mortgage Lending Reform Law of 2008 by setting the standards by which mortgage loan servicers conduct the business of mortgage loan servicing. The rule sets the standards for handling complaints, payments of taxes and insurance, crediting borrower payments, late payments, account statements, delinquencies and loss mitigation and fees. This part also imposes certain recordkeeping and reporting requirements in order to enable the Superintendent to monitor servicers' conduct and prohibits certain practices such as engaging in deceptive business practices.

Costs: The requirements of Part 419 do not impose any direct costs on mortgage loan servicers. The periodic reporting requirements of Part 419 are consistent with those imposed on other regulated entities. In addition, many of the other requirements of Part 419, such as those related to the handling of loan delinquencies, taxes, insurance and escrow payments, collection of late fees and charges and crediting of payments, derive from federal or state laws, current federal loan modification programs, servic-

ing guidelines utilized by Fannie Mae and Freddie Mac or servicers' own protocols. Although mortgage loan servicers may incur some additional costs as a result of complying with Part 419, the overwhelming majority of mortgage loan servicers are banks, credit unions, operating subsidiaries or affiliates of banks, large independent servicers or other financial services entities that service millions, and even billions, of dollars in loans and have the experience, resources and systems to comply with these requirements. Of the 67 entities that have been approved for registration or that have pending applications, only one is located in a rural area of New York State. Of the few exempt organizations located in rural areas of New York, virtually all are banks or credit unions. Moreover, compliance with the rule should improve the servicing of residential mortgage loans in New York, including the handling of mortgage delinquencies, help prevent unnecessary foreclosures and reduce consumer complaints regarding the servicing of residential mortgage loans.

Minimizing Adverse Impacts: As noted in the "Costs" section above, while mortgage loan servicers may incur some higher costs as a result of complying with the rules, the Department does not believe that the rule will impose any meaningful adverse economic impact upon private or public entities in rural areas. In addition, it should be noted that Part 418, which establishes the application and financial requirements for mortgage loan servicers, authorizes the Superintendent to reduce or waive the otherwise applicable financial responsibility requirements in the case of mortgage loans servicers that service not more than 12 mortgage loans or more than \$5,000,000 in aggregate mortgage loans in New York and which do not collect tax or insurance payments. The Superintendent is also authorized to reduce or waive the financial responsibility requirements in other cases for good cause. The Department believes that this will ameliorate any burden on mortgage loan servicers operating in rural areas.

Rural Area Participation: The Department issued a draft of Part 419 in December 2009 and held meetings with and received comments from industry and consumer groups following the release of the draft rule. The Department also maintains continuous contact with large segments of the servicing industry through its regulation of mortgage bankers and brokers and its work in the area of foreclosure prevention. The Department likewise maintains close contact with a variety of consumer groups through its community outreach programs and foreclosure mitigation programs. The Department has utilized this knowledge base in drafting the regulation.

Job Impact Statement

Article 12-D of the Banking Law, as amended by the Mortgage Lending Reform Law (Ch. 472, Laws of 2008), requires persons and entities which engage in the business of servicing mortgage loans after July 1, 2009 to be registered with the Superintendent. Part 418 of the Superintendent's Regulations, initially adopted on an emergency basis on July 1, 2009, sets forth the application, exemption and approval procedures for registration as a mortgage loan servicer, as well as financial responsibility requirements for applicants, registrants and exempted persons.

Part 419 addresses the business practices of mortgage loan servicers in connection with their servicing of residential mortgage loans. Thus, this part addresses the obligations of mortgage loan servicers in their communications, transactions and general dealings with borrowers, including the handling of consumer complaints and inquiries, handling of escrow payments, crediting of payments, charging of fees, loss mitigation procedures and provision of payment histories and payoff statements. This part also imposes certain recordkeeping and reporting requirements in order to enable the Superintendent to monitor services' conduct and prohibits certain practices such as engaging in deceptive business practices.

Compliance with Part 419 is not expected to have a significant adverse effect on jobs or employment activities within the mortgage loan servicing industry. The vast majority of mortgage loan servicers are sophisticated financial entities that service millions, if not billions, of dollars in loans and have the experience, resources and systems to comply with the requirements of the rule. Moreover, many of the requirements of the rule reflect derive from federal or state laws and reflect existing best industry practices.

New York State Gaming Commission

EMERGENCY RULE MAKING

Ability of a New Owner of a Claimed Horse to Void the Claim

I.D. No. RWB-08-13-00005-E

Filing No. 680

Filing Date: 2013-06-24

Effective Date: 2013-06-24

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

Action taken: Amendment of section 4038.5 of Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 103(1), 104(1), (19), 122 and 128

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

Specific reasons underlying the finding of necessity: The Board has determined that immediate adoption of this rule is necessary for the preservation of the public safety and general welfare and that compliance with the requirements of subdivision 1 of Section 202 of the State Administrative Procedure Act would be contrary to the public interest.

Between November 2011 and March 2012, 21 thoroughbred horses in New York State died or were euthanized while racing at Aqueduct Race Track. Their deaths prompted a comprehensive analysis of the circumstances and possible causes for the deaths of these horses by the New York Task Force on Racehorse Health and Safety. One common aspect in these races was the fact that the horse that broke down was often involved in a claiming race. This rule is necessary to remove an incentive that a trainer or owner may have for entering an unsound horse in claiming race for the purpose of racing and potentially transferring a horse without proper regard to the horse's well-being and the integrity of racing. The Board previously adopted an amendment to Section 4038.5 that allowed for a claim to be voided if the horse died during the race or was euthanized on the racetrack. The Task Force recommended this amendment be adopted on an emergency basis to more adequately remove any incentive for racing unsound claiming horses.

Given the danger of a horse breaking down, and the safety threat presented to both the jockey on the horse and the jockeys riding in close proximity, this rule is necessary to protect the safety of human and equine athletes. Thoroughbred horses travel over the racetrack at an average speed of approximately 40 miles per hour, sometimes exceeding that average as they sprint to the finish or sprint to gain positional advantage. An unsound horse racing on short rest may be forced to race beyond its limits and result in a fatal breakdown, oftentimes in a sudden or uncontrollable breakdown.

This rule is also necessary to protect the general welfare of the horse racing industry and the thousands of jobs that are created through it. Public confidence in both the process of racing and in pari-mutuel wagering system is necessary for the sport to survive, and with it the jobs and revenue generated in support of government. Claiming races play an essential part of thoroughbred racing and pari-mutuel wagering. This rule is necessary to ensure integrity in the claiming process, and in turn ensure that the when a horse steps onto a race track, it doing so for the purpose of winning and not merely to foster a transaction.

Subject: Ability of a new owner of a claimed horse to void the claim.

Purpose: To remove the incentive to horse owners to race substandard horses in a claiming race.

Text of emergency rule: Under subdivision (a) of Section 4038.5 of Title 9 NYCRR, paragraph (3) is added and paragraph (1) is amended to read as follows:

(1) the claim is voidable at the discretion of the new owner pursuant to the conditions stated in section [4038.18] 4038.19 of this subchapter unless the age or sex of such horse has been misrepresented, and subject to the provisions of subdivision (b) of this section; [and]

(2) a claim shall be void for any horse that dies during a race or is euthanized on the track following a race[.]; and

(3) a claim is voidable at the discretion of the new owner, for a period of one hour after the race is made official, for any horse that is vanned off the track after the race.

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. RWB-08-13-00005-E, Issue of February 20, 2013. The emergency rule will expire August 22, 2013.

Text of rule and any required statements and analyses may be obtained from: John Googas, New York State Gaming Commission, One Broadway Center, Suite 600, Schenectady, New York 12305-2553, (518) 395-5400, email: info@gaming.ny.gov

Regulatory Impact Statement

1. Statutory authority and legislative objectives of such authority: The New York State Gaming Commission is authorized to promulgate these rules pursuant to Racing, Pari-Mutuel Wagering and Breeding Law sections 103(1), 104(1), 104(19), 122, and 128. Under sections 103(1) and 104(1), the Gaming Commission has general jurisdiction over all horse racing and pari-mutuel wagering activities in the state and the corporations and associations and persons engaged therein, and is responsible for the supervision, regulation, and administration thereof. Section 104(19) authorizes the Gaming Commission to promulgate any rules and regulations that it deems necessary to carry out its responsibilities. Section 122 provides that all rule-making of the former New York State Racing and Wagering Board shall continue in force and effect as rule-making of the Gaming Commission until duly modified or abrogated by such commission. Section 128 authorizes the new Gaming Commission to promulgate regulations on an emergency basis by methods outside of standard administrative procedural requirements to ensure continuity through readopting current emergency rules of the Gaming Commission.

2. Legislative objectives: To enable the New York State Gaming Commission to preserve the integrity of pari-mutuel racing, while generating reasonable revenue for the support of government.

3. Needs and benefits: This rulemaking is necessary to assure integrity, safety and public confidence in claiming races by removing incentives to use the claiming race process as a means of racing and transferring unsound horses. This rulemaking removes the incentive to enter an unsound horse in a claiming race with the intended goal of protecting both the health and safety of the equine and human athlete.

All claiming horses are, in effect, offered for sale at a designated price within the range of the claiming race in which they are entered by their owners. The potential buyer of a horse in a claiming race must enter his claim before the race. By entering a horse in a claiming race, the owner is offering his horse for sale to another individual.

This amendment will reduce the incidence of injuries/deaths in horse races by changing the claiming rule to allow a successful claimant to void a claim when the horse is unable to walk off the track and must be transported – or vanned – off the race track. The current rule provides a regulatory mechanism by which a successful claimant may void a claim in the event that a horse dies during the race or is euthanized on the track.

Adoption of this amendment was recommended by the New York Task Force on Racehorse Health and Safety, which recently released its report of investigation concerning the death of 21 thoroughbred race horse between November 2011 and March 2012. The report stated: “The Task Force recommends that the NYSRWB Rule 4038.5 be amended to provide that a claim is voidable, at the discretion of the claimant and within one hour of the conclusion of the race, for a horse that is vanned off the track.” The report further states: “The Task Force believes the NYSRWB emergency amendment to Rule 4038 (in April 2012) represents an improvement by establishing a deterrent to the willful entry of a compromised horse, but that it should be further amended to provide that a claim is voidable by the claimant within one hour of the conclusion of the race if the horse is vanned off the track. The voiding of a claim should not require the death of a horse.”

4. Costs:
 (a) Costs to regulated parties for the implementation of and continuing compliance with the rule: None.

(b) Costs to the agency, the state and local governments for the implementation and continuation of the rule: None.

(c) The information, including the source(s) of such information and the methodology upon which the cost analysis is based: Commission staff reviewed the cost factors and determined that the rule can be implemented using the existing system for voiding a claim, and no additional costs will be added.

(d) Where an agency finds that it cannot provide a statement of costs, a statement setting forth the agency’s best estimate, which shall indicate the information and methodology upon which the estimate is based and the reason(s) why a complete cost statement cannot be provided. Not applicable.

5. Local government mandates: None. The New York State Gaming Commission is the only governmental entity authorized to regulate pari-mutuel harness racing activities.

6. Paperwork: There will be no additional paperwork. The process will rely on the existing administrative forms and processes for voiding a claim.

7. Duplication: None.

8. Alternatives: Proposals include allowing the claimant to void a claim immediately after a race for no reason or giving race secretaries authority to include the above condition in claiming races. These alternatives were considered impractical.

The Commission also considered a rule to required the stewards to consult with a designated veterinarian before voiding a claim for a horse that has suffered a catastrophic injury or death before it was unsaddled following its race. This alternative was rejected in favor of the proposed rule, which is a bright line threshold rather than an arguably judgmental determination.

