RULE MAKING ACTIVITIES

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

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

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

Department of Agriculture and Markets

PROPOSED RULE MAKING HEARING(S) SCHEDULED

State and County Fairs

I.D. No. AAM-23-13-00009-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 351 of Title 1 NYCRR.

Statutory authority: Agriculture and Markets Law, sections 18(6), 31-b, 72(3) and 74(9)

Subject: State and county fairs.

Purpose: To require animal identification consistent with federal requirements; clarify and ease current regulatory requirements.

Public hearing(s) will be held at: 11:00 a.m., July 24, 2013 at Dept. of Agriculture and Markets, 10B Airline Dr., Albany, 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.

Text of proposed rule: Subdivision (a) of section 351.1 of 1 NYCRR is amended to read as follows:

(a) Accredited veterinarian means a veterinarian approved *as a category 2 accredited veterinarian* by the Administrator of the Animal and Plant Health Inspection Service, United States Department of Agriculture to perform the functions of Federal and cooperative State-Federal programs for animal disease control.

Subdivision (c) of section 351.1 of 1 NYCRR is repealed and subdivisions (d) and (e) of section 351.1 are relettered subdivisions (c) and (d).

Subdivision (f) of section 351.1 of 1 NYCRR is repealed and subdivisions (g) and (h) of section 351.1 are relettered subdivisions (e) and (f).

Subdivision (i) of section 351.1 of 1 NYCRR is repealed and subdivisions (j) through (n) are relettered (g) through (k).

Subdivision (o) of section 351.1 of 1 NYCRR is relettered subdivision (l) and amended to read as follows:

[(o)] *(l)* Interstate certificate of veterinary inspection means the original preprinted document which:

(1) is issued by an accredited veterinarian and approved [and countersigned] by the chief livestock health official or such official's designee of the state or country of origin [. Approval and counter-signature of the certificate shall signify that said official has caused the statements thereon to be verified and shall further signify that these statements qualify the animal for movement into New York State in accordance with the provisions of this Part];

(2) [uniquely] identifies each animal to be moved into this State *with U.S.D.A. approved official identification where applicable. For species that U.S.D.A. has not defined approved identification the identification shall be in a form approved by the Commissioner.*[Identification shall include] *All manmade identification shall be recorded including* all ear tags, ear notches, tattoos and electronic identification devices carried by the animal, its species, breed, age, sex, registration number and any other unique description; and

(3) includes the full name and address of both consignor and consignee, the date of issue, the dates and results of qualifying tests, the anticipated date of entry of the animal into New York State, and a statement that the individual animal and that animal's herd of origin has been inspected by [an] *a category 2* accredited veterinarian and no evidence of infectious, contagious or communicable disease was found (except where noted) and that the results of the tests are as indicated.

Subdivision (p) of section 351.1 of 1 NYCRR is relettered subdivision (m) and amended to read as follows:

[(p)] *(m)* Intrastate certificate of veterinary inspection means the original preprinted document which:

(1) contains the name and address of the owner;

(2) [uniquely] identifies each individual animal[. Identification shall include] *with U.S.D.A. approved official identification where applicable. For species that U.S.D.A. has not defined approved identification the identification shall be in a form approved by the Commissioner. All manmade identification shall be recorded including* all ear tags, ear notches, tattoos and electronic identification devices carried by the animal, its species, breed, age, sex, registration number and any other unique description;

(3) includes a statement that the individual animal and that animal's herd of origin has been inspected by [an] *a category 2* accredited veterinarian on or after May 1st of the current year and no evidence of infectious, contagious or communicable disease was found (except where noted);

(4) verifies that all required vaccinations and tests have been performed and provides a record of the results of any or all required tests; and

(5) includes the signature of the accredited veterinarian who has inspected the animals identified on the certificate verifying the accuracy of the statements thereon.

Subdivision (q) of section 351.1 is relettered subdivision (n).

Subdivision (r) of section 351.1 is repealed and subdivisions (s) through (x) are relettered subdivisions (o) through (t).

Subdivisions (c) and (d) of section 351.3 of 1 NYCRR are amended to read as follows:

(c) All animals presented for admission to a fair that originate from a

location other than this State shall meet all State importation regulations appropriate to the species in addition to the requirements of this Part. State importation requirements can be obtained by contacting the [d]*D*epartment at 10B Airline Drive, Albany, NY 12235, (518) 457-3502, [www.agmkt.state.ny.us] *www.agriculture.ny.gov*.

(d) Animals *originating from the State* that qualify for admission under this Part at one fair shall be considered approved for admission at all other New York State fairs conducted during the same calendar year, subject to [State importation requirements appropriate to the species and] compliance with the rabies vaccination requirements of individual fairs, provided that the health status of the individual animal or the herd of origin does not change in the interim period. *Imported animals entering a fair accompanied by an interstate certificate of veterinary inspection may utilize the same certificate at all other New York State fairs conducted during the same calendar year if the initial entry to a fair is within 30 days of issuance.*

Subdivision (a) of section 351.4 of 1 NYCRR is amended to read as follows:

(a) To qualify for admission to a fair, all animals [105 days of age or more] *4 months of age or older* for which a rabies vaccine labeled by the manufacturer for that species is available [must] *shall* be accompanied by proof that the animal [is currently] *has been* vaccinated against rabies. *Vaccination shall be administered according to the manufacturer instructions within the duration of protection indicated.* Animals *4 months of age or older* for which no labeled vaccine is available [must] *shall* be accompanied by proof that the animal is [currently] vaccinated against rabies if required by the rules of an individual fair.

Subdivision (b) of section 351.4 is repealed and subdivision (c) is relettered subdivision (b) and is amended to read as follows:

[(c)] *(b)* Acceptable proof of vaccination includes a signed written statement from the [attending] veterinarian or a valid certificate of veterinary inspection that has the vaccination listed and is signed by the [attending] *accredited* veterinarian. Acceptable proof of vaccination [must] *shall* include the name of the product used and the date of administration.

Subdivision (a) of section 351.5 of 1 NYCRR is amended to read as follows:

(a) To qualify for admission to a fair all [camels,] deer, [elephants,] llamas, [non-human primates,] ruminants and swine [must] *shall*:

(1) be accompanied by an original intrastate or interstate certificate of veterinary inspection *as defined in Part 351.1* which shall be presented to the commissioner at any time upon request [; and

(2) be permanently and uniquely identified by an official approved means or device including an official eartag, registration tattoo, electronic identification or a sketch or photograph signed and dated by the accredited veterinarian who has inspected the individual animal].

Section 351.6 of 1 NYCRR is amended to read as follows:

In addition to the requirements listed in sections 351.4 and 351.5 of this Part, all cattle presented for admission to a fair [must] *shall* be accompanied by an original intrastate or interstate certificate of veterinary inspection that contains proof that the cattle have tested negative for being persistently infected with bovine viral diarrhea and proof that the cattle are [currently] vaccinated against bovine respiratory disease complex, including bovine respiratory syncytial virus, bovine viral diarrhea, infectious bovine rhinotracheitis, and parainfluenza with a product administered in a manner and time frame adequate to confer protective immunity for these diseases for the duration of the fair.

Section 351.7 of 1 NYCRR is amended to read as follows:

(a) In addition to the requirements listed in sections 351.4 and 351.5 of this Part, all deer presented for admission to a fair must be accompanied by a permit as required by Parts 60, 62 and 68 of this Title. Permit information can be obtained by contacting the [d]*D*epartment at 10B Airline Drive, Albany, NY 12235, (518) 457-3502, [www.agmkt.state.ny.us] *www.agriculture.ny.gov*

Section 351.8 of 1 NYCRR is repealed, sections 351.9 and 351.10 are renumbered sections 351.8 and 351.9 and a new section 351.10 is added to read as follows:

Swine. In addition to the requirements set forth in Section 351.5 of this part, all swine presented for admission to a fair shall be identified by USDA approved official eartag.

Section 351.11 of 1 NYCRR is repealed and section 351.12 is renumbered section 351.11 and amended to read as follows:

All poultry presented for admission to a fair:

[(a) shall not originate from any state where the commissioner has determined that highly pathogenic avian influenza is present. A list of such states is maintained at the offices of the department's Division of Animal Industry, 10B Airline Drive, Albany, NY 12235; and]

[(b)] *(a)* [must] *shall* be accompanied by results of a negative pullorum typhoid test conducted within 90 days prior to the opening date of the fair or [proof that the fowl originated] *originate* directly from a U.S. pullorum-typhoid clean or equivalent flock. Waterfowl are exempt from this requirement. *Pullorum test negative poultry shall be identified by official leg band. Poultry originating from a status flock shall be accompanied by proof of status.*

Sections 351.13, 351.14 and 351.15 of 1 NYCRR are renumbered sections 351.12, 351.13 and 351.14.