9. Federal standards: None.

10. Compliance schedule: As an emergency rule, the amendments can be implemented immediately upon submission to the Department of State.

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

As is evident by the nature of this rulemaking, this proposal affects the voiding of claims when a horse is injured during a race and requires transportation off the track and will not have an adverse affect on jobs or small businesses. The narrow economic impact of this amendment is limited to those instances where a claim on a thoroughbred race horse is voidable if the horse is unable to walk off the race track and is transported off the track. The Board previously adopted a similar rule that allowed a claim to be voided if the horse dies on the track or is euthanized. Since that rule was adopted as an emergency rule in April 2012, there has been only one instance of a claimed horse dying on the track. The indirect economic impact of this rule is that it will discourage horse owners from entering unsound horses in claiming races. The Board believes that this limited economic impact will not adversely impact rural areas, jobs, small businesses or local governments and does not require a Regulatory Flexibility Statement, Rural Area Flexibility Statement or Job Impact Statement because it will not impose an adverse impact on rural areas, nor will it affect jobs. This amendment is intended to reduce an incentive to race an unsound horse. A Regulatory Flexibility Statement and a Rural Area Flexibility Statement are not required because the rule does not adversely affect small business, local governments, public entities, private entities, or jobs in rural areas. There will be no impact for reporting, recordkeeping, or other compliance requirements on public or private entities in rural areas. A Jobs Impact Statement is not required because this rule amendment will not adversely impact jobs. This rulemaking does not impact upon a small business pursuant to such definition in the State Administrative Procedure Act § 102 (8) nor does it negatively affect employment. The proposal will not impose adverse economic impact on reporting, recordkeeping or other compliance requirements on small businesses in rural or urban areas nor on employment opportunities. The rule does not impose any technological changes on the industry either.

Assessment of Public Comment

The agency received no public comment.

Department of Health

EMERGENCY RULE MAKING

Personal Care Services Program (PCSP) and Consumer Directed Personal Assistance Program (CDPAP)

I.D. No. HLT-28-13-00001-E

Filing No. 671

Filing Date: 2013-06-19

Effective Date: 2013-06-19

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

Action taken: Amendment of sections 505.14 and 505.28 of Title 18 NYCRR.

Statutory authority: Public Health Law, section 201(1)(v); and Social Services Law, sections 363-a(2), 365-a(2)(e) and 365-f

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

Specific reasons underlying the finding of necessity: Pursuant to the authority vested in the Commissioner of Health by Social Services Law § 365-a(2)(e), the Commissioner is authorized to adopt standards, pursuant to emergency regulation, for the provision and management of services for individuals whose need for such services exceeds a specified level to be determined by the Commissioner.

Subject: Personal Care Services Program (PCSP) and Consumer Directed Personal Assistance Program (CDPAP).

Purpose: To establish definitions, criteria and requirements associated with the provision of continuous PC and continuous CDPA services.

Text of emergency rule: Paragraph (3) of subdivision (a) of section 505.14 is repealed and a new paragraph (3) is added to read as follows:

(3) *Continuous personal care services means the provision of uninterrupted care, by more than one person, for more than 16 hours per day for a patient who, because of the patient's medical condition and disabilities, requires total assistance with toileting, walking, transferring or feeding at times that cannot be predicted.*

Paragraph (4) of subdivision (a) of section 505.14 is amended by adding new subparagraph (iii) to read as follows:

(iii) *Personal care services shall not be authorized if the patient's need for assistance can be met by either or both of the following:*

(a) *voluntary assistance available from informal caregivers including, but not limited to, the patient's family, friends or other responsible adult; or formal services provided by an entity or agency; or*

(b) *adaptive or specialized equipment or supplies including, but not limited to, bedside commodes, urinals, walkers and wheelchairs, when such equipment or supplies can be provided safely and cost-effectively.*

Paragraph (5) of subdivision (a) of section 505.14 is repealed and a new paragraph (5) is added to read as follows:

(5) *Live-in 24-hour personal care services means the provision of care by one person for a patient who, because of the patient's medical condition and disabilities, requires some or total assistance with one or more personal care functions during the day and night and whose need for assistance during the night is infrequent or can be predicted.*

Clause (b) of subparagraph (i) of paragraph (6) of subdivision (a) of section 505.14 is amended to read as follows:

(b) The [initial] authorization for Level I services shall not exceed eight hours per week. [An exception to this requirement may be made under the following conditions:

(1) The patient requires some or total assistance with meal preparation, including simple modified diets, as a result of the following conditions:

(i) informal caregivers such as family and friends are unavailable, unable or unwilling to provide such assistance or are unacceptable to the patient; and

(ii) community resources to provide meals are unavailable or inaccessible, or inappropriate because of the patient's dietary needs.

(2) In such a situation, the local social services department may authorize up to four additional hours of service per week.]

Clause (b) of subparagraph (ii) of paragraph (6) of subdivision (a) of section 505.14 is amended to read as follows:

(b) When continuous [24-hour care] *personal care services* is indicated, additional requirements for the provision of services, as specified in clause (b)(4)(i)(c) of this section, must be met.

Clause (c) of subparagraph (ii) of paragraph (3) of subdivision (b) of section 505.14 is relettered as clause (d) and a new clause (c) is added to read as follows:

(c) *When live-in 24-hour personal care services is indicated, the social assessment shall evaluate whether the patient's home has adequate sleeping accommodations for a personal care aide.*

Subclauses (5) and (6) of clause (b) of subparagraph (iii) of paragraph (3) of subdivision (b) of section 505.14 are renumbered as subclauses (6) and (7), and new subclause (5) is added to read as follows:

(5) *an evaluation whether adaptive or specialized equipment or supplies including, but not limited to, bedside commodes, urinals, walkers and wheelchairs, can meet the patient's need for assistance with personal care functions, and whether such equipment or supplies can be provided safely and cost-effectively;*

Subclause (7) of clause (a) of subparagraph (iv) of paragraph (3) of subdivision (b) of section 505.14 is amended to read as follows:

(7) whether the patient can be served appropriately and more cost-effectively by using *adaptive* or specialized medical equipment or supplies covered by the MA program including, but not limited to, *bedside commodes, urinals, walkers, wheelchairs and insulin pens*; and

Clause (c) of subparagraph (iv) of paragraph (3) of subdivision (b) of section 505.14 is amended to read as follows:

(c) A social services district may determine that the assessments required by subclauses (a)(1) through (6) and (8) of this subparagraph may be included in the social assessment or the nursing assessment.

Clause (c) of subparagraph (i) of paragraph (4) of subdivision (b) of section 505.14 is amended to read as follows:

(c) the case involves the provision of continuous [24-hour] personal care services as defined in paragraph (a)(3) of this section. Documentation for such cases shall be subject to the following requirements:

Subclause (2) of clause (c) of subparagraph (i) of paragraph (4) of subdivision (b) of section 505.14 is amended to read as follows:

(2) The nursing assessment shall document that: the functions required by the patient[.]; the degree of assistance required for each function, *including that the patient requires total assistance with toileting, walking, transferring or feeding*; and the time of this assistance require the provision of continuous [24-hour care] *personal care services*.

Subparagraph (ii) of paragraph (4) of subdivision (b) of section 505.14 is amended to read as follows:

(ii) The local professional director, or designee, must review the physician's order and the social, nursing and other required assessments in accordance with the standards for levels of services set forth in subdivision (a) of this section, and is responsible for the final determination of the level and amount of care to be provided. *The local professional director or designee may consult with the patient's treating physician and may conduct an additional assessment of the patient in the home. The final determination must be made [within five working days of the request] with reasonable promptness, generally not to exceed seven business days after receipt of the physician's order and the completed social and nursing assessments, except in unusual circumstances including, but not limited to, the need to resolve any outstanding questions regarding the level, amount or duration of services to be authorized.*

Paragraph (4) of subdivision (b) of section 505.28 is amended to read as follows:

(4) "continuous [24-hour] consumer directed personal assistance" means the provision of uninterrupted care, by more than one consumer directed personal assistant, *for more than 16 hours per day for a consumer who, because of the consumer's medical condition [or] and disabilities, requires total assistance with toileting, walking, transferring or feeding at [unscheduled times during the day and night] at times that cannot be predicted.*

Paragraphs (8) through (13) of subdivision (b) of section 505.28 are renumbered as paragraphs (9) through (14) and the renumbered paragraph (9) is amended to read as follows:

(9) "personal care services" means the nutritional and environmental support functions, personal care functions, or both such functions, that are specified in Section 505.14(a)(6) of this Part *except that, for individuals whose needs are limited to nutritional and environmental support functions, personal care services shall not exceed eight hours per week.*

A new paragraph (8) of subdivision (b) of section 505.28 is added to read as follows:

(8) "*live-in 24-hour consumer directed personal assistance*" means the provision of care by one consumer directed personal assistant for a consumer who, because of the consumer's medical condition and disabilities, requires some or total assistance with personal care functions, home health aide services or skilled nursing tasks during the day and night and whose need for assistance during the night is infrequent or can be predicted.

Subparagraph (iii) of paragraph (2) of subdivision (d) of section 505.28 is amended, and new subparagraphs (iv) and (v) of such paragraph are added, to read as follows:

(iii) an evaluation of the potential contribution of informal supports, such as family members or friends, to the individual's care, which must consider the number and kind of informal supports available to the individual; the ability and motivation of informal supports to assist in care; the extent of informal supports' potential involvement; the availability of informal supports for future assistance; and the acceptability to the individual of the informal supports' involvement in his or her care [.] and;

(iv) *for cases involving continuous consumer directed personal assistance, documentation that: all alternative arrangements for meeting the individual's medical needs have been explored or are infeasible including, but not limited to, the provision of consumer directed personal assistance in combination with other former services or in combination with contributions of informal caregivers; and*

(v) *for cases involving live-in 24-hour consumer directed personal assistance, an evaluation whether the individual's home has adequate sleeping accommodations for a consumer directed personal assistant.*

Subparagraph (i) of paragraph (3) of subdivision (d) of section 505.28 is repealed and a new subparagraph (i) is added to read as follows:

(i) *The nursing assessment must be completed by a registered professional nurse who is employed by the social services district or by a licensed or certified home care services agency or voluntary or proprietary agency under contract with the district.*

Clauses (g) and (h) of subparagraph (ii) of paragraph (3) of subdivision (d) of section 505.28 are relettered as clauses (h) and (i) and a new clause (g) is added to read as follows:

(g) for continuous consumer directed personal assistance cases, documentation that: the functions the consumer requires; the degree of assistance required for each function, including that the consumer requires total assistance with toileting, walking, transferring or feeding; and the time of this assistance require the provision of continuous consumer directed personal assistance;

Paragraph (5) of subdivision (d) of section 505.28 is amended to read as follows:

(5) Local professional director review. If there is a disagreement among the physician's order, nursing and social assessments, or a question regarding the level, amount or duration of services to be authorized, or if the case involves continuous [24-hour] consumer directed personal assistance, an independent medical review of the case must be completed by the local professional director, a physician designated by the local professional director or a physician under contract with the social services district. The local professional director or designee must review the physician's order and the nursing and social assessments and is responsible for the final determination regarding the level and amount of services to be authorized. *The local professional director or designee may consult with the consumer's treating physician and may conduct an additional assessment of the consumer in the home.* The final determination must be made with reasonable promptness, generally not to exceed [five] seven business days after receipt of the physician's order and the completed social and nursing assessments, except in unusual circumstances including, but not limited to, the need to resolve any outstanding questions regarding the level, amount or duration of services to be authorized.

Paragraph (1) of subdivision (e) of section 505.28 is amended to read as follows:

(1) When the social services district determines pursuant to the assessment process that the individual is eligible to participate in the consumer directed personal assistance program, the district must authorize consumer directed personal assistance according to the consumer's plan of care. The district must not authorize consumer directed personal assistance unless it reasonably expects that such assistance can maintain the individual's health and safety in the home or other setting in which consumer directed personal assistance may be provided. *Consumer directed personal assistance shall not be authorized if the consumer's need for assistance can be met by either or both of the following:*

(i) voluntary assistance available from informal caregivers including, but not limited to, the consumer's family, friends or other responsible adult; or formal services provided by an entity or agency; or

(ii) adaptive or specialized equipment or supplies including, but not limited to, bedside commodes, urinals, walkers and wheelchairs, when such equipment or supplies can be provided safely and cost-effectively.

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 September 16, 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:

Social Services Law ("SSL") § 363-a(2) and Public Health Law § 201(1)(v) provide that the Department has general rulemaking authority to adopt regulations to implement the Medicaid program.

The Commissioner has specific rulemaking authority under SSL § 365-a(2)(e)(ii) to adopt standards, pursuant to emergency regulation, for the provision and management of personal care services for individuals whose need for such services exceeds a specified level to be determined by the Commissioner.

Under SSL § 365-a(2)(e)(iv), personal care services shall not exceed eight hours per week for individuals whose needs are limited to nutritional and environmental support functions.

Legislative Objectives:

The Legislature sought to reform the Medicaid personal care services program by controlling expenditure growth and promoting self-sufficiency.

The Legislature authorized the Commissioner of Health to adopt standards for the provision and management of personal care services for Medicaid recipients whose need for such services exceeds a specified level. The regulations adopt such standards for Medicaid recipients who seek continuous personal care services or continuous consumer directed personal assistance for more than 16 hours per day.

The Legislature additionally sought to promote the goal of self-

sufficiency among Medicaid recipients who do not need hands-on assistance with personal care functions such as bathing, toileting or transferring. It determined that recipients whose need for personal care services is limited to nutritional and environmental support functions, such as shopping, laundry and light housekeeping, could receive no more than eight hours per week of such assistance.

Needs and Benefits:

The regulations have two general purposes: to conform the Department's personal care services and consumer directed personal assistance program (CDPAP) regulations to State law limiting the amount of services that can be authorized for individuals who require assistance only with nutritional and environmental support functions; and, to implement State law authorizing the Department to adopt standards for the provision and management of personal care services for individuals whose need for such services exceeds a specified level that the Commissioner may determine.

The term "nutritional and environmental support functions" refers to housekeeping tasks including, but not limited to, laundry, shopping and meal preparation. Department regulations refer to these support functions as "Level I" personal care services. Department regulations have long provided that social services districts cannot initially authorize Level I services for more than eight hours per week; however, an exception permitted authorizations for Level I services to exceed eight hours per week under certain circumstances.

The Legislature has nullified this regulatory exception. The regulations conform the Department's personal care services regulations to the new State law. They repeal the regulatory exception that permitted social services districts to authorize up to 12 hours of Level I services per week, capping such authorizations at no more than eight hours per week.

The regulations similarly amend the Department's CDPAP regulations. Some CDPAP participants are authorized to receive only assistance with nutritional and environmental support functions. Since personal care services are included within the CDPAP, it is consistent with the Legislature's intent to extend the eight hour weekly cap on nutritional and environmental services to that program.

The regulations also implement the Department's specific statutory authority to adopt standards pursuant to emergency regulation for the provision and management of personal care services for individuals whose need for such services exceeds a specified level. The Commissioner has determined to adopt such standards for individuals whose need for continuous personal care services or continuous consumer directed personal assistance exceeds 16 hours per day.

The regulations repeal the definition of "continuous 24-hour personal care services," replacing it with a definition of "continuous personal care services." The prior definition applied to individuals who required total assistance with certain personal care functions for 24 hours at unscheduled times during the day and night. The new definition applies to individuals who require such assistance for more than 16 hours per day at times that cannot be predicted.

Cases in which continuous personal care services are indicated must be referred to the local professional director or designee. Such referrals would now be required in additional cases: those involving provision of continuous care for more than 16 hours per day.

The regulations permit the local professional director or designee to consult with the recipient's treating physician and conduct an additional assessment of the recipient in the home.

The regulations amend the documentation requirements for nursing assessments in continuous personal care services cases.

The regulations add a definition of live-in 24 hour personal care services. This level of service has long existed, primarily in New York City, but has never been explicitly set forth in the Department's regulations. The regulations also require that, for recipients who may be eligible for such services, the social assessment evaluate whether the recipient's home has adequate sleeping accommodations for the live-in aide.

The regulations provide that personal care services shall not be authorized when the recipient's need for assistance can be met by the voluntary assistance of informal caregivers or by formal services or by adaptive or specialized equipment or supplies that can be provided safely and cost-effectively. The regulations require that the nursing assessments that districts currently complete or obtain include an evaluation whether adaptive or specialized equipment or supplies can meet the recipient's need for assistance and whether such equipment or supplies can be provided safely and cost-effectively.

The regulations adopt conforming amendments to the Department's CDPAP regulations.

Costs to Regulated Parties:

Regulated parties include entities that voluntarily contract with social services districts to provide personal care services to, or to perform certain CDPAP functions for, Medicaid recipients. These entities include licensed home care services agencies, agencies that are exempt from licensure, and CDPAP fiscal intermediaries.

Social services districts may no longer authorize certain Medicaid recipients to receive more than eight hours per week of assistance with nutritional and environmental support functions. To the extent that regulated parties were formerly reimbursed for more than eight hours per week for these services, their Medicaid revenue will decrease. This is a consequence of State law, not the regulations. The regulations do not impose any additional costs on these regulated parties.

Costs to State Government:

The regulations impose no additional costs on State government.

The statutory cap on nutritional and environmental support functions will result in cost-savings to the State share of Medicaid expenditures. The estimated annual personal care services and CDPAP cost-savings for subsequent State fiscal years are approximately \$3.4 million.

This estimate is based on 2010 recipient and expenditure data for the personal care services program. According to such data, 2,377 New York City recipients received more than eight hours per week of Level I services, the average being 11 weekly hours of such service. The number of Level I hours that exceeded eight hours per week was thus approximately 370,800 hours (2,377 recipients x 3 hours per week x 52 weeks). Multiplying this hourly total by the 2010 average hourly New York City personal care aide cost (\$17.30) results in total annual savings of \$6.4, or \$3.2 million in State share savings. Application of this calculation to the Rest of State recipient and expenditure data yields an additional \$200,000 in State share savings, or \$3.4 million.

State Medicaid cost-savings are also projected to occur as a result of changes to continuous personal care services authorizations. It is not possible to accurately estimate such savings. However, the Department anticipates that most recipients currently authorized for continuous 24-hour personal care services will continue to receive that level of care. Others may be authorized for continuous services for 16 hours per day or live-in 24 hour personal care services. Still others may be authorized for services for more than 16 hours per day but fewer than 24 hours per day.

The estimated State share savings for this portion of the regulations are \$33.1 million. This comprises approximately \$17.1 million in personal care savings and \$15.9 million in CDPAP savings. This estimate is based on 2010 personal care services and CDPAP recipient and expenditure data. In 2010, 1,809 Medicaid recipients were authorized to receive more than 16 hours of services per day. The assumption is that these recipients were authorized for continuous 24-hour services, which has an average annual per person cost of approximately \$166,000. Assuming that 20 percent were authorized for live-in 24-hour services at an average annual per person cost of approximately \$83,000, and 15 percent were authorized for 16 hours per day at an average hourly cost of between approximately \$17.00 and \$22.00, depending on service and location, the annual State share savings per recipient would range from approximately \$28,000 to \$35,000.

Costs to Local Government:

The regulation will not require social services districts to incur new costs. State law limits the amount that districts must pay for Medicaid services provided to district recipients. Districts may claim State reimbursement for any costs they may incur when administering the Medicaid program.

Costs to the Department of Health:

There will be no additional costs to the Department.

Local Government Mandates:

The regulations require social services districts to refer additional cases to their local professional directors or designees. Currently, the regulations require that such referrals be made for continuous 24 hour care and certain other cases. Under the proposed regulations, such referrals must also be made for recipients who may require continuous services for more than 16 hours.

Paperwork:

The regulations specify additional documentation requirements for the social and nursing assessments that districts currently complete or obtain for personal care services and CDPAP applicants and recipients. For persons who may be eligible for live-in 24 hour services, the social assessment must evaluate whether the recipient's home has adequate sleeping accommodations for the live-in aide. The nursing assessments for all personal care services and CDPAP cases, including those not involving continuous services, must include an evaluation whether adaptive or specialized equipment or supplies can meet the recipient's need for assistance and whether such equipment or supplies can be used safely and cost-effectively. The amendments to the CDPAP regulations also specify additional documentation requirements for the social and nursing assessments for cases involving continuous consumer directed personal assistance. These requirements mirror long-standing documentation requirements in the personal care services regulations.

Duplication:

The regulations do not duplicate any existing federal, state or local regulations.

Alternatives:

With respect to the regulation that caps authorizations for nutritional and environmental support functions to eight hours per week, no alternatives exist. The regulation must conform to State law that imposes this weekly cap. With respect to the regulation that establishes new requirements for continuous services, alternatives existed but were not now pursued. One such alternative may be the repeal of the regulatory authorization for continuous 24-hour services. The Department determined to promulgate further regulatory controls regarding the provision and management of continuous services, rather than repeal such services in their entirety.

Federal Standards:

This rule does not exceed any minimum federal standards.

Compliance Schedule:

The Department has issued instructions to social services districts advising them of the new State law that limits nutritional and environmental support functions to no more than eight hours per week for certain recipients. Districts should not now be authorizing more than eight hours per week of such assistance and should thus be able to comply with the regulations when they become effective. With regard to the remaining regulations, social services districts should be able to comply with the regulations when they become effective. For applicants, social services districts would apply the regulations when assessing applicants' eligibility for personal care services and the CDPAP. For current recipients, districts would apply the regulations upon reassessing these recipients' continued eligibility for services.

Regulatory Flexibility Analysis

Effect of Rule:

The regulation limiting authorizations of nutritional and environmental support functions to no more than eight hours per week primarily affects licensed home care services agencies and exempt agencies that provide only such Level I services. These entities are the primary employers of individuals providing Level I services. Most recipients of Level I personal care services are located in New York City. There are currently eight Level I only personal care service providers in New York City, none of which employ fewer than 100 persons.

Fiscal intermediaries that are enrolled as Medicaid providers and that facilitate payments for the nutritional and environmental support functions provided to consumer directed personal assistance program (CDPAP) participants may also experience slight reductions in service hours reimbursed. There are approximately 46 fiscal intermediaries that contract with social services districts. Fiscal intermediaries are typically non-profit entities such as independent living centers but may also include home care services agencies.

With respect to continuous care, a significant majority of existing 24-hour a day continuous care cases are located in New York City. There are currently 60 Level II personal care service providers in New York City, none of which employ fewer than 100 persons.

The regulations also affect social services districts. There are 62 counties in New York State, but only 58 social services districts. The City of New York comprises five counties but is one social services district.

Compliance Requirements:

Social services districts currently assess whether Medicaid recipients are eligible for personal care services and the CDPAP. When 24 hour continuous care is indicated, districts are currently required to refer such cases to the local professional director or designee for final determination. The regulations would require districts to refer additional continuous care cases to the local professional director or designee; namely, those cases in which continuous care for more than 16 hours a day is indicated would also be referred to the local professional director or designee. The local professional director or designee would be required to consult with the recipient's treating physician before approving continuous care for more than 16 hours per day.