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

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

Public comment will be received until: Five days after the last scheduled public hearing.

Regulatory Impact Statement

1. Statutory authority:

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

Section 31-b of the Law provides that the Department may make, alter, suspend or repeal needed rules relating to the New York State Fair.

Section 72(3) of the Law authorizes the Commissioner to adopt and enforce rules and regulations for the control, suppression or eradication of communicable diseases among domestic animals and to prevent the spread of infection and contagion.

Section 74(9) of the Law authorizes the Commissioner, after public hearing, to adopt rules and regulations relating to the importation of domestic or feral animals into the State.

2. Legislative objectives:

The statutory provisions pursuant to which these regulations are proposed are aimed at preventing infectious or communicable diseases affecting domestic animals from being brought into the State; controlling, suppressing and eradicating such diseases; and preventing the spread of infection and contagion. The Department's proposed amendment of 1 NYCRR Part 351 would further this goal by implementing requirements to place identifying eartags on cattle and swine and leg bands on poultry, thereby helping to prevent the introduction and spread of animal diseases at the State Fair and county fairs. The proposed amendment would also clarify and ease certain requirements and make technical changes to the rule.

3. Needs and benefits:

The proposed amendments would adopt federal requirements for animal identification. As part of its animal disease control initiative, the United States Department of Agriculture (USDA) has established an official animal identification program which applies to cattle and swine being moved to exhibitions. The USDA requires that livestock being moved to exhibitions have a USDA-approved official identification, such as an eartag. This would help control the spread of diseases, thereby protecting animal health.

The proposed amendments would also require that poultry which test negative for pullorum be identified with an official leg band. Poultry originating from a status flock shall be accompanied by proof of status. Pullorum is a bacterial disease which is easily spread among birds. The proposed rule would help identify healthy chicken, thereby protecting animal health.

The proposed rule would ease regulatory requirements.

Under the proposal, out of state exhibitors would be able to move their cattle to exhibitions using one certificate of veterinary inspection (CVI) during the fair season, provided the CVI is used within 30 days of issuance at the first fair the exhibitor enters. This would ease the burden of having to acquire a CVI for each entry into the State during fair season.

The proposed regulations would lift State health requirements for exhibitors to obtain CVI's for elephants and non-human primates. These species are already covered under the USDA Animal Welfare Act and are typically housed apart from other animals. Any animal health issues that arise at a fair could be addressed by Department staff or the USDA.

The proposed amendments would clarify regulatory requirements.

Regarding the rabies requirement, the current rule provides that a rabies vaccine is required for all animals 105 days or older. A primary vaccine can be administered at 84 days of age, with the follow-up vaccine administered at least 14 days prior to arrival at the fairgrounds. The latest a follow-up vaccine can be administered is at 91 days of age to meet the 105 day requirement (i.e. 105 days -14 days = 91 days). This results in only a one week window (i.e. 91 days - 14 days = 7 days) to have the animal fully immunized against rabies in order to enter the fair. To ease potential confusion as well as to facilitate compliance, the proposed rule would provide that all animals 4 months of age or older be vaccinated against rabies. This is consistent with the Department and the Department of Health requirements for dogs. In addition, the state public health veterinarian has stated that this change would not increase risk of rabies exposure at a fair.

At present, authorized veterinarians are approved to perform functions of Federal and cooperative State-Federal programs for animal disease control. The proposed rule would replace authorized veterinarians with category 2 accredited veterinarians. The category 2 accreditation is a USDA designation for veterinarians approved to do livestock regulatory work. It is anticipated that this change would have no significant impact upon the ability of exhibitors to meet the health requirements since the vast majority of accredited veterinarians they are using have category 2 status.

Finally, the proposed amendments would make technical changes by updating the Department's e-mail address.

These proposed amendments would benefit the exhibitors and their animals. The enhanced animal identification requirements would help track animal movements from farm to fairs and between fairs and help control the introduction of animal diseases into fairs. Allowing the use of one CVI for multiple entries of the same livestock being brought into fairs as well as the lifting of State health requirements for elephants and primates would ease regulatory burdens. The proposed changes in the rabies requirements and the requirement that a category 2 accredited veterinarian be used clarifies these requirements and makes it easier for exhibitors to comply.

4. Costs:

(a) Costs to regulated parties: Under the proposed rule, regulated parties would have to pay for the cost of eartags and applicators for their cattle and swine. It is anticipated that approximately 10 to 20% of the 6,000 dairy cattle, up to 50% of the 2,000 beef cattle and 90% of the estimated 1,500 swine exhibited at fairs do not have eartags. Nonetheless, costs to exhibitors should be minimal, since category 2 accredited veterinarians receive the eartags for free and can apply them at the time the animals are undergoing the required health inspection. Cattle and 4-H swine exhibitors would also be able to obtain eartags from the Department for minimal cost. Exhibitors of approximately 500 open class swine may choose to purchase eartags at approximately $1.00 per tag or their veterinarian can apply eartags at no charge. The Department currently supplies pullorum testing for exhibition poultry at no cost including application of bands.

(b) Costs to the agency, state and local governments: There would be no costs to state and local governments. It is anticipated that the Department would incur costs of approximately $3,000 to purchase eartags and applicators. However, under a cooperative agreement, the USDA would reimburse the Department for the tags and applicators, resulting in minimal administrative costs to the Department.

(c) Source: Costs are based upon observations in the industry, outreach and review and evaluation of the proposed amendments.

5. Local government mandates:

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

6. Paperwork:

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

7. Duplication:

The rule does not duplicate any State or federal requirements.

8. Alternatives:

The only alternative considered was to not amend the regulations. This was rejected since the proposed rule would bring New York into compliance with USDA requirements that require livestock being moved interstate for exhibition to have a USDA-approved official identification. Animals in the State are already required to have identification. By requiring leg bands for pullorum negative poultry, the proposed rule would help identify healthy chickens, thereby protecting animal health. Since the USDA already regulates elephants and primates, it was determined that Department regulations governing these animals would be redundant and unnecessary. Allowing the use of the same certificate of veterinary inspection for imported animals for 30 days and amending the rabies requirement would ease and clarify regulatory requirements, respectively.

9. Federal standards:

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

10. Compliance schedule:

The rule will be effective upon publication of the Notice of Adoption in the *State Register*.

Regulatory Flexibility Analysis

1. Effect of rule:

There are approximately 450 to 600 cattle exhibitors and 750 swine exhibitors who would be affected by the proposed rule. Many of these exhibitors are small businesses.

The proposed rule wouldl have no impact on local governments.

2. Compliance requirements:

The proposed rule would adopt USDA requirements that livestock being moved into fairs for exhibition have a USDA-approved official identification, such as an eartag. The proposed amendments would also require that poultry which test negative for pullorum be identified with an official leg band.

The proposed rule would have no impact on local governments.

3. Professional services:

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

The proposed rule would have no impact on local governments.

4. Compliance costs:

Under the proposal, regulated parties would have to pay for the cost of eartags and applicators for their cattle and swine. It is anticipated that approximately 10 to 20% of the 6,000 dairy cattle, up to 50% of the 2,000 beef cattle and 90% of the estimated 1,500 swine do not have eartags. Nonetheless, costs to exhibitors should be minimal, since category 2 accredited veterinarians receive the eartags for free and can apply them at the time the animals are undergoing the required health inspection. Cattle and 4-H swine exhibitors would also be able to obtain eartags from the Department for minimal cost. Exhibitors of the approximately 500 open class swine may choose to purchase eartags for approximately $1.00 per tag or their veterinarian can apply eartags at no charge. The Department currently supplies pullorum testing for exhibition poultry at no cost including application of leg bands.

The proposed rule would have no impact on local governments.

5. Economic and technological feasibility:

The economic and technological feasibility of complying with the proposed amendments has been assessed. The rule is economically feasible. It is anticipated that 10% to 20% of the 6,000 dairy cattle, 50% of the 2,000 beef cattle and 90% of the approximately 1,500 swine are unidentified and would require identification under this rule. However, the cost for eartags would be minimal. Most poultry are already banded as negative for pullorum, so costs to identify health but unbanded chickens would likewise be minimal since the Department supplies pullorum testing at no cost to the exhibitor. The rule is technologically feasible. Exhibitors would have to obtain eartags and applicators. They are readily available from the Department or veterinarians.

The proposed rule would have no impact on local governments.