In addition, the nursing assessments that districts currently complete or obtain for personal care services and CDPAP applicants and recipients would be required to include an evaluation of whether adaptive or specialized equipment or supplies would be appropriate and could be safely and cost-effectively provided. In cases involving the authorization of live-in 24 hour services, the social assessments that districts currently are required to complete would have to include an evaluation whether the recipient's home had sufficient sleeping accommodations for a live-in aide.

Professional Services:

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

Compliance Costs:

No capital costs will be imposed as a result of this rule, nor are there any annual costs of compliance.

Economic and Technological Feasibility:

There are no additional economic costs or technology requirements associated with this rule.

Minimizing Adverse Impact:

The regulations should not have an adverse economic impact on social services districts. Districts currently assess Medicaid recipients to determine whether they are eligible for personal care services or the CDPAP. The regulations modify these assessment procedures. Should districts incur administrative costs to comply with the regulation, they may seek State reimbursement for such costs.

Small businesses providing Level I personal care services and consumer directed environmental and nutritional support functions may experience slight reductions in service hours provided. This is a consequence of State law limiting these services to no more than eight hours per week.

Small businesses currently providing continuous 24-hour services may experience some reductions in service hours provided.

Small Business and Local Government Participation:

The Department solicited comments on the regulations from the New York City Human Resources Administration, which administers the personal care services program and CDPAP for New York City Medicaid recipients who are not enrolled in managed care. Most of the State's personal care services and CDPAP recipients reside in New York City. Personal care services provided to New York City recipients comprises approximately 84 percent of Medicaid personal care services expenditures.

Small business and local governments also have the opportunity to provide input into the redesign of New York State's Medicaid program. The Medicaid Redesign Team (MRT) was tasked by Governor Cuomo to find ways to reduce costs and increase quality and efficiency in the Medicaid program for the 2011-12 Fiscal Year. As part of its work, the MRT sought and continues to seek ideas from the public at large, as well as experts in health care delivery and insurance, the health care workforce, economics, business, consumer rights and other relevant areas. The MRT conducted regional public hearings across the State to solicit ideas from the public on ways to reduce costs and improve the quality of the Medicaid program. Additionally, a web page was established, providing a vehicle for all individuals and organizations to provide ideas, comments and recommendations.

Rural Area Flexibility Analysis

Types and Estimated Numbers of 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. In 2010, only 6% of all continuous care cases resided in the counties listed below. Currently there are 34 organizations which maintain contracts with local districts to provide consumer directed environmental and nutritional support functions, and 50 individual licensed home care services agencies which maintain contracts with local districts to provide Level I personal care services, within the following 43 counties having 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		

Reporting, Recordkeeping and Other Compliance Requirements and Professional Services:

Social services districts would be required to refer additional cases to their local professional directors or designees. Currently, the personal care services and CDPAP regulations require that such referrals be made for recipients seeking continuous 24-hour services and in certain other cases. Under the regulations, such referrals must also be made for recipients who require continuous care for more than 16 hours. The regulations also specify additional documentation requirements for the social and nursing assessments that districts currently complete or obtain for personal care services and CDPAP applicants and recipients.

Costs:

There are no new capital or additional operating costs associated with the rule.

Minimizing Adverse Impact:

It is anticipated the rule will have minimal impact on rural areas as the Department has determined that the preponderance of Level I services in excess of eight hours per week occur in downstate urban areas. Additionally, in 2010, only 6% of all individuals receiving continuous care services resided in those counties listed above. To the extent that social services districts incur administrative costs to comply with the regulations' requirements for referral of continuous care cases and social and nursing assessment documentation requirements, they may seek State reimbursement of such expenses.

Rural Area Participation:

Individuals and organizations from rural areas have the opportunity to provide input into the redesign of New York State's Medicaid program. The Medicaid Redesign Team (MRT) is tasked by Governor Cuomo to find ways to reduce costs and increase quality and efficiency in the Medicaid program for the 2011-12 Fiscal Year. As part of its work, the MRT sought and continues to seek ideas from the public at large, as well as experts in health care delivery and insurance, the health care workforce, economics, business, consumer rights and other relevant areas. The MRT conducted regional public hearings across the State to solicit ideas from the public on ways to reduce costs and improve the quality of the Medicaid program. Additionally, a web page was established, providing a vehicle for all individuals and organizations to provide ideas, comments and recommendations.

Job Impact Statement

No Job Impact Statement is required pursuant to section 201-a(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.

**EMERGENCY
RULE MAKING**

Children's Camps

I.D. No. HLT-28-13-00024-E

Filing No. 687

Filing Date: 2013-06-25

Effective Date: 2013-06-30

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

Action taken: Amendment of Subpart 7-2 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 225

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

Specific reasons underlying the finding of necessity: Chapter 501 of the Laws of 2012 established the Justice Center for the Protection of People with Special Needs ("Justice Center"), in order to coordinate and improve the State's ability to protect those persons having various physical, developmental, or mental disabilities and who are receiving services from various facilities or provider agencies. The Department must promulgate regulations as a "state oversight agency." These regulations will assure proper coordination with the efforts of the Justice Center, which will be operational after June 30, 2013.

Among the facilities covered by Chapter 501 are children's camps having enrollments with 20 percent or more developmentally disabled campers. These camps are regulated by the Department and, in some cases, by local health departments, pursuant to Article 13-B of the Public Health Law and 10 NYCRR Subpart 7-2. Given the effective date of Chapter 501 and its relation to the start of the camp season, these implementing regulations must be promulgated on an emergency basis in order to assure the necessary protections for vulnerable persons at such camps during the upcoming camp season. Absent emergency promulgation, such persons would be denied initial coordinated protections until the 2014 camp season. Promulgating these regulations on an emergency basis will provide such protection, while still providing a full opportunity for comment and input as part of a formal rulemaking process which will also occur pursuant to the State Administrative Procedures Act. The Department is authorized to promulgate these rules pursuant to sections 201 and 225 of the Public Health Law.

Promulgating the regulations on an emergency basis will ensure that campers with special needs promptly receive the coordinated protections to be provided to similar individuals cared for in other settings. Such protections include reduced risk of being cared for by staff with a history

of inappropriate actions such as physical, psychological or sexual abuse towards persons with special needs. Perpetrators of such abuse often seek legitimate access to children so it is critical to camper safety that individuals who that have committed such acts are kept out of camps. The regulation provides an additional mechanism for camp operators to do so. The regulations also reduce the risk of incidents involving physical, psychological or sexual abuse towards persons with special needs by ensuring that such occurrences are fully and completely investigated, by ensuring that camp staff are more fully trained and aware of abuse and reporting obligations, allowing staff and volunteers to better identify inappropriate staff behavior and provide a mechanism for reporting injustice to this vulnerable population. Early detection and response are critical components for mitigating injury to an individual and will prevent a perpetrator from hurting additional children. Finally, prompt enactment of the proposed regulations will ensure that occurrences are fully investigated and evaluated by the camp, and that measures are taken to reduce the risk of re-occurrence in the future. Absent emergency adoption, these benefits and protections will not be available to campers with special needs for the upcoming camp season, with the attendant loss of additional protections against abuse and neglect, including physical, psychological, and sexual abuse.

Subject: Children's Camps.

Purpose: To include camps for children with developmental disabilities as a type of facility with in the oversight of the Justice Center.

Substance of emergency rule: The Department is amending 10 NYCRR Subpart 7-2 Children's Camps as an emergency rulemaking to conform the Department's regulations to requirements added or modified as a result of Chapter 501 of the Laws of 2012 which created the Justice Center for the Protection of Persons with Special Needs (Justice Center). Specifically, the revisions:

- amend section 7-2.5(o) to modify the definition of "adequate supervision," to incorporate the additional requirements being imposed on camps otherwise subject to the requirements of section 7-2.25
- amend section 7-2.24 to address the provision of variances and waivers as they apply to the requirements set forth in section 7-2.25
- amend section 7-2.25 to add definitions for "camp staff," "Department," "Justice Center," and "Reportable Incident"

With regard to camps with 20 percent or more developmentally disabled children, which are subject to the provisions of 10 NYCRR section 7-2.25, add requirements as follows:

- amend section 7-2.25 to add new requirements addressing the reporting of reportable incidents to the Justice Center, to require screening of camp staff, camp staff training regarding reporting, and provision of a code of conduct to camp staff
- amend section 7-2.25 to add new requirements providing for the disclosure of information to the Justice Center and/or the Department and, under certain circumstances, to make certain records available for public inspection and copying
- amend section 7-2.25 to add new requirements related to the investigation of reportable incidents involving campers with developmental disabilities
- amend section 7-2.25 to add new requirements regarding the establishment and operation of an incident review committee, and to allow an exemption from that requirement under appropriate circumstances
- amend section 7-2.25 to provide that a permit may be denied, revoked, or suspended if the camp fails to comply with the regulations, policies or other requirements of the Justice Center

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 September 22, 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: regsqa@health.state.ny.us

Regulatory Impact Statement

Statutory Authority:

The Public Health and Health Planning Council is authorized by Section 225(4) of the Public Health Law (PHL) to establish, amend and repeal sanitary regulations to be known as the State Sanitary Code (SSC), subject to the approval of the Commissioner of Health. Article 13-B of the PHL sets forth sanitary and safety requirements for children's camps. PHL Sections 225 and 201(1)(m) authorize SSC regulation of the sanitary aspects of businesses and activities affecting public health including children's camps.

Legislative Objectives:

In enacting to Chapter 501 of the Laws of 2012, the legislature established the New York State Justice Center for the Protection of People with Special Needs (Justice Center) to strengthen and standardize the

safety net for vulnerable people that receive care from New York's Human Services Agencies and Programs. The legislation includes children's camps for children with developmental disabilities within its scope and requires the Department of Health to promulgate regulations approved by the Justice Center pertaining to incident management. The proposed amendments further the legislative objective of protecting the health and safety of vulnerable children attending camps in New York State (NYS).

Needs and Benefits:

The legislation amended Article 11 of Social Services law as it pertains to children's camps as follows. It:

- included overnight, summer day and traveling summer day camps for children with developmental disabilities as facilities required to comply with the Justice Center requirements.
- defined the types of incident required to be reported by children's camps for children with developmental disabilities to the Justice Center Vulnerable Persons' Central Registry.
- mandated that the regulations pertaining to children's camps for children with developmental disabilities are amended to include incident management procedures and requirements consistent with Justice Center guidelines and standards.
- required that children's camps for children with developmental disabilities establish an incident review committee, recognizing that the Department could provide for a waiver of that requirement under certain circumstances
- required that children's camps for children with developmental disabilities consult the Justice Center's staff exclusion list (SEL) to ensure that prospective employees are not on that list and to, where the prospective employee is not on that list, to also consult the Office of Children and Family Services State Central Registry of Child Abuse and Maltreatment (SCR) to determine whether prospective employees are on that list.
- required that children's camps for children with developmental disabilities publicly disclose certain information regarding incidents of abuse and neglect if required by the Justice Center to do so.

The children's camp regulations, Subpart 7-2 of the SSC are being amended in accordance with the aforementioned legislation.

Compliance Costs:

Cost to Regulated Parties:

The amendments impose additional requirements on children's camp operators for reporting and cooperating with Department of Health investigations at children's camps for children with developmental disabilities (hereafter "camps"). The cost to affected parties is difficult to estimate due to variation in salaries for camp staff and the amount of time needed to investigate each reported incident. Reporting an incident is expected to take less than half an hour; assisting with the investigation will range from several hours to two staff days. Using a high estimate of staff salary of \$30.00 an hour, total staff cost would range from \$120 to \$1600 for each investigation. Expenses are nonetheless expected to be minimal statewide as between 40 and 50 children's camps for children with developmental disabilities operate each year, with combined reports of zero to two incidents a year statewide. Accordingly, any individual camp will be very unlikely to experience costs related to reporting or investigation.

Each camp will incur expenses for contacting the Justice Center to verify that potential employees, volunteers or others falling within the definition of "custodian" under section 488 of the Social Services Law (collectively "employees") are not on the Staff Exclusion List (SEL). The effect of adding this consultation should be minimal. An entry level staff person earning the minimum wage of \$7.25/hour should be able to compile the necessary information for 100 employees, and complete the consultation with the Justice Center, within a few hours.

Similarly, each camp will incur expenses for contacting the Office of Children and Family Services (OCFS) to determine whether potential employees are on the State Central Registry of Child Abuse and Maltreatment (SCR) when consultation with the Justice Center shows that the prospective employee is not on the SEL. The effect of adding this consultation should also be minimal, particularly since it will not always be necessary. An entry level staff person earning the minimum wage of \$7.25/hour should be able to compile the necessary information for 100 employees, and complete the consultation with the OCFS, within a few hours. Assuming that each employee is subject to both screens, aggregate staff time required should not be more than six to eight hours. Additionally, OCFS imposes a \$25.00 screening fee for new or prospective employees.

Camps will be required to disclose information pertaining to reportable incidents to the Justice Center and to the permit issuing official investigating the incident. Costs associated with this include staff time for locating information and expenses for copying materials. Using a high estimate of staff salary of \$30.00 an hour, and assuming that staff may take up to two hours to locate and copy the records, typical cost should be under \$100.

Camps must also assure that camp staff, and certain others, who fall within the definition of mandated reporters under section 488 of the Social

Services Law receive training related to mandated reporting to the Justice Center, and the obligations of those staff who are required to report incidents to the Justice Center. The costs associated with such training should be minimal as it is expected that the training material will be provided to the camps and will take about one hour to review during routine staff training. Camps must also ensure that the telephone number for the Justice Center reporting hotline is conspicuously posted for campers and staff. Cost associated with such posting is limited, related to making and posting a copy of such notice in appropriate locations.

The camp operator must also provide each camp staff member, and others who may have contact with campers, with a copy of a code of conduct established by the Justice Center pursuant to Section 554 of the Executive Law. The code must be provided at the time of initial employment, and at least annually thereafter during the term of employment. Receipt of the code of conduct must be acknowledged, and the recipient must further acknowledge that he or she has read and understands it. The cost of providing the code, and obtaining and filing the required employee acknowledgment, should be minimal, as it would be limited to copying and distributing the code, and to obtaining and filing the acknowledgments. Staff should need less than 30 minutes to review the code.

Camps will also be required to establish and maintain a facility incident review committee to review and guide the camp's responses to reportable incidents. The cost to maintain a facility incident review committee is difficult to estimate due to the variations in salaries for camp staff and the amount of time needed for the committee to do its business. A facility incident review committee must meet at least annually, and also within two weeks after a reportable incident occurs. Assuming the camp will have several staff members participate on the committee, an average salary of \$50.00 an hour and a three hour meeting, the cost is estimated to be \$450.00 dollars per meeting. However, the regulations also provide the opportunity for a camp to seek an exemption, which may be granted subject to Department approval based on the duration of the camp season and other factors. Accordingly, not all camps can be expected to bear this obligation and its associated costs.

Camps are now explicitly required to obtain an appropriate medical examination of a camper physically injured from a reportable incident. A medical examination has always been expected for such injuries.

Finally, the regulations add noncompliance with Justice Center-related requirements as a ground for denying, revoking, or suspending a camp operator's permit.

Cost to State and Local Government:

State agencies and local governments that operate children's camps for children with developmental disabilities will have the same costs described in the section entitled "Cost to Regulated Parties." Currently, it is estimated that five summer day camps that meet the criteria are operated by municipalities. The regulation imposes additional requirements on local health departments for receiving incident reports and investigations of reportable incidents, and providing a copy of the resulting report to the Department and the Justice Center. The total cost for these services is difficult to estimate because of the variation in the number of incidents and amount of time to investigate an incident. However, assuming the typically used estimate of \$50 an hour for health department staff conducting these tasks, an investigation generally lasting between one and four staff days, and assuming an eight hour day, the cost to investigate an incident will range \$400.00 to \$1600. Zero to two reportable incidents occur statewide each year, so a local health department is unlikely to bear such an expense. The cost of submitting the report is minimal, limited to copying and mailing a copy to the Department and the Justice Center.

Cost to the Department of Health:

There will be routine costs associated with printing and distributing the amended Code. The estimated cost to print revised code books for each regulated children's camp in NYS is approximately \$1600. There will be additional cost for printing and distributing training materials. The expenses will be minimal as most information will be distributed electronically. Local health departments will likely include paper copies of training materials in routine correspondence to camps that is sent each year.

Local Government Mandates:

Children's camps for children with developmental disabilities operated by local governments must comply with the same requirements imposed on camps operated by other entities, as described in the "Cost to Regulated Parties" section of this Regulatory Impact Statement. Local governments serving as permit issuing officials will face minimal additional reporting and investigation requirements, as described in the "Cost to State and Local Government" section of this Regulatory Impact Statement. The proposed amendments do not otherwise impose a new program or responsibilities on local governments. City and county health departments continue to be responsible for enforcing the amended regulations as part of their existing program responsibilities.

Paperwork:

The paperwork associated with the amendment includes the completion

and submission of an incident report form to the local health department and Justice Center. Camps for children with developmental disabilities will also be required to provide the records and information necessary for LHD investigation of reportable incidents, and to retain documentation of the results of their consultation with the Justice Center regarding whether any given prospective employee was found to be on the SEL or the SCR.

Duplication:

This regulation does not duplicate any existing federal, state, or local regulation. The regulation is expected to be consistent with a regulation expected to be promulgated by the Justice Center.

Alternatives:

The amendments to the camp code are mandated by law. No alternatives were considered.

Consideration was given to including a cure period to afford camp operators an opportunity to correct violations associated with this rule; however, this option was rejected because it is believed that lessening the department's ability to enforce the regulations could place this already vulnerable population at greater risk to their health and safety.

Federal Standards:

Currently, no federal law governs the operation of children's camps.

Compliance Schedule:

The proposed amendments are to be effective on June 30, 2013.

Regulatory Flexibility Analysis

Types and Estimated Number of Small Businesses and Local Governments:

There are between 40 and 50 regulated children's camps for children with development disabilities (38% are expected to be overnight camps and 62% are expected to be summer day camps) operating in New York State, which will be affected by the proposed rule. About 30% of summer day camps are operated by municipalities (towns, villages, and cities). Typical regulated children's camps representing small business include those owned/operated by corporations, hotels, motels and bungalow colonies, non-profit organizations (Girl/Boy Scouts of America, Cooperative Extension, YMCA, etc.) and others. None of the proposed amendments will apply solely to camps operated by small businesses or local governments.

Compliance Requirements:

Reporting and Recordkeeping:

The obligations imposed on small business and local government as camp operators are no different from those imposed on camps generally, as described in "Cost to Regulated Parties," "Local Government Mandates," and "Paperwork" sections of the Regulatory Impact Statement. The obligations imposed on local government as the permit issuing official is described in "Cost to State and Local Government" and "Local Government Mandates" portions of the Regulatory Impact Statement.

Other Affirmative Acts:

The obligations imposed on small business and local government as camp operators are no different from those imposed on camps generally, as described in "Cost to Regulated Parties" "Local Government Mandates," and "Paperwork" sections of the Regulatory Impact Statement.

Professional Services:

Camps with 20 percent or more developmentally disabled children are now explicitly required to obtain an appropriate medical examination of a camper physically injured from a reportable incident. A medical examination has always been expected for such injuries.

Compliance Costs:

Cost to Regulated Parties:

The obligations imposed on small business and local government as camp operators are no different from those imposed on camps generally, as described in "Cost to Regulated Parties" and "Paperwork" sections of the Regulatory Impact Statement.

Cost to State and Local Government:

The obligations imposed on small business and local government as camp operators are no different from those imposed on camps generally, as described in the "Cost to Regulated Parties" section of the Regulatory Impact Statement. The obligations imposed on local government as the permit issuing official is described in "Cost to State and Local Government" and "Local Government Mandates" portions of the Regulatory Impact Statement.

Economic and Technological Feasibility:

There are no changes requiring the use of technology.

The proposal is believed to be economically feasible for impacted parties. The amendments impose additional reporting and investigation requirements that will use existing staff that already have similar job responsibilities. There are no requirements that will involve capital improvements.

Minimizing Adverse Impact:

The amendments to the camp code are mandated by law. No alternatives were considered. The economic impact is already minimized.

Consideration was given to including a cure period to afford camp

operators an opportunity to correct violations associated with this rule; however, this option was rejected because it is believed that lessening the department's ability to enforce the regulations could place this already vulnerable population at greater risk to their health and safety.

Small Business Participation and Local Government Participation:

No small business or local government participation was used for this rule development. The amendments to the camp code are mandated by law. Ample opportunity for comment will be provided as part of the process of promulgating the regulations, and training will be provided to affected entities with regard to the new requirements.

Rural Area Flexibility Analysis

Types and Estimated Number of Rural Areas:

There are between 40 and 50 regulated children's camps for children with development disabilities (38% are expected to be overnight camps and 62% are expected to be summer day camps) operating in New York State, which will be affected by the proposed rule. Currently, there are seven day camps and ten overnight camps operating in the 44 counties that have population less than 200,000. There are an additional four day camps and three overnight camps in the nine counties identified to have townships with a population density of 150 persons or less per square mile.

Reporting and Recordkeeping and Other Compliance Requirements:

Reporting and Recordkeeping:

The obligations imposed on camps in rural areas are no different from those imposed on camps generally, as described in "Cost to Regulated Parties" and "Paperwork" sections of the Regulatory Impact Statement.

Other Compliance Requirements:

The obligations imposed on camps in rural areas are no different from those imposed on camps generally, as described in "Cost to Regulated Parties" and "Paperwork" sections of the Regulatory Impact Statement.

Professional Services:

Camps with 20 percent or more developmentally disabled children are now explicitly required to obtain an appropriate medical examination of a camper physically injured from a reportable incident. A medical examination has always been expected for such injuries.

Compliance Costs:

Cost to Regulated Parties:

The costs imposed on camps in rural areas are no different from those imposed on camps generally, as described in "Cost to Regulated Parties" and "Paperwork" sections of the Regulatory Impact Statement.

Economic and Technological Feasibility:

There are no changes requiring the use of technology.

The proposal is believed to be economically feasible for impacted parties. The amendments impose additional reporting and investigation requirements that will use existing staff that already have similar job responsibilities. There are no requirements that that involve capital improvements.

Minimizing Adverse Economic Impact on Rural Area:

The amendments to the camp code are mandated by law. No alternatives were considered. The economic impact is already minimized, and no impacts are expected to be unique to rural areas.

Consideration was given to including a cure period to afford camp operators an opportunity to correct violations associated with this rule; however, this option was rejected because it is believed that lessening the department's ability to enforce the regulations could place this already vulnerable population at greater risk to their health and safety.

Rural Area Participation:

No rural area participation was used for this rule development. The amendments to the camp code are mandated by law. Ample opportunity for comment will be provided as part of the process of promulgating the routine regulations, and training will be provided to affected entities with regard to the new requirements.