6. Minimizing adverse impact:

In conformance with State Administrative Procedure Act section 202-b(1), the rule was drafted to minimize economic impact and reporting requirements for all regulated parties, including small businesses. The identification requirements for cattle and swine are required and in any event, would pose minimal costs on small businesses. The same is true for exhibitors of poultry, since the Department supplies pullorum testing and leg banding at no cost. There are no reporting requirements under the proposed rule. The other provisions of the proposal ease or clarify regulatory requirements or make technical changes to the current rule.

The proposed rule would have no impact on local governments.

7. Small business and local government participation:

In developing this proposed rule, Department field staff held approximately ten meetings with representatives of county fairs as well as Cooperative Extension groups. The representatives did not object to the proposal as written. Letters were also sent to fair groups and accredited veterinarians outlining the proposed rule. The New York State Department of Health expressed support for the clarification of the rabies requirement. Outreach efforts will continue.

The proposed rule would have no impact on local governments.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:

There are approximately 450 to 600 cattle exhibitors and 750 swine exhibitors who would be affected by the proposed rule. Many are located throughout the rural areas of New York, as defined by section 481(7) of the Executive Law.

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

The proposed rule would adopt USDA requirements which require that livestock being moved into fairs for exhibition have a USDA-approved official identification, such as an eartag. The proposed amendments would also require poultry which test negative for pullorum be identified with an official leg band. In terms of professional services, regulated parties may use veterinarians to apply eartags to their cattle and swine and leg bands to their poultry. It is not anticipated that regulated parties would have to undertake reporting or recordkeeping requirements in order to comply with the proposed rule.

3. Costs:

Under the proposed rule, regulated parties, including those in rural areas, would have to pay for the cost of eartags and applicators for their cattle and swine. It is anticipated that approximately 10 to 20% of the 6,000 dairy cattle, up to 50% of the 2,000 beef cattle and 90% of the estimated 1,500 swine do not have eartags. Nonetheless, costs to exhibi-

tors should be minimal, since category 2 accredited veterinarians receive the eartags for free and can apply them at the time the animals are undergoing their required health inspection. Cattle and 4-H swine exhibitors would also be able to obtain eartags from the Department. The Department currently supplies pullorum testing at no cost including application of leg bands.

4. Minimizing adverse impact:

In conformance with State Administrative Procedure Act section 202-bb(2), the rule was drafted to minimize economic impact and reporting requirements for all regulated parties, including those in rural areas. The identification requirements for cattle and swine are required and in any event, would pose minimal costs. The same is true for exhibitors of poultry, since the Department supplies pullorum testing and leg banding at no cost. There are no reporting requirements under the proposed rule. The other provisions of the proposal ease or clarify regulatory requirements or make technical changes to the current rule.

5. Rural area participation:

In developing this proposed rule, Department field staff held approximately ten meetings with representatives of county fairs as well as Cooperative Extension groups. The representatives did not object to the proposal as written. Letters were also sent to fair groups and accredited veterinarians outlining the proposed rule. The New York State Department of Health expressed support for the clarification of the rabies requirement.

Outreach efforts will continue.

Job Impact Statement

1. Nature of impact:

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

2. Categories and numbers affected:

The number of persons employed by the 450 to 600 cattle exhibitors and the approximately 750 swine exhibitors is unknown.

3. Regions of adverse impact:

The exhibitors are located throughout the State.

4. Minimizing adverse impact:

By identifying the approximately 9,500 cattle and swine being brought to exhibitions in New York State, this rule will help to preserve the jobs of those employed by these exhibitors by helping to ensure animal health.

State Commission of Correction

NOTICE OF ADOPTION

Agency Address

I.D. No. CMC-11-13-00004-A

Filing No. 530

Filing Date: 2013-05-21

Effective Date: 2013-06-05

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

Action taken: Amendment of sections 7022.5(c), 7200.2(a), 7200.3, 7200.6(b), 7202.4(a), 7202.6 and 7202.11(a) of Title 9 NYCRR.

Statutory authority: Correction Law, section 45(6) and (15)

Subject: Agency address.

Purpose: To amend the Commission of Correction's listed address.

Text or summary was published in the March 13, 2013 issue of the Register, I.D. No. CMC-11-13-00004-P.

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

Text of rule and any required statements and analyses may be obtained from: Brian M. Callahan, Associate Attorney, New York State Commission of Correction, Alfred E. Smith State Office Building, 80 S. Swan Street, 12th Floor, Albany, New York 12210, (518) 485-2346, email: Brian.Callahan@scoc.ny.gov

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Department of Corrections and Community Supervision

I.D. No. CMC-11-13-00005-A

Filing No. 534

Filing Date: 2013-05-21

Effective Date: 2013-06-05

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

Action taken: Amendment of sections 7013.8, 7064.8, 7300.2, 7300.4, 7414.6, 7600.1, 7601.1 and 7651.3 of Title 9 NYCRR.

Statutory authority: Correction Law, section 45(6) and (15)

Subject: Department of Corrections and Community Supervision.

Purpose: To amend references of the Department of Correctional Services to the Department of Corrections and Community Supervision.

Text or summary was published in the March 13, 2013 issue of the Register, I.D. No. CMC-11-13-00005-P.

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

Text of rule and any required statements and analyses may be obtained from: Brian M. Callahan, Associate Attorney, New York State Commission of Correction, Alfred E. Smith State Office Building, 80 S. Swan Street, 12th Floor, Albany, New York 12210, (518) 485-2346, email: Brian.Callahan@scoc.ny.gov

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Inmate Access to Legal Reference Materials

I.D. No. CMC-14-13-00010-A

Filing No. 531

Filing Date: 2013-05-21

Effective Date: 2013-06-05

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

Action taken: Amendment of section 7031.4 of Title 9 NYCRR.

Statutory authority: Correction Law, section 45(6) and (15)

Subject: Inmate access to legal reference materials.

Purpose: To eliminate the requirement that law libraries be maintained within a local correctional facility.

Text or summary was published in the April 3, 2013 issue of the Register, I.D. No. CMC-14-13-00010-P.

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

Text of rule and any required statements and analyses may be obtained from: Brian M. Callahan, Associate Attorney, New York State Commission of Correction, Alfred E. Smith State Office Building, 80 S. Swan Street, 12th Floor, Albany, New York 12210, (518) 485-2346, email: Brian.Callahan@scoc.ny.gov

Initial Review of Rule

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

Assessment of Public Comment

The New York State Commission of Correction (hereinafter "Commission") received formal comment from William Mills, President of the Law Library Association of Greater New York (hereinafter "LLAGNY"), Jean M. Wenger, President of the American Association of Law Libraries (hereinafter "AALL"), John Boston, Project Director, William D. Gibney, Project Director, and Barbara A. Hamilton, Staff Attorney of The Legal Aid Society (hereinafter "Legal Aid"), Jerry Johnson, an inmate of Sing Sing Correctional Facility, and twenty six (26) separate, but identical comments from various individuals, mostly inmates of Sing Sing Correctional Facility (hereinafter "the Sing Sing inmates").

As evident by its comments, LLAGNY, AALL, Mr. Johnson and the Sing Sing inmates are of the mistaken belief that the subject regulation affects the facilities, inmates and budget of the New York State Department of Corrections and Community Supervision (DOCCS). Contained in Chapter I of Subtitle AA of Title 9 NYCRR, the amended regulation controls only local correctional facilities operated by a county or the City

of New York. Specifically, AALL provides extensive comment regarding the conversion of the DOCCS state prison print library collection to Premise Research Software and the complexities and potential problems associated therewith. Likewise, Mr. Johnson opines that the New York State Legislature should provide adequate funding for law library clerks "that are skilled in writing legal briefs and motions, and having the know how of what Court to file papers in and the proper order of filing," as well as access to copy machines and notaries. As these comments do not specifically address the proposed regulatory amendment, the Commission respectfully declines to provide a response.

Otherwise, LLAGNY, AALL and Legal Aid generally contend that the proposed amendment will result in the removal of legal reference materials from correctional facilities, thus infringing on the inmates' constitutional rights to access such materials. Based upon the relevant judicial authority regarding this matter, the Commission respectfully disagrees. It is well settled that prisoners have a constitutional right of access to the courts. Bounds v. Smith, 430 U.S. 817, 822, 97 S.Ct. 1491, 1494 (1977). In Bounds, the United States Supreme Court held that this fundamental constitutional right requires correctional authorities to "assist inmates in the preparation and filing of meaningful legal papers by providing prisoners with adequate law libraries or adequate assistance from persons trained in the law." Id. at 828 (emphasis added). In 1996, the Supreme Court revisited the Bounds decision in Lewis v. Casey, 518 U.S. 343, 116 S.Ct. 2174 (1996). In Lewis, the Court held that Bounds "did not create an abstract, free-standing right to a law library or legal assistance." Lewis, at 2180. Rather, "[t]he right that Bounds acknowledged was the (already well-established) right of access to the courts." Id. at 2179. Inmate access to law library facilities was therefore only one constitutionally acceptable method to assure meaningful access to the courts, and the Court did not foreclose alternative means to achieve that goal. Therefore, based on the decisions in Bounds and Lewis, it appears that an inmate represented by legal counsel would have no constitutional right of access to a law library, or any other legal reference materials provided by a correctional facility.