Job Impact Statement

No Job Impact Statement is required pursuant to Section 201-a (2)(a) of the State Administrative Procedure Act. It is apparent, from the nature of the proposed amendment that it will have no impact on jobs and employment opportunities, because it does not result in an increase or decrease in current staffing level requirements. Tasks associated with reporting new incidents types and assisting with the investigation of new reportable incidents are expected to be completed by existing camp staff, and should not be appreciably different than that already required under current requirements.

Public Service Commission

NOTICE OF ADOPTION

Modification of NYSEG's and RG&E's Program Budgets for Residential Gas HVAC Program

I.D. No. PSC-19-12-00017-A

Filing Date: 2013-06-19

Effective Date: 2013-06-19

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

Action taken: On 6/13/13, the PSC adopted an order approving a March 30, 2012 petition from New York State Electric & Gas Corporation (NYSEG) and Rochester Gas and Electric Corporation (RG&E) to modify program budgets for their residential gas HVAC programs.

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

Subject: Modification of NYSEG's and RG&E's program budgets for Residential Gas HVAC Program.

Purpose: Modifications to approve NYSEG's and RG&E's program budgets for Residential Gas HVAC Program.

Substance of final rule: The Commission, on June 13, 2013, adopted an order approving the March 30, 2012 petition of New York State Electric and Gas Corporation and Rochester Gas and Electric Corporation to modify the 2012-2015 program budgets and savings targets for their Residential Gas HVAC 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.

(07-M-0548SA60)

NOTICE OF ADOPTION

Denial of NYSEG's and RG&E's Petition for New Multifamily Gas Program and to Modify an Existing Multifamily Electric Program

I.D. No. PSC-19-12-00025-A

Filing Date: 2013-06-19

Effective Date: 2013-06-19

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

Action taken: On 6/13/13, the PSC adopted an order denying the March 30, 2012 petition of New York State Electric & Gas Corporation (NYSEG) and Rochester Gas and Electric Corporation (RG&E) to create a new; and modify an existing multifamily gas and electric programs.

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

Subject: Denial of NYSEG's and RG&E's petition for new multifamily gas program and to modify an existing multifamily electric program.

Purpose: To deny NYSEG's and RG&E's petition for new multifamily gas program and to modify an existing multifamily electric program.

Substance of final rule: The Commission, on June 13, 2013, adopted an order denying the March 30, 2012 petition of New York State Electric & Gas Corporation and Rochester Gas and Electric Corporation to create a new Residential Multifamily Gas Program and to modify the participation limits of the Residential Multifamily Electric 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.

(07-M-0548SA63)

NOTICE OF ADOPTION

Approval for Con Edison to Discontinue its Direct Install Residential Electric Program and Modify Program Budgets

I.D. No. PSC-36-12-00009-A

Filing Date: 2013-06-19

Effective Date: 2013-06-19

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

Action taken: On 6/13/13, the PSC adopted an order approving the August 15, 2012 petition of Consolidated Edison Company of New York, Inc. (Con Edison) to discontinue its Direct Install Residential Electric Program and modify program budgets.

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

Subject: Approval for Con Edison to discontinue its Direct Install Residential Electric Program and modify program budgets.

Purpose: To allow Con Edison to discontinue its Direct Install Residential Electric Program and to modify program budgets.

Substance of final rule: The Commission, on June 13, 2013, adopted an order approving the August 15, 2012 petition of Consolidated Edison Company of New York, Inc. to discontinue its Direct Install residential electric program and a modification of the 2012 – 2015 program budgets and savings targets for its residential gas HVAC programs. The Commission also directed the company to merge its existing residential electric HVAC, residential Appliance Bounty, and residential Room Air Conditioner Rebate programs into a single residential electric 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.

(07-M-0548SA73)

NOTICE OF ADOPTION

Modifications of Submetering Order to Allow for Termination of Electric Service for Failure to Pay

I.D. No. PSC-41-12-00014-A

Filing Date: 2013-06-19

Effective Date: 2013-06-19

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

Action taken: On 6/13/13, the PSC adopted an order approving a petition filed by Progressive Management of NY, Corp. to modify a submetering order issued March 16, 2004 so it may terminate electric service to tenants for failure to pay.

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

Subject: Modifications of submetering order to allow for termination of electric service for failure to pay.

Purpose: To modify submetering order to allow for termination of electric service for failure to pay.

Substance of final rule: The Commission, on June 13, 2013, adopted an

order approving Progressive Management of NY, Corp.'s petition to modify a submetering order issued on March 16, 2004 to submeter electricity at Sea Park East, L.P. At 2980 West 28th Street, 2970 West 27th Street and 2727 Surf Avenue, Brooklyn, New York; Sea Park West, LP at 2929 West 31st Street and 2930 West 39th Street, Brooklyn, New York; and Sea Park North, L.P. at 2828 West 28th Street, Brooklyn, New York to allow termination of electric service to tenants who fail to pay their submetered electric bills, 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-E-0402SA1)

NOTICE OF ADOPTION

Approving the Waiver of Individual Living Unit Metering Requirements

I.D. No. PSC-09-13-00005-A

Filing Date: 2013-06-19

Effective Date: 2013-06-19

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

Action taken: On 6/13/13, the PSC adopted an order approving a petition filed by Concern for Independent Living, Inc., to allow it to master meter a portion of its building currently under construction at 3349 Webster Avenue, Bronx, New York.

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

Subject: Approving the waiver of individual living unit metering requirements.

Purpose: To approve the waiver of individual living unit metering requirements.

Substance of final rule: The Commission, on June 13, 2013, adopted an order approving the petition of Concern for Independent Living for waiver of requirements of the individual residential living unit metering requirements, 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-E-0579SA1)

NOTICE OF ADOPTION

Approving Request for Funding Under a Maintenance Resource Contract Under the RPS

I.D. No. PSC-12-13-00010-A

Filing Date: 2013-06-20

Effective Date: 2013-06-20

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

Action taken: On 6/13/13, the PSC adopted an order approving Azure Mountain Power Company's request for financial support for its hydro-electric facility in St. Regis Falls, NY under the "Maintenance Tier" in the Renewable Portfolio Standard (RPS) Program.

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

Subject: Approving request for funding under a maintenance resource contract under the RPS.

Purpose: To approve funding under a maintenance resource contract under the RPS.

Substance of final rule: The Commission, on June 13, 2013, adopted an order approving Azure Mountain Power Company's request to enter in to a maintenance resource contract under the Renewable Portfolio Standard Program for its St. Regis Falls facility, 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-0188SA38)

NOTICE OF ADOPTION

Approving Victor at Fifth, LLC to Submeter Electricity at 241 5th Avenue, New York, New York

I.D. No. PSC-15-13-00014-A

Filing Date: 2013-06-20

Effective Date: 2013-06-20

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

Action taken: On 6/13/13, the PSC adopted an order approving a petition filed by Victor at Fifth, LLC to submeter electricity at 241 5th Avenue, New York, New York.

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

Subject: Approving Victor at Fifth, LLC to submeter electricity at 241 5th Avenue, New York, New York.

Purpose: To approve Victor at Fifth, LLC to submeter electricity at 241 5th Avenue, New York, New York.

Substance of final rule: The Commission, on June 13, 2013, adopted an order approving the petition filed by Victor at Fifth, LLC to submeter electricity at 241 5th Avenue, New York, New York, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: 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-0101SA1)

NOTICE OF ADOPTION

Approving Revisions to National Grid's High Load Factor Delivery Rates and Billing Formula

I.D. No. PSC-15-13-00017-A

Filing Date: 2013-06-19

Effective Date: 2013-06-19

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

Action taken: On 6/13/13, the PSC adopted an order approving a petition filed by Niagara Mohawk Power Corporation d/b/a National Grid (National Grid) to revise High Load Factor Power Delivery Rates and Billing Formula.

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

Subject: Approving revisions to National Grid's High Load Factor delivery rates and billing formula.

Purpose: To approve revisions to National Grid's High Load Factor delivery rates and billing formula.

Substance of final rule: The Commission, on June 13, 2013, adopted an order approving Niagara Mohawk Power Corporation d/b/a National Grid's petition to revise its High Load Factor Power Delivery Rates and Billing Formula, 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-0121SA1)

NOTICE OF ADOPTION

Approving Transfer of Solar Photovoltaic Funding in the Customer-Sited Tier Among NY Independent System Operator Load Zones

I.D. No. PSC-16-13-00008-A

Filing Date: 2013-06-20

Effective Date: 2013-06-20

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

Action taken: On 6/13/13, the PSC adopted an order approving a petition filed by New York State Energy Research and Development Authority to reallocate solar photovoltaic program funds in the Customer-Sited Tier of the Renewable Portfolio Standard among NY load zones.

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

Subject: Approving transfer of solar photovoltaic funding in the Customer-Sited Tier among NY Independent System Operator load zones.

Purpose: To approve transfer of solar photovoltaic funding in the Customer-Sited Tier among NY Independent System Operator load zones.

Substance of final rule: The Commission, on June 13, 2013, adopted an order approving the petition filed by New York State Energy Research and Development Authority to modify the Renewable Portfolio Standard Customer-Sited Tier competitive solar photovoltaic program to help meet the goals of the NY-Sun initiative, 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-0188SA39)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Provision for the Recovery and Allocation of Costs of Transmission Projects That Reduce Congestion on Certain Interfaces

I.D. No. PSC-28-13-00014-P

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

Proposed Action: The Commission is considering whether to approve,

reject or modify (in whole or in part), a Staff proposal to provide for the recovery and allocation of the costs of transmission projects that reduce congestion on certain transmission interfaces.

Statutory authority: Public Service Law, sections 4(1), 5, 65 and 66
Subject: Provision for the recovery and allocation of costs of transmission projects that reduce congestion on certain interfaces.

Purpose: To consider the recovery and allocation of costs of transmission projects that reduce congestion on certain interfaces.

Substance of proposed rule: The Staff of the Department of Public Service is proposing rules relating to the recovery of the costs of transmission projects that mitigate the congestion identified in Case No. 12-T-0502. These proposals include (1) establishing a Public Policy Requirement, as defined by the Federal Energy Regulatory Commission; (2) establishing mechanisms for incumbent and non-incumbent transmission owners to recover their costs; (3) a method for allocating those costs to the ratepayers who are the beneficiaries of those projects; and (4) parameters for risk-sharing among ratepayers and project developers. A copy of Staff's proposed rule can be accessed on the Department's Web site at: www.dps.ny.gov, by searching Case 12-T-0502.

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.

(12-T-0502SP2)

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

Transfer of Assets from Garrow Water Works Company, Inc., to the Town of Schuyler Falls

I.D. No. PSC-28-13-00015-P

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

Proposed Action: The Commission is considering whether to approve or reject in whole or in part, a joint petition file by Garrow Water Works Company, Inc. and the Town of Schuyler Falls, to transfer all of the water supply assets to the Town.

Statutory authority: Public Service Law, section 89-H

Subject: Transfer of assets from Garrow Water Works Company, Inc., to the Town of Schuyler Falls.

Purpose: To allow the Garrow Water Works Company, Inc., to transfer its water supply assets to the Town of Schuyler Falls.

Substance of proposed rule: On June 20, 2013, Garrow Water Works Company, Inc. (the company), and the Town of Schuyler Falls, filed a joint petition requesting Public Service Commission approve the transfer of all the water supply assets serving the Fillion Subdivision to the Town of Schuyler Falls at a sale price of \$287,000.00. The company provides unmetered water service to 46 residential customers in the Fildowns Country Homes Subdivision located in the Town of Schuyler Falls, Clinton County. The Commission may approve or reject, in whole or in part, or modify the petition.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.ny.gov/f96dir.htm>. For questions, contact: 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-0270SP1)

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

Request of NGT for Lightened Regulation as a Gas Corporation

I.D. No. PSC-28-13-00016-P

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

Proposed Action: The Commission is considering whether to approve, reject, or modify (in whole or in part) the request of Niagara Gas Transport of Lockport, NY LLC (NGT).

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

Subject: Request of NGT for lightened regulation as a gas corporation.

Purpose: To consider whether to approve, reject, or modify the request of Niagara gas transport of Lockport, NY LLC.

Substance of proposed rule: On June 11, 2013, Niagara Gas Transport of Lockport, NY LLC (NGT) filed a petition seeking lightened regulation as a gas corporation in connection with its provision of gas service to Cambria Asphalt Products, Inc. NGT also proposes to construct a gas line necessary to provide such service. While the request to construct the gas line is a licensing matter, the request for lightened regulation as a competitive gas service provider is a proposed rule.

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-G-0243SP1)

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

Request by TE for Waiver of Regulations Requiring That Natural Gas be Odorized in Certain Gathering Line Segments

I.D. No. PSC-28-13-00017-P

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

Proposed Action: The Commission is considering whether to approve, reject or modify (in whole or in part) a request by Talisman Energy USA Inc (TE) for waiver of regulations that gas be odorized in certain lines.

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

Subject: Request by TE for waiver of regulations requiring that natural gas be odorized in certain gathering line segments.

Purpose: Consider the request by TE for waiver of regulations that gas be odorized in certain lines.

Substance of proposed rule: On June 18, 2013, Talisman Energy USA, Inc. (TE) filed a petition for waiver of the odorization requirement contained in 16 NYCRR Section 255.625 as applied to certain of TE's gathering lines by Section 255.9. While TE filed such petition, it claimed to reserve its right to argue that such regulations do not lawfully apply to such gathering lines.

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-G-0249SP1)

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

Refunds of Gas Suppliers, Pipeline Transporters and Storage Providers

I.D. No. PSC-28-13-00018-P

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

Proposed Action: The Commission is considering whether to grant, modify or deny a tariff filing by KeySpan Gas East Corporation d/b/a National Grid to make various revisions to the rates, charges, rules and regulations contained in Schedule for P.S.C. No. 1 — Gas.

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

Subject: Refunds of gas suppliers, pipeline transporters and storage providers.

Purpose: Tariff filing proposing revisions to the method of gas supplier, pipeline transporter and storage provider refunds to customers.

Substance of proposed rule: The Public Service Commission is considering whether to approve, modify or reject, in whole or in part, a tariff filing by KeySpan Gas East Corporation d/b/a National Grid (the Company) to streamline and clarify the method the Company uses to credit customers with refunds the Company receives from gas suppliers, pipeline transporters and storage providers. Specifically, the Company is proposing to credit gas supply refunds to firm sales customers and to allocate refunds from pipeline transporters and storage providers to firm sales customers, firm transportation customers, and where applicable, to Energy Service Companies and Direct Customers. The amendments have an effective date of October 1, 2013. The Commission may apply its decision here to other utilities.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.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-G-0274SP1)

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

Refunds of Gas Suppliers, Pipeline Transporters and Storage Providers

I.D. No. PSC-28-13-00019-P

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

Proposed Action: The Commission is considering whether to grant,

modify or deny a tariff filing by The Brooklyn Union Gas Company d/b/a National Grid to make various revisions to the rates, charges, rules and regulations contained in Schedule for P.S.C. No. 12 — Gas.

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

Subject: Refunds of gas suppliers, pipeline transporters and storage providers.

Purpose: Tariff filing proposing revisions to the method of gas supplier, pipeline transporter and storage provider refunds to customers.

Substance of proposed rule: The Public Service Commission is considering whether to approve, modify or reject, in whole or in part, a tariff filing by The Brooklyn Union Gas Company d/b/a National Grid (the Company) to streamline and clarify the method the Company uses to credit customers with refunds the Company receives from gas suppliers, pipeline transporters and storage providers. Specifically, the Company is proposing to credit gas supply refunds to firm sales customers and to allocate refunds from pipeline transporters and storage providers to firm sales customers, firm transportation customers, and where applicable, to Energy Service Companies and Direct Customers. The amendments have an effective date of October 1, 2013. The Commission may apply its decision here to other utilities.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.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-G-0275SP1)

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

Refunds of Gas Suppliers, Pipeline Transporters and Storage Providers

I.D. No. PSC-28-13-00020-P

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

Proposed Action: The Commission is considering whether to grant, modify or deny a tariff filing by Niagara Mohawk Power Corporation d/b/a National Grid to make various revisions to the rates, charges, rules and regulations contained in Schedule for P.S.C. No. 219 — Gas.

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

Subject: Refunds of gas suppliers, pipeline transporters and storage providers.

Purpose: Tariff filing proposing revisions to the method of gas supplier, pipeline transporter and storage provider refunds to customers.

Substance of proposed rule: The Public Service Commission is considering whether to approve, modify or reject, in whole or in part, a tariff filing by Niagara Mohawk Power Corporation d/b/a National Grid (the Company) to streamline and clarify the method the Company uses to credit customers with refunds the Company receives from gas suppliers, pipeline transporters and storage providers. Specifically, the Company is proposing to credit gas supply refunds to firm sales customers and to allocate refunds from pipeline transporters and storage providers to firm sales customers, firm transportation customers, and where applicable, to Energy Service Companies and Direct Customers. The Company is also revising its Gas Transportation Rate Statement to include a component as to where these refunds can be placed and tracked. The amendments have an effective date of October 1, 2013. The Commission may apply its decision here to other utilities.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.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-G-0276SP1)

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

Water Rates and Charges

I.D. No. PSC-28-13-00021-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 tariff filing by 473 West End Realty Corp., requesting approval to increase its annual revenues by approximately \$33,254 or 138% in P.S.C. No. 1 — Water, to become effective January 1, 2014.

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

Subject: Water rates and charges.

Purpose: To approve an increase in annual revenues by approximately \$33,254 or 138%.

Substance of proposed rule: The Commission is considering whether to approve, modify or reject, in whole or in part, a tariff filing by 473 West End Realty Corp. (Company), requesting approval to increase its annual revenues by approximately \$33,254 or 138% to P.S.C. No. 1 — Water. The Company is also requesting approval to increase its restoration of service charges during normal business hours from \$50 to \$125; outside of normal business hours from \$75 to \$175; and on weekends or public holidays from \$100 to \$225. The Company is also requesting approval to shut off water to a customer's property after 48 hours if a leak continues and is considered excess by the Company, and that the cost of such action shall be billed to the customer on a time and material basis. The proposed filing has an effective date of January 1, 2014. The Commission may resolve related matters and may take this action for other utilities.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.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-0250SP1)

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

Lightened and Incidental Regulation of a Steam Service

I.D. No. PSC-28-13-00022-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 Monroe Community College requesting that a steam service it will provide in the City of Rochester be subject to lightened and incidental regulation.

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

Subject: Lightened and incidental regulation of a steam service.

Purpose: Consideration of lightened and incidental regulation of a steam service.

Substance of proposed rule: The Public Service Commission is considering a petition filed by Monroe Community College on June 17, 2013 requesting that a steam service it will provide in the City of Rochester be subject to lightened and incidental regulation. 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-S-0248SP1)

State University of New York

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

Proposed Amendments to Traffic and Parking Regulations at State University Maritime College

I.D. No. SUN-28-13-00006-P

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

Proposed Action: Amendment of Part 576 of Title 8 NYCRR.

Statutory authority: Education Law, section 360(1)

Subject: Proposed amendments to traffic and parking regulations at State University Maritime College.

Purpose: Amend existing regulations to update traffic and parking regulations, address overnight parking, etc.

Text of proposed rule: Part 576 of Title 8 NYCRR is amended to read as follows:

STATE UNIVERSITY MARITIME COLLEGE

Section 576.1 Applicability of regulations. This Part shall govern vehicular traffic and parking upon the streets and roads controlled or maintained by the State University [of New York] Maritime College [at Fort Schuyler], and shall apply to students, faculty, employees, visitors and all other persons upon such premises.

576.2 Application of New York State law. (a) A violation of any section of the Vehicle and Traffic Law shall be a misdemeanor or traffic infraction as designated in such law, and shall be punishable as therein provided.

(b) Such laws and orders adopted by State University shall be enforced in any court having jurisdiction.

(c) A complaint regarding any violation of the Vehicle and Traffic Law or any traffic ordinance applicable on such premises shall be processed in accordance with the requirements of applicable law.

576.3 General regulations. (a) No person shall drive a vehicle on campus at a speed greater than is reasonable and prudent under the conditions and having regard to the actual and potential hazards then existing, but in no event shall a person drive a vehicle in excess of [30] 25 miles per hour or a posted lower speed limit.

(b) No person shall park a vehicle on the premises of the Maritime Col-

lege in such a manner as to interfere with the use of a fire hydrant, fire lane or other emergency zone, create any other hazard or unreasonably interfere with the free and proper use of a roadway, trash dumpster, loading zone, service area, crosswalk or pedestrian way. [With the exception of Reeder Street, which is reserved for resident parking, parking is prohibited on any campus street.] *There is no overnight parking allowed on campus unless authorized by permit classification, conducting official College business on campus or in official travel status for Maritime College. Overnight begins at midnight.* Parking is restricted to designated areas and prohibited on all campus roadways whenever a snow emergency is declared by the *Vice President of Operations*, [director of physical plant] *Director of Facilities*, [and] or [the director of public safety] *the Chief of Police*. Temporary stops to pick up or discharge passengers are permitted, providing the driver remains in the vehicle. All faculty, staff, [cadets/graduate] students and visitors must park in assigned areas. [Faculty, staff and student vehicles will be assigned to a specific parking lot, but not to a specific space within the lot, when the vehicle is registered.] Visitors will be directed to a parking area by the officer at [public safety headquarters] *University Police*. *The campus president may reserve and assign [T]temporary parking spaces [in the fort area, marked "FOR OFFICIAL USE ONLY," are reserved] for designated faculty and staff members having official business. [to conduct in the fort. Under normal conditions, parking in these areas is limited to a maximum of one hour.]* The [director of public safety] *Chief of Police* may, in order to meet the parking demands of a specific college function, authorize parking in areas other than the aforementioned ones; providing, however, that such parking in no way impedes the ingress and egress of emergency vehicles.

(c) All members of the Maritime College community authorized and desiring to operate and park vehicles on the college grounds shall register their vehicles at the [public safety headquarters] *University Police Department* located at the main entrance to the campus. All commuter students and junior and senior residential students desiring to operate and park vehicles on the college grounds must register their vehicles at the [public safety headquarters] *University Police Department* and pay a registration fee as approved by the chancellor or [his] designee. [Cadets/graduate] [s]Students must re-register their vehicles at the commencement of each fall semester. All outstanding parking violations must be paid at the [bursar's] *Student Accounts* office [prior to the annual fall student registration] *within ten business days of violation*. Student registration expires immediately upon disenrollment from the college. All other registrations expire when employment is terminated.