Nevertheless, the Commission does not believe that the proposed amendment will otherwise infringe on an inmate's existing access to legal reference materials while incarcerated. Though counties are no longer obliged to maintain physical law libraries within the local correctional facility, inmates remain entitled to access the same legal reference materials as currently required. Further, the Commission anticipates that many counties will continue to maintain a law library within the facility, as the costs associated therewith may now legitimately be paid for with the profits of the inmate commissary pursuant to 9 NYCRR Part 7016.

LLAGNY, AALL and Legal Aid each provided various comments regarding the provision of legal reference materials by electronic research services, together with the issues associated therewith. The general requirement of 9 NYCRR § 7031.4 that inmates have access to current legal reference materials will remain unchanged. Consequently, local correctional facilities are charged with the duty to ensure that electronic equipment, if employed, is maintained, repaired and operational, and that each inmate is provided sufficient access. Other unforeseen costs spelled out by AALL must be individually considered by each county in their determination of whether to provide legal reference material by book or electronic mediums. Given the varying populations, operations and physical plants of local correctional facilities, attempts to standardize a statewide inmate to terminal ratio as suggested by Legal Aid would prove impracticable. Lastly, the Commission has long monitored the several local correctional facilities currently maintaining electronic access to legal reference materials, and has found such systems equally accessible and more current than a traditional law library. Thus, the Commission does not agree that an electronic means of providing access to legal reference materials would impede the research capabilities of an inmate population, that electronic research requires more than rudimentary training and supervision, or that local correctional facilities that provide electronic research services should be required to maintain a reduced core collection in book form.

LLAGNY, AALL, Legal Aid and the Sing Sing inmates each comment that inmate access to legal reference materials will be compromised by the absence of legal reference materials maintained within a correctional facility. Specifically, it is opined that inmates will not know what materials are available absent the ability to browse a library. As amended section 7031.4(c) provides that, where legal reference materials "are maintained in a manner that does not permit direct access by a prisoner, the prisoner shall be provided access to a list of such available materials, sufficiently indexed to allow for a competent request by chapter, article, section, etc.," the Commission disagrees with this premise. Further objections claimed that the proposed amendment "singled out" inmates represented by counsel, and that waiting 3 days to be provided requested materials would prove burdensome to the requesting inmate, particularly while the inmate is on trial. The Commission notes that the proposed amendment does not change the regulation that all inmates are entitled to access legal reference materials, with regard to any legal matter, whether represented by counsel or not. Amended section 7031.4(o) requires facilities to consider an inmate's pro se status in determining necessary access to reference materials, which presumptively grows more necessary while the inmate is in the midst of a trial. Thus, the only population "burdened" by the maximum three day waiting period would be those represented by legal counsel, not otherwise constitutionally entitled to access any legal reference materials.

Lastly, Legal Aid and the Sing Sing inmates object to eliminating the requirement that local correctional facilities provide inmates access to a typewriter, as this will delay and confuse courts due to illegible handwriting. Considering that legal papers are generally required only to be written in black ink (see CPLR Rule 2101), that ever decreasing production and use of typewriters renders supply and service thereof costly and scarce, and that providing certain violent inmates access to a typewriter constitutes a security risk, the Commission has found the current regulation to be overly burdensome to local correctional facilities, remedied by providing inmates adequate access to the courts via a black pen and paper.

Finally, the Sing Sing inmates object to the failure of the proposed amendment to provide a designated area for prisoners to study legal reference material. As inmates were previously provided sufficient access to legal reference materials without the requirement of a designated area, and the fact that many existing local correctional facilities, as currently constructed, would be unable to meet such a requirement, the Commission deems the request unnecessary and unfeasible.

Division of Criminal Justice Services

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Public Access to Records and Access to Personal Information

I.D. No. CJS-23-13-00008-P

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

Proposed Action: This is a consensus rule making to repeal Parts 368 and 369; and amend sections 6150.6(a) and (b), 6150.10, 6150.11, 6151.2(b), 6151.4, 6151.8(c) and 6151.9(a) of Title 9 NYCRR.

Statutory authority: Executive Law, section 837(13); and Public Officers Law, sections 87(1)(b) and 94(2)

Subject: Public Access to Records and Access to Personal Information.

Purpose: Repeal obsolete rules of former DPCA and make necessary technical amendments to DCJS rules on subject areas.

Text of proposed rule: Parts 368 and 369 of Title 9 NYCRR are REPEALED.

Subdivisions (a) and (b) of Section 6150.6 of Title 9 NYCRR are amended to read as follows:

(a) Place of request. Any person wishing to inspect and/or copy any record, other than a payroll record, may apply at [one of] the following [locations] *location*:

[(1)] Albany. Records Access Officer, New York State Division of Criminal Justice Services, [Executive Park Tower, Stuyvesant Plaza, 5th] *Alfred E. Smith Office Building 8th* floor*, 80 South Swan Street,* Albany, N.Y. [12203] *12210*.

[(2) New York City. Records Access Officer, New York State Division of Criminal Justice Services, 80 Centre Street, 4th floor, New York, N.Y. 10013.]

(b) [Form of] Written request. All requests for access shall be in writing [on a form prescribed by the records access officer,] identifying the record requested with reasonable particularity. [Blank forms may be obtained from the records access officer either personally on any workday or by mail addressed to such office]. *Requests can be mailed or emailed as follows:*

Records Access Officer
New York State Division of Criminal Justice Services
Alfred E. Smith Office Building 8th floor
80 South Swan Street, Albany, N.Y. 12210
foil@dcjs.ny.gov

Section 6150.10 of Title 9 NYCRR is amended to read as follows:

Section 6150.10 Grant or denial of access to records.

If the records access officer determines that an application to inspect and/or copy records pertains to information required to be disclosed under section 6150.3 of this Part and is not otherwise exempt from disclosure under section 6150.4 of this Part, he/*she* shall grant the application. If the records access officer determines that an application to inspect and/or copy records pertains to other information not exempt under section 6150.4 of this Part, he/*she* shall grant the application unless he/*she* determines that to do so would adversely affect the public interest. If the records access officer determines that an application to inspect and/or copy records pertains to information specifically exempt under section 6150.4 of this Part he/*she* shall deny such application. In denying an application, the records access officer shall indicate his/*her* reason for such denial and shall advise the applicant of his/*her* right to appeal such denial to the [commissioner] *Deputy Commissioner and Counsel*.

Section 6150.11 of Title 9 NYCRR is amended to read as follows:

Section 6150.11. Appeals.

Any person whose application to inspect and/or copy records has been denied pursuant to section 6150.10 of this Part may appeal such denial within 30 days of such denial to [the commissioner at 80 Centre Street in New York City]: *Deputy Commissioner and Counsel, Office of Legal Services, Division of Criminal Justice Services, Alfred E. Smith Office Building 8th floor, 80 South Swan Street, Albany, New York 12210*. Such appeal must be in writing [on a form prescribed by DCJS] and shall set forth: the name and address of the applicant; the specified record(s) requested; the date of the denial; the reasons given for the denial; and other evidence the applicant deems pertinent. The [commissioner] *Deputy Commissioner and Counsel* shall, upon receipt of a written appeal, immediately review the matter and affirm, modify or reverse the denial. If the [commissioner] *Deputy Commissioner and Counsel* affirms or modifies the denial he/*she* shall, within seven days of the receipt of the appeal:

(a) communicate his/*her* reasons for such affirmation or modification to the person making the appeal; and

(b) inform such person of his/*her* right to appeal such affirmation or modification under article 78 of the Civil Practice Law and Rules. Copies of all appeals and determinations of those appeals will be transmitted to the [State] Committee on [Public Access to Records] *Open Government*, Department of State, [162 Washington Avenue] *One Commerce Plaza, 99 Washington Avenue,* Albany, New York [12231] *12210*.

Subdivision (b) of Section 6151.2 of Title 9 NYCRR is amended to read as follows:

(b) Communications shall be addressed to: Privacy Compliance Officer, [Four Tower Place] *New York State Division of Criminal Justice Services, Alfred E. Smith Office Building 8th floor, South Swan Street,* Albany, NY [12203] *12210*.

Section 6151.4 of Title 9 NYCRR is amended to read as follows:

6151.4 Location.

Records shall be made available at: [4 Tower Place] *Alfred E. Smith Office Building 8th floor, South Swan Street,* Albany, NY [12203] *12210*.

Subdivision (c) of section 6151.8 of Title 9 NYCRR is amended to read as follows:

(c) Any such denial may be appealed to: Deputy Commissioner and Counsel, Office of Legal Services, Division of Criminal Justice Services, [4 Tower Place] *Alfred E. Smith Office Building 8th floor, South Swan Street,* Albany, NY [12203] *12210*.

Subdivision (a) of Section 6151.9 of Title 9 NYCRR is amended to read as follows:

(a) Any person denied access to a record or denied a request to amend or correct a record or personal information pursuant to section 6151.8 of this Part may, within 30 business days of such denial, appeal to: Deputy Commissioner and Counsel, Office of Legal Services, Division of Criminal Justice Services, [4 Tower Place] *Alfred E. Smith Office Building 8th floor,* Albany, NY [12203] *12210*.

Text of proposed rule and any required statements and analyses may be obtained from: Linda J. Valenti, Assistant Counsel, Division of Criminal Justice Services, Alfred E. Smith Building 8th floor, 80 South Swan Street, Albany, New York 12210, (518) 457-8413, email: linda.valenti@dcjs.ny.gov

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

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

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

Consensus Rule Making Determination

Pursuant to Chapter 56 of the Laws of 2010, the former Division of Probation and Correctional Alternatives was renamed the Office of Probation and Correctional Alternatives and merged with the Division of Criminal Justice Services (DCJS). As DCJS has its own agency rules governing public access to records and access to personal information, Parts 368 and 369 have been rendered obsolete. Accordingly, repeal of these aforementioned Parts is appropriate. Additionally, DCJS has a recently moved its office and therefore applicable regulatory amendments to Parts 6150 and 6151 have been made to agency rules governing the aforementioned subject areas to avoid confusion and better ensure requests and/or appeals are timely received. Lastly, a technical conforming amendment to the appeal process with respect to Part 6150 has been made to parallel who handles appeals under Part 6151 and other corrections have been made to reflect the proper name of the Committee on Open Government and its address and to make certain provisions gender neutral.

Job Impact Statement

A job impact statement is not being submitted with these proposed regulations because the repeal of Parts 368 and 369 and regulatory amendments to Parts 6150 and 6151 of Title 9 NYCRR will have no adverse effect on private or public jobs or employment opportunities.

Department of Economic Development

EMERGENCY RULE MAKING

Economic Transformation and Facility Redevelopment Program

I.D. No. EDV-23-13-00002-E
Filing No. 525
Filing Date: 2013-05-20
Effective Date: 2013-05-20

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

Action taken: Addition of Parts 200-204 to Title 5 NYCRR.

Statutory authority: Economic Development Law, art. 18

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

Specific reasons underlying the finding of necessity: Regulatory action is needed immediately to implement the Economic Transformation and Facility Redevelopment Program ("the Program") which was created by Chapter 61 of the Laws of 2011. The Program is created to support communities affected by the closure of correctional and juvenile justice facilities. The Program will provide tax credits to firms that create jobs and make investments in certain areas designated as economic transformation areas. The Program will leverage private sector job creation and investments and help transform the economies of the communities in these areas and lessen the impact of the facility closures.

New York is in the midst of a national economic slowdown. The impact of the national financial crisis and resulting slowed economic growth was particularly devastating to New York State and could be even more severe for those communities where correctional and juvenile justice facilities will be closed.

The Economic Transformation and Facility Redevelopment Program will be a key economic development tool for creating jobs and private sector investment in communities affected by the facility closures. It is imperative that this Program be implemented immediately so that the State can respond quickly to the dislocation and job losses that will likely result from the closure of these facilities.

It bears noting that section 403 of the Economic Development Law directs the Commissioner of Economic Development to promulgate regulations and explicitly indicates that such regulations may be adopted on an emergency basis.

Subject: Economic Transformation and Facility Redevelopment Program.

Purpose: Allow Department to implement the Economic Transformation and Facility Redevelopment Program.

Substance of emergency rule: The regulation creates new Parts 200-204 in 5 NYCRR as follows:

1) The regulation adds the definitions relevant to the Economic Transformation and Facility Redevelopment Program (the "Program"). Key definitions include, but are not limited to, certificate of eligibility, preliminary schedule of benefits, net new jobs, new business, economic transformation area, and closed facility.

2) The regulation creates the application and review process for the Program. In order to become a participant in the Program, an applicant

must submit a complete application by the later of: (1) the date that is three years after the date of the closure of the closed facility located in the economic transformation area in which the business entity would operate or (2) January 1, 2015. An applicant must also agree to a variety of requirements, including, but not limited to, the following: (a) allowing the exchange of its tax information between Department of Taxation and Finance and Department of Economic Development (the "Department"); (b) allowing the exchange of its tax and employer information between the Department of Labor and the Department; and (c) agreeing to not participate in either the Excelsior Jobs Program, the Empire Zones Program or claim any tax credits under the Brownfield Cleanup Program if admitted into the Economic Transformation and Facility Redevelopment Program specifically with regard to the facility located in the economic transformation area.

3) Upon receiving a complete application, the Commissioner of the Department shall review the application to ensure it meets eligibility criteria set forth in the statute (see 5 below). If it does not, the application shall not be accepted. If it does meet the eligibility criteria, the Commissioner may admit the applicant into the Program. If admitted into the Program, an applicant will receive a certificate of eligibility. When considering an application, the Commissioner shall consider factors including, but not limited to, the overall cost and effectiveness of the project, and whether the project is consistent with the intent of the Program. If a participant does not start construction on or acquire a qualified investment or create at least one net new job within one year of the issuance of its certificate of eligibility, the participant will not be eligible for any of the Program's tax credits.

4) The regulation sets forth the eligibility criteria for the Program. In order to qualify for the Program, (1) a participant must create and maintain at least five net new jobs in an economic transformation area, and must demonstrate that its benefit-cost ratio is at least ten to one; (2) a participant must be in compliance with all worker protection and environmental laws and regulations; (3) a participant must not owe past due federal or state taxes or local property taxes, unless those taxes are being paid pursuant to an executed payment plan; and (4) the location of the participant's operations for which it seeks tax benefits must be wholly located within the economic transformation area.

5) In addition, a business entity that is primarily operated as a retail business is not eligible to participate in the program if its application is for any facility or business location that will be primarily used in making retail sales to customers who personally visit such facilities. A business entity that is engaged in offering professional services licensed by the state or by the courts of this state is not eligible to participate in the Economic Transformation and Facility Redevelopment Program. In addition, a business entity that is or will be principally operated as a real estate holding company or landlord for retail businesses or entities offering professional services licensed by the state or by the courts of this state is also not eligible to participate in the Note, however, that that the commissioner may determine that such a business entity described in the preceding three sentences may be eligible to participate in the Program at the site of a closed facility if it is pursuant to an adaptive reuse plan for a substantial portion of such facility, the adaptive reuse plan is consistent with the strategic plan of the Regional Economic Development Council and it has been recommended by the Regional Economic Development Council to the Commissioner.

6) The regulation sets forth the fourteen (14) evaluation standards that the Commissioner can utilize when determining whether to admit an applicant to the Program. These include, but are not limited to, the following: (1) the number of net new jobs to be created in New York State; or (2) the amount of capital investment to be made; or (3) whether the applicant is proposing to substantially renovate and reuse closed facilities; or (4) whether the applicant will use energy-efficient measures, including, but not limited to, the reduction of greenhouse gas and emissions and the Leadership in Energy and Environmental Design (LEED) green building rating system for the project identified in its application; or (5) whether the application has been recommended by the Regional Economic Council representing the region where the project will be located; or (6) the degree to which the project is consistent with the strategic plan and priorities for the region; or (7) the degree of economic distress in the area where the applicant will locate the project identified in its application; or (8) the degree of an applicant's financial viability, strength of financials, readiness and likelihood of completion of the project identified in the application; or (9) the degree to which the project identified in the application supports New York State's minority and women business enterprises; or (10) the degree to which the project identified in the application supports the principles of Smart Growth; or (11) the estimated return on investment that the project identified in the application will provide to the state; or (12) the overall economic impact that the project identified in the application will have on a region, including, but not limited to, the impact of any direct and indirect jobs that will be created; or (13) the degree to which other state or local incentive programs are available to the applicant; or (14) the likelihood that the project identified in the application would be located outside of New York State or would not occur but for the availability of state or local incentives.

7) The regulation states that the Commissioner shall prepare a program report on a quarterly basis for posting on the Department's website.

8) The regulation calls for removal of a participant in the Program for failing to meet the application requirements or eligibility criteria of the statute. Upon removal, a participant will be notified in writing and have the right to appeal such removal.

9) The regulation lays out the appeal process for participants who have been removed from the Program. A participant will have thirty (30) days to appeal to the Department. An appeal officer will be appointed and shall evaluate the merits of the appeal and any response from the Department. The appeal officer will determine whether a hearing is necessary and the level of formality required. The appeal officer will prepare a report and make recommendations to the Commissioner. The Commissioner will then issue a final decision in the case.

The full text of the emergency rule is available at the Department's website at http://esd.ny.gov/BusinessPrograms/EconomicTransformation.html.

This notice is intended to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires August 17, 2013.

Text of rule and any required statements and analyses may be obtained from: Thomas P Regan, NYS Department of Economic Development, 30 South Pearl Street, Albany NY 12245, (518) 292-5123, email: tregan@empire.state.ny.us

Regulatory Impact Statement

STATUTORY AUTHORITY:

Chapter 61 of the Laws of 2011 established Article 18 of the Economic Development Law, creating the Economic Transformation and Facility Redevelopment Program and authorizing the Commissioner of Economic Development to adopt, on an emergency basis, rules and regulations governing the Program.

LEGISLATIVE OBJECTIVES:

The emergency rulemaking accords with the public policy objectives the Legislature sought to advance because they directly address the legislative findings and declarations that New York State needs, as a matter of public policy, to create competitive financial incentives for businesses to create jobs and invest in the redevelopment of closed facilities and the economic transformation of surrounding communities. The Economic Transformation and Facility Redevelopment Program is created to support communities affected by closure of correctional and juvenile justice facilities. The Program will provide tax credits to firms that create jobs and make investments in certain areas designated as economic transformation areas. The Program will leverage private sector job creation and investments and help transform the economies of the communities in these areas and lessen the impact of the facility closures. The emergency rule is specifically authorized by the Legislature.

NEEDS AND BENEFITS:

The emergency rule is required in order to immediately implement the statute contained in Article 18 of the Economic Development Law, creating the Economic Transformation and Facility Redevelopment Program. The statute directed the Commissioner of Economic Development to adopt regulations with respect to an application process and eligibility criteria and authorized the adoption of such regulations on an emergency basis notwithstanding any provisions to the contrary in the state administrative procedures act. New York is in the midst of a national economic slowdown. The impact of the national financial crisis and resulting slowed economic growth was particularly devastating to New York State and could be even more severe for those communities where correctional and juvenile justice facilities will be closed.

The Economic Transformation and Facility Redevelopment Program will be one of the State's key economic development tools for creating jobs and private sector investment in communities affected by the facility closures. It is imperative that this Program be implemented immediately so that the State can respond quickly to the dislocation and job losses that will likely result from closure of these facilities.

This rule will establish the process and procedures for launching this new Program in the most efficient and cost-effective manner while protecting all New York State taxpayers with rules to ensure accountability, performance and adherence to commitments by businesses choosing to participate in the Program.

COSTS:

A. Costs to private regulated parties: None. There are no regulated parties in the Economic Transformation and Facility Redevelopment Program, only voluntary participants.

B. Costs to the agency, the State, and local governments: The Department of Economic Development does not anticipate any significant costs

with respect to implementation of this program. There is no additional cost to local governments.

C. Costs to the State government: None. There will be no additional costs to New York State as a result of the emergency rule making.

LOCAL GOVERNMENT MANDATES:

None. There are no mandates on local governments with respect to the Economic Transformation and Facility Redevelopment Program. This emergency rule does not impose any costs to local governments for administration of the Economic Transformation and Facility Redevelopment Program.

PAPERWORK:

The emergency rule requires businesses choosing to participate in the Economic Transformation and Facility Redevelopment Program to establish and maintain complete and accurate books relating to their participation in the Economic Transformation and Facility Redevelopment Program for a period of three years beyond their participation in the Program. However, this requirement does not impose significant additional paperwork burdens on businesses choosing to participate in the Program but instead simply requires that information currently established and maintained be shared with the Department in order to verify that the business has met its job creation and investment commitments.

DUPLICATION:

The emergency rule does not duplicate any state or federal statutes or regulations.

ALTERNATIVES:

No alternatives were considered with regard to amending the regulations in response to statutory revisions.

FEDERAL STANDARDS:

There are no federal standards in regard to the Economic Transformation and Facility Redevelopment Program. Therefore, the emergency rule does not exceed any Federal standard.

COMPLIANCE SCHEDULE:

The period of time the state needs to assure compliance is negligible, and the Department of Economic Development expects to be compliant immediately.

Regulatory Flexibility Analysis

1. Effect of rule

The emergency rule imposes recordkeeping requirements on all businesses (small, medium and large) that choose to participate in the Economic Transformation and Facility Redevelopment Program. The emergency rule requires all businesses that participate in the Program to establish and maintain complete and accurate books relating to their participation in the Program for the duration of their term in the Program plus three additional years. Local governments are unaffected by this rule.

2. Compliance requirements

Each business choosing to participate in the Economic Transformation and Facility Redevelopment Program must establish and maintain complete and accurate books, records, documents, accounts, and other evidence relating to such business's application for entry into the program and relating to annual reporting requirements. Local governments are unaffected by this rule.

3. Professional services

The information that businesses choosing to participate in the Economic Transformation and Facility Redevelopment Program would be required to keep is information such businesses already must establish and maintain in order to operate, i.e. wage reporting, financial records, tax information, etc. No additional professional services would be needed by businesses in order to establish and maintain the required records. Local governments are unaffected by this rule.

4. Compliance costs

Businesses (small, medium or large) that choose to participate in the Economic Transformation and Facility Redevelopment Program must create new jobs and/or make capital investments in order to receive any tax incentives under the Program. If businesses choosing to participate in the Program do not fulfill their job creation or investment commitments, such businesses would not receive the tax incentives. There are no other initial capital costs that would be incurred by businesses choosing to participate in the Economic Transformation and Facility Redevelopment Program. Annual compliance costs are estimated to be negligible for businesses because the information they must provide to demonstrate their compliance with their commitments is information that is already established and maintained as part of their normal operations. Local governments are unaffected by this rule.

5. Economic and technological feasibility

The Department of Economic Development ("DED") estimates that complying with this recordkeeping is both economically and technologically feasible. Local governments are unaffected by this rule.

6. Minimizing adverse impact

DED finds no adverse economic impact on small or large businesses with respect to this rule. Local governments are unaffected by this rule.

7. Small business and local government participation

DED is in compliance with SAPA Section 202-b(6), which ensures that small businesses and local governments have an opportunity to participate in the rule-making process. DED has conducted outreach within the small and large business communities and maintains continuous contact with small and large businesses with regard to their participation in this program. Local governments are unaffected by this rule.

Rural Area Flexibility Analysis

The Economic Transformation and Facility Redevelopment Program is a tax credit program available to new businesses that locate in communities affected by the closure of correctional and juvenile justice facilities, create jobs and make private sector investments. Economic transformation areas will be designated through implementation of these regulations. New businesses to these areas that create jobs and make investments are eligible to apply to participate in the Program entirely at their discretion. Municipalities are not eligible to participate in the Program. The emergency rule does not impose any special reporting, recordkeeping or other compliance requirements on private entities in rural areas. Therefore, the emergency rule will not have a substantial adverse economic impact on rural areas nor on the reporting, recordkeeping or other compliance requirements on public or private entities in such rural areas. Accordingly, a rural area flexibility analysis is not required and one has not been prepared.

Job Impact Statement

The emergency rule relates to the Economic Transformation and Facility Redevelopment Program. The Economic Transformation and Facility Redevelopment Program will enable New York State to provide financial incentives to businesses that create jobs and make investments in communities affected by the closure of correctional and juvenile justice facilities. This Program, given its design and purpose, will have a substantial positive impact on job creation and employment opportunities. The emergency rule will immediately enable the Department to fulfill its mission of job creation and investment in certain areas designated as economic transformation areas. Because this emergency rule will authorize the Department to immediately begin offering financial incentives to firms that commit to creating new jobs and/or to making significant capital investment in these areas, it will have a positive impact on job and employment opportunities. Accordingly, a job impact statement is not required and one has not been prepared.

Education Department

NOTICE OF ADOPTION

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

I.D. No. EDU-11-13-00016-A
Filing No. 528
Filing Date: 2013-05-21
Effective Date: 2013-07-01

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

Action taken: Amendment of section 52.21 and Part 80; and addition of Subpart 57-4 to Title 8 NYCRR.

Statutory authority: Education Law, sections 14(5), 207(not subdivided), 212(3), 305(1) and (2), 3004(1) and 3007(not subdivided); and L. 2012, ch. 102

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

Purpose: To require that applicants for an administrative or supervisory service, classroom teaching service or school service certificate or license on or after July 1, 2013, shall have completed at least six hours of coursework or training in harassment, bullying and discrimination prevention and intervention as prescribed in the Dignity for All Students Act.

Substance of final rule: Section 52.21 of the Commissioner's regulations is amended to require, beginning July 1, 2013, all registered teacher education programs leading to certification in the classroom teaching service, school service, or administrative and supervisory service to provide six clock hours, of which at least three hours must be conducted through face-to-face instruction, of coursework or training in the prevention and

intervention of harassment, bullying and discrimination. Such coursework or training shall include, training on the social patterns of harassment, bullying and discrimination, as defined in section 11 of the Education Law, including but not limited to those acts based on a person's actual or perceived race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender or sex; the identification and mitigation of harassment, bullying and discrimination; and strategies for effectively addressing problems of exclusion, bias and aggression in educational settings.

A new subpart 57-4 of the Regulations of the Commissioner of Education is added, effective July 1, 2013 to establish standards for approval and the approval process for providers of course work or training in harassment, bullying and discrimination, prevention and intervention that is offered to candidates for a teachers' certificate or license in the classroom teaching service, school service, or administrative and supervisory service, as required by section 14 of the Education Law.

Section 57-4.1 discusses the purpose of the new subpart.

Section 57-4.2 sets forth the definitions for terms used in the Subpart, including definitions for coursework or training and provider.

Section 57-4.3 requires person or organization seeking approval as a provider to submit to the department, an application on forms prescribed by the commissioner, with a fee of $600. To be approved, each applicant shall submit evidence acceptable to the department that the applicant:

(1) has and will maintain adequate resources to offer the course work or training;

(2) has and will ensure that faculty who will offer the course work or training have demonstrated, their competence to offer the course work or training;

(3) certifies in writing that the coursework or training will be conducted through use of a curriculum which, at a minimum, includes the syllabus prepared by the department;

(4) certifies, in writing, that certification of completion forms obtained from the department will be issued to students upon completion of the course work or training for their use in documenting satisfaction of the requirement of course work or training in the Prevention and Intervention of Harassment, Bullying and Discrimination; and

(5) certifies, in writing, that it will maintain and produce evidence of completion for all students who complete the course work or training and that it will submit such evidence to the department, in a time and format prescribed by the Commissioner.

Section 57-4.4 sets for a three year term of approval, except that approved status of such providers may be terminated during this term by the department in accordance with section 57-4.6 of this Subpart and allows the provider to reapply to the department for approval following the requirements of section 57-4.3 of this Subpart, including payment of the required fee.

Section 57-4.5 sets for the responsibility of providers, which includes the following responsibilities:

(a) A provider, at a minimum, shall offer the syllabus prepared by the department and demonstrate that at least three of the six clock hours shall be conducted through face-to-face instruction. However, nothing in this section shall preclude providers from offering additional coursework or training which exceeds, or expands upon, the six hour syllabus prescribed by the department.

(b) An approved provider of such course work or training shall execute a certification of completion of each person completing course work or training, and within 21 calendar days of the completion of course work or training, the provider shall submit the certification of completion to the person completing the course work or training for that person's use in documenting such completion.

(c) The provider shall retain a copy of the certification of completion in the provider's files for not less than six years from the date of completion of course work or training.

(d) In the event that an approved provider discontinues offering coursework or training, all copies of certifications of completion issued within the six years prior to such discontinuance shall be transferred to the department.

(e) Coursework or training shall be taught by instructors who have demonstrated by training, education and experience their competence to teach the course content prescribed in subdivision (a) of this section.

Section 57-4.6 authorizes the department to review approved providers during the term of approval to ensure compliance with the requirements of this Subpart and allows them to request information from a provider and may conduct site visits, pursuant to such review. A determination by the department that the services offered by a provider are inadequate, incomplete or otherwise unsatisfactory pursuant to the standards set forth in this Subpart shall result in the denial or termination of the approved status of the provider.

Section 57-4.7 provides an exemption from the $600 fee for an institution that offers a registered program leading to certification pursuant to section 52.21 of this Title.

Section 80-1.13 of the Regulations of the Commissioner of Education is added to require all candidates for a certificate or license valid for an administrative or supervisory service, classroom teaching service or school service who apply for a certificate or license on or after July 1, 2013, shall have completed at least six clock hours, of which at least three hours must be conducted through face-to-face instruction, of course work or training in harassment, bullying and discrimination prevention and intervention, as required by section 14 the Education Law, which is provided by a registered program leading to certification pursuant to section 52.21 of this Title or other approved provider pursuant to Subpart 57-4 of this Title.

Several other conforming amendments are made to Part 80 to require a candidate who applies for the certificate on or after July 1, 2013, to complete at least six clock hours, of which at least three hours must be conducted through face-to-face instruction, of coursework or training in harassment, bullying and discrimination prevention and intervention, as required by section 14 the Education Law.

Final rule as compared with last published rule: Nonsubstantive changes were made in section 80-5.14(b)(1).

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

Revised Regulatory Impact Statement

Since publication of a Notice of Proposed Rule Making in the State Register on March 13, 2013, a nonsubstantial revision was made to the proposed rule as follows:

The introductory language in item 13 was revised to replace an incorrect citation indicating an amendment was made to section 80-5.20(b)(1) with the correct citation that section 80-5.14(b)(1) was amended.

The above change does not require any further changes to the previously published Regulatory Impact Statement.

Revised Regulatory Flexibility Analysis

Since publication of a Notice of Proposed Rule Making in the State Register on March 13, 2013, a nonsubstantial revision was made to the proposed rule as set forth in the Statement Concerning the Regulatory Impact Statement submitted herewith.

The change does not require any further changes to the previously published Regulatory Flexibility Analysis.

Revised Rural Area Flexibility Analysis

Since publication of a Notice of Proposed Rule Making in the State Register on March 13, 2013, a nonsubstantial revision was made to the proposed rule as set forth in the Statement Concerning the Regulatory Impact Statement submitted herewith.

The change does not require any further changes to the previously published Rural Area Flexibility Analysis.

Revised Job Impact Statement

Since publication of a Notice of Proposed Rule Making in the State Register on March 13, 2013, a nonsubstantial revision was made to the proposed rule as set forth in the Statement Concerning the Regulatory Impact Statement submitted herewith.

The proposed amendment, as revised, requires that anyone applying for an administrative or supervisory service, classroom teaching service or school service certificate or license on or after July 1, 2013 to complete at least six clock hours of coursework or training in Harassment, Bullying and Discrimination Prevention and Intervention in order to implement the policies, procedures and guideline requirements of the Dignity for All Students Act, as amended by Chapter 102 of the Laws of 2012. The proposed amendment, as revised, also sets forth the standards and process for approval of providers of such training. The proposed revised amendment will not have an adverse impact on jobs or employment opportunities. Because it is evident from the nature of the proposed revised amendment that it will have a positive impact, or no impact, on jobs or employment opportunities, no further steps were needed to ascertain those facts and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2018, which is the 4th or 5th year after the year in which this rule is being adopted. This review period, justification for proposing same, and invitation for public comment thereon, were contained in a RFA, RAFA or JIS:

Assessment of Public Comment

Since publication of a Notice of Revised Rule Making in the State Register on March 13, 2013, the State Education Department (SED) received the following comments on the revised proposed amendment.

COMMENTS:

A commenter expressed concern regarding the requirement that three of the six training hours be conducted "face to face." The commenter

indicated that having a course that was conducted all online would be helpful for students who have internships or those who are student teaching while taking their course, and therefore not on campus during the semester. Additionally, the commenter noted that many of the students that would take the training course online over the summer may be located in different states, or different countries, where it would not be possible to come back to their campus for the three hours of face to face time, unless this face to face time included a synchronized online component.

Another commenter expressed similar concern, stating: there is no reason to impose a face-to-face requirement that is decidedly more expensive and less efficient—and without evidence of greater effectiveness—than other modalities, including online instruction, video conferencing, and/or other modern possibilities.

The face-to-face requirement that SED proposes to impose (1) has no demonstrable benefit, (2) is more expensive and time consuming than available alternatives, and (3) is not mandated by statute. We respectfully submit that SED should, therefore, remove the face-to-face requirement.

DEPARTMENT RESPONSE:

In direct response to the enactment of Chapter 102 of the Laws of 2012, which amended the Dignity Act to include the requirement that school professionals applying for a certificate or license on or after July 1, 2013 complete six hours of harassment, bullying, and discrimination training, the Department consulted with an extensive work group. This work group was comprised of representatives of teachers, administrators, school social workers, school counselors, school psychologists, superintendents, school boards, teacher education program faculty, and GLESN and Empire Pride Agenda program leaders.

The Department sought recommendations from the work group, including how many hours and what type of training would be most appropriate to ensure that school personnel are provided with adequate training in harassment, bullying, and discrimination. Subsequently, the workgroup recommended that at least three of the six hour training be conducted through face to face instruction. The rationale for this recommendation was based largely on the statutorily required subject matter of the DASA training. Several members of the workgroup, as representatives of the field, voiced concerns that allowing the DASA training to be conducted online would substantially decrease the potential for emotional impact on participants. Additionally, the scope of activities possible for participants to experience would be significantly decreased.

While the Department understands the concerns of the commenter, the Department has determined that three of the six required hours may be conducted online, while the remaining three hours must be conducted face to face. This determination takes into consideration both the intent and purpose behind the DASA training, while simultaneously recognizing and allowing for a level of flexibility for educators in their teaching. The Department is seeking as many alternative face-to-face providers as possible, to ensure that students who will be required to take the course have access to this training. For example, BOCES and teacher centers can become regional providers.

COMMENT:

Several comments suggested that the Department consider combining the training of the Safe Schools Against Violence in Education ("SAVE") Act with the Dignity for All Students Act ("Dignity Act"), in order to build a more comprehensive understanding of violence, risk and prevention factors, and the overall referral process for students exhibiting intolerance, bullying, and/or violent behavior. The six hours would include content from both Acts, and as NYSCSS is developing guidance to correlate components of SAVE in relation to the Dignity Act, they seem to have similar components.

DEPARTMENT RESPONSE:

The Dignity for All Students Act ("Dignity Act") requires training to focus specifically on addressing social patterns of harassment, bullying, and discrimination. As many of the requisite topics under the Safe Schools Against Violence in Education ("SAVE") Act do not address these items, a single training session would not be sufficient to comply with the provisions of the Dignity Act. However, if a provider made arrangements to extend the six hours required for DASA training to include SAVE training, that would certainly be acceptable.

COMMENT:

Another commenter provided support for the proposed amendment. However, the commenter expressed concern because the syllabus for the training course has not been made publicly available and the approval process for providers of such training has not begun. The comment noted that preparation programs with August graduates are affected as well as currently certified individuals who will be applying for an additional certificate prior to the start of the 2013-14 school year. The comment asked how will these applicants fulfill the requirement and obtain the necessary documentation for certification?

Applicants should not be penalized for conditions that are not within their control. We are confident that you will offer appropriate accommodations in these initial stages.

DEPARTMENT RESPONSE:

The Legislature enacted Chapter 102 of the Laws of 2012 in June 2012, which amended the Dignity Act to include a requirement that school professionals applying for a certificate or license on or after July 1, 2013 complete training on the social patterns of harassment, bullying, and discrimination. The Department convened a workgroup of experts from a broad range of interested parties to discuss the best strategies to employ to assist educators, which included the development of a course syllabus. This developmental process also included outreach and feedback from several preparation programs and took into account many of their suggestions. It is expected that this syllabus will be available in the next couple of weeks and the Department will begin accepting applications for approved providers later this month.

The Department understands the challenges that preparation programs may face as a result of the regulation changes, and is currently discussing ways that the Department can further assist the field. However, at this time, any school professional that applies for a certificate or license on or after July 1, 2013, must complete the training required by the Dignity Act and no additional time will be given to comply with these requirements.

NOTICE OF ADOPTION

Policy, Procedures and Guidelines Prohibiting Harassment, Bullying (including Cyberbullying) and Discrimination Against Students

I.D. No. EDU-11-13-00017-A
Filing No. 529
Filing Date: 2013-05-21
Effective Date: 2013-06-05

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

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

Statutory authority: Education Law, sections 11(7) and (8), 12(1), 13(1-5), 14(1-5), 101(not subdivided), 207(not subdivided), 305(1) and (2) and 2854(1)(b); and L. 2012, ch. 102

Subject: Policy, procedures and guidelines prohibiting harassment, bullying (including cyberbullying) and discrimination against students.

Purpose: To implement the ch. 102, L. 2012 amendments to the Dignity for All Students Act.

Text of final rule: Subdivision (jj) of section 100.2 of the Regulations of the Commissioner of Education is amended, effective July 1, 2013, as follows:

(jj) Dignity [For All Students] *Act Coordinator and* School Employee Training Program.

(1) Definitions. As used in this subdivision:

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

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

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

(iv) ''Employee'' means employee as defined in Education Law section 1125(3), including an employee of a charter school.

(v) ''Sexual orientation'' means actual or perceived heterosexuality, homosexuality or bisexuality.

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

(vii) ''Discrimination'' means discrimination against any student by a student or students and/or an employee or employees on school property or at a school function including, but not limited to, discrimination based on a person's actual or perceived race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender, or sex.

(viii) ''Harassment *or bullying*'' means the creation of a hostile environment by conduct or by [verbal] threats, intimidation or abuse*, including cyberbullying as defined in Education Law section 11(8),* that *either:*

(a) has or would have the effect of unreasonably and substantially interfering with a student's educational performance, opportunities or benefits, or mental, emotional [or] *and/or* physical well-being [; or] *including* conduct, [verbal] threats, intimidation or abuse that reasonably causes or would reasonably be expected to cause *emotional harm; or*

(b) reasonably causes or would reasonably be expected to cause physical injury to a student *or to cause a student* to fear for his or her physical safety [; such conduct verbal threats, intimidation or abuse includes but is not limited to conduct, verbal threats, intimidation or abuse]

(c) Such definition shall include acts of harassment or bullying that occur:

(i) on school property, as defined in section 100.2(kk)(1)(i) of this Part; and/or

(ii) at a school function, as defined in section 100.2(kk)(1)(ii) of this Part; or

(iii) off school property where such acts create or would foreseeably create a risk of substantial disruption within the school environment, where it is foreseeable that the conduct, threats, intimidation or abuse might reach school property.

(d) For purposes of this subdivision, the term "threats, intimidation or abuse" shall include verbal and non-verbal actions. Acts of harassment or bullying shall include, but not be limited to, acts based on a person's actual or perceived race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender, or sex.

(e) ''Emotional harm'' that takes place in the context of "harassment or bullying" means harm to a student's emotional well-being through creation of a hostile school environment that is so severe or pervasive as to unreasonably and substantially interfere with a student's education.

(2) On or before July 1, [2012] *2013*, each school district and each charter school shall establish *policies, procedures and* guidelines for its school or schools to implement, commencing with the [2012-2013] *2013-2014* school year and continuing in each school year thereafter, Dignity [for All Students] *Act* school employee training programs to promote a positive school environment that is free from [discrimination and] harassment*, bullying and/or discrimination*; and to discourage and respond to incidents of [discrimination and/or] harassment*, bullying, and/or discrimination* on school property or at a school function*, or off school property pursuant to subclause (1)(viii)(c)(iii) of this subdivision*. Such *polices, procedures and* guidelines shall be approved by the board of education, trustees or sole trustee of the school district (or by the chancellor of the city school district, in the case of the City School District of the City of New York) or by the board of trustees of the charter school.

(3) The *polices, procedures and* guidelines shall include, but not be limited to*, guidelines relating to the development of nondiscriminatory instructional and counseling methods, and* providing employees, including school and district administrators and instructional and non-instructional staff, with [(i)] training to:

(a) raise awareness and sensitivity to potential acts of [discrimination and/or] harassment*, bullying, and/or discrimination* directed at students that are committed by students and/or school employees on school property or at a school function*, or off school property pursuant to subclause (1)(viii)(c)(iii) of this subdivision*; including, but not limited to, [discrimination and/or] harassment*, bullying, and/or discrimination* based on a person's actual or perceived race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender, or sex*. Such training shall address the social patterns of harassment, bullying and/or discrimination, the identification and mitigation of such acts, and strategies for effectively addressing problems of exclusion, bias and aggression in educational settings*; [and]

(b) [training to] enable employees to prevent and respond to incidents of [discrimination and/or] harassment*, bullying, and/or discrimination, consistent with Education Law section 13(4)*;

(c) make school employees aware of the effects of harassment, bullying, cyberbullying, and/or discrimination on students;

(d) ensure the effective implementation of school policy