(d) All registered vehicles must have affixed to the [right-hand section of the front and rear bumpers] *passenger side rear window* a sticker issued to the registrant by the [public safety office] *University Police Department*. When the configuration of the vehicle prohibits display of the sticker on the [bumper] *window*, a display location will be designated by the [director of public safety] *Chief of Police*. This sticker must be replaced when it becomes unreadable or removed if the vehicle is transferred to another owner. *Visitor/Guest and temporary passes must be displayed on the driver's side, dashboard of the vehicle, with the effective date facing out.*

(e) A fee as approved by the Chancellor or [his] designee will be charged for student vehicular registration payable at the *Student Accounts* office [of the bursar] at the commencement of each fall semester. *Fee is non-refundable.*

(f) Parking fees as approved by the Chancellor, or designee, shall be charged for motor vehicles parked within designated lots, consistent with applicable collective bargaining agreements and in accordance with guidelines established by the Chancellor or designee. Such guidelines shall provide that the determination of the amount of the fee be substantially based on an analysis of the costs attributable to the operation and maintenance of the parking facilities owned and operated by the Maritime College. *Fee is non-refundable.*

(g) *A fee as approved by the Chancellor or designee will be charged for vehicle registration for summer sea term and summer ashore parking and for special events. Fee is non-refundable.*

(h) *Permit classifications:*

(i) *Faculty/Staff is any employee on the non-student payroll of the College, Research Foundation or Faculty Student Association. Non-resident Faculty/Staff permit holders may not park vehicles overnight unless they are conducting official College business on campus or are in official travel status for the College. Overnight starts at midnight. Resident Faculty/Staff permit holders may park vehicles overnight in designated staff/resident parking areas.*

(ii) *Commuter Student is a registered student who is not assigned on-campus housing. Commuters may not park on campus after midnight.*

(iii) *Resident Student is a registered student who is assigned on-*

campus housing. Freshman and sophomore resident students are not allowed to purchase, use or be in possession of a Maritime College parking permit. The Dean of Students or Commandant of Cadets may recommend to UPD a hardship waiver affording the purchase of a parking permit for freshman or sophomore residential students.

576.4 Traffic control. (a) The following traffic regulations are hereby established on the grounds of State University [of New York] Maritime College at Throggs Neck, Bronx County, New York City:

(1) [30] 25 MPH or posted lower speed limit is the maximum speed limit at which vehicles may proceed on or along all roadways on the grounds of the campus.

[(2) Parking is prohibited on or along both sides of all roadways on the grounds of the campus.]

[(3)] (2) The following intersections on the grounds of the campus are designated as yield intersection and yield signs shall be installed at entrances to such intersections as follows:

[(i) Intersection of Crowninshield Street with Shepard Avenue with a yield sign on Shepard Avenue--entrance from west.]

[(ii)] (i) Intersection of Shepard Avenue with Wadhams Street with a yield sign on Wadhams Street--entrance from north.

[(4)] (3) The following intersections on the grounds of the campus are designated as stop intersections and stop signs shall be installed at entrances to such intersection as follows:

(i) Shepard Avenue with McGowan Street with a stop sign on McGowan Street--entrance from north.

(ii) Shepard Avenue with Reeder Street with a stop sign on Reeder Street--entrance from north.

(iii) [Hanus Street with Wadhams Street with a stop sign on Wadhams Street--entrance from south.] *Shepard Avenue with Crowninshield with a stop sign on Crowninshield--entrance from south.*

(iv) Erben Avenue with Crowninshield Street with a stop sign on Crowninshield Street--entrance from south.

(v) Shepard Avenue with Patterson Street with a stop sign on Patterson Street--entrance from north.

(vi) *Wadhams Street with Erben Avenue with stop signs on Erben Avenue--entrance from south.*

(vi) (vii) The southerly archway with Wadhams Street with stop signs on Wadhams Street--entrances from north and south.

[(vii)] (viii) The northerly archway with Wadhams Street with stop signs on Wadhams Street--entrances from north and south.

[(viii)](ix) Pythian Circle with all roadways for traffic entering or leaving the campus with stop signs on all entrances to Pythian Circle.

[(ix)] (x) Erben Avenue with all parking field exits with stop signs on all exits.

[(x)] (xi) Hanus Street with all parking field exits with stop signs on all exits.

[(xi)] (xii) Shepard Avenue with all parking field exits on all exits.

(xiii) *Wadhams Street with all parking field exits on all exits.*

(xiv) *Crowninshield Street with all parking field exits on all exits.*

(xv) *Field Place with all parking field exits on all exits.*

576.5 Violation of regulations. (a) For infractions of the Vehicle and Traffic Law, a traffic ticket answerable before a local magistrate will be issued.

(b)(1) For nonmoving violations, a Maritime College summons will be issued, answerable before [the commandant of cadets and/or hearing] an *Appeals* board.

(2) The prosecution of visitors shall be in accordance with applicable State law.

(c) The college reserves the right to remove, by towing or otherwise, vehicles parked in violation of the regulations or abandoned. Such removal will be at the expense of the owner of the vehicle.

576.6 Fines and penalties. (a) For nonmoving violations the offender will be fined [\$25] *in accordance with fee schedule approved by Chancellor or designee*. All fines are payable at the [business] *Student Accounts* office and all monies deposited in the State University Income Fund.

(b) Unpaid fines may be deducted from the wages of any faculty or staff member. In the case of [cadets/graduate] students, grades and transcripts will be withheld until the fines are paid. All fines are considered debts due the college and must be paid [prior to the campus vehicular registration procedure at the commencement of each fall semester] *within ten business days of violation or before commencement*.

(c) Revocation of campus motor vehicle registrations and a loss of parking privileges for the balance of the academic year will result upon a finding that 10 or more parking violations have been incurred during an academic year.

(d) A vehicle immobilizer may be affixed at the owner's expense by the

University Police department [of public safety] to a vehicle parked in violation of these regulations, where there is a need for prompt seizure of such vehicle after reasonable efforts to learn the name and address of the owner.

(e) The fee for removal of such vehicle immobilizer equipment shall be an amount approved by the Chancellor, or designee. The amount of the fee shall be substantially based on an analysis of the costs attributable to operations and administration associated with the vehicle immobilizer procedure.

(f) Unpaid fines may be deducted from the salary of a faculty or staff employee. In the case of students, grades and transcripts will be withheld until the penalty is paid.

576.7 Appeals procedure. (a) A complaint regarding any violation of a campus rule shall be in writing, reciting the time and place of the violation and the title, number or substance of the applicable rule.

(b) The complaint must be subscribed by the officer witnessing the violation and shall be served upon the violator or attached to the vehicle involved.

(c) The complaint shall indicate the amount of the fine assessable for the violation, and advise that, if the person charged does not dispute the violation, fines may be paid at the [business] Student Accounts office [of the campus] within [14] 10 business days after receipt.

(d) The complaint shall recite that [a hearing] an appeal may be requested within [14] 10 business days after service of the charges. Any student, faculty member or employee of the Maritime College who feels that he/she has been wrongfully issued a Maritime College summons may, within [14 calendar] 10 business days after receiving the summons, submit [his/her appeal via the director of administration to a hearing board appointed by the president of the Maritime College] a completed UPD Appeal Form to the University Police Department. After the 10-day period, the option of appeal or other consideration expires and summons is irrevocable. The alleged violator may request an in-person hearing.

(e) The complaint shall recite that, should the alleged violator fail to appeal violation [appear at the time fixed for the hearing] or should no hearing be requested within the period as prescribed by the college council in subdivision (d) of this section, the complaint is proved and shall warrant such action as may then be appropriate.

(f) The University Police chief [administrative officer] shall designate a hearing officer or board, not to exceed three persons, to hear complaints for violation of campus traffic and parking regulations enforceable on campus. Appeals Hearing officer or board will adjudicate within 30 days of the receipt of the appeal. Such hearing officer or board shall not be bound by the rules of evidence, but may hear or receive any testimony or evidence directly relevant and material to the issues presented. At the conclusion of the hearing, or not later than five days thereafter, such hearing officer or board shall file a report. All appeals decisions are binding and final. A notice of the decision shall be promptly transmitted to the Chief of Police and violator. The report shall include:

- (1) the name and address of the alleged violator;
- (2) the time and place when the complaint was issued;
- (3) the campus rule violated;
- (4) a concise statement of the facts established on the hearing, based upon the testimony or other evidence offered;
- (5) the time and place of the hearing;
- (6) the names of all witnesses;
- (7) each adjournment, stating upon whose application and to what time and place it was made; and
- (8) the decision (guilty or not guilty) of the hearing officer or board.

Text of proposed rule and any required statements and analyses may be obtained from: Lisa S. Campo, State University of New York, System Administration, State University Plaza, S-325, Albany, NY 12246, (518) 320-1400, email: Lisa.Campo@SUNY.edu

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: Education Law § 360(1) authorizes the State University Trustees to make rules and regulations relating to parking, vehicular and pedestrian traffic and safety on the State-operated campuses of the State University of New York.

2. Legislative objectives: The present measure makes technical amendments to the parking and traffic regulations applicable to the State University Maritime College.

3. Needs and benefits: The amendments are necessary to update existing regulations as a result of changes in overnight parking policies, permit classifications, to amend penalties and fines, to update and modify the method of and place for paying fines.

- 4. Costs: None.
- 5. Local government mandates: None.
- 6. Paperwork: None.
- 7. Duplication: None.
- 8. Alternatives: There are no viable alternatives.
- 9. Federal standards: There are no related Federal standards.
- 10. Compliance schedule: Maritime College will notify those affected as soon as the rule is effective. Compliance should be immediate.

Regulatory Flexibility Analysis

No regulatory flexibility analysis is submitted with this notice because this proposal does not impose any requirements on small businesses and local governments. This proposed rule making will not impose any adverse economic impact on small businesses and local governments or impose any reporting, recordkeeping or other compliance requirements on small businesses and local governments. The proposal addresses internal parking and traffic regulations on the campus of the State University Maritime College.

Rural Area Flexibility Analysis

No rural area flexibility analysis is submitted with this notice because this proposal will not impose any adverse economic impact on rural areas or impose any reporting, record keeping or other compliance requirements on public or private entities in rural areas. The proposal addresses internal parking and traffic regulations on the campus of the State University Maritime College.

Job Impact Statement

No job impact statement is submitted with this notice because this proposal does not impose any adverse economic impact on existing jobs or employment opportunities. The proposal addresses internal parking and traffic regulations on the campus of the State University Maritime College.

Department of Taxation and Finance

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Fuel Use Tax on Motor Fuel and Diesel Motor Fuel and the Art. 13-A Carrier Tax Jointly Administered Therewith

I.D. No. TAF-28-13-00005-P

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

Proposed Action: Amendment of section 492.1(b)(1) of Title 20 NYCRR.

Statutory authority: Tax Law, sections 171, subd. First, 301-h(c), 509(7), 523(b) and 528(a)

Subject: Fuel use tax on motor fuel and diesel motor fuel and the art. 13-A carrier tax jointly administered therewith.

Purpose: To set the sales tax component and the composite rate per gallon for the period July 1, 2013 through September 30, 2013.

Text of proposed rule: Section 1. Paragraph (1) of subdivision (b) of section 492.1 of such regulations is amended by adding a new subparagraph (lxxi) to read as follows:

Motor Fuel			Diesel Motor Fuel			
Sales Tax Component	Composite Rate	Aggregate Rate	Sales Tax Component	Composite Rate	Aggregate Rate	
(lxx) April - June 2013	16.0	24.0	42.6	16.0	24.0	40.85
(lxxi) July - September 2013	16.0	24.0	42.6	16.0	24.0	40.85

Text of proposed rule and any required statements and analyses may be obtained from: Thomas E. Curry, Tax Regulations Specialist 4, Department of Taxation and Finance, Taxpayer Guidance Division, Building 9, W.A. Harriman Campus, Albany, NY 12227, (518) 530-4145, email: tax.regulations@tax.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.

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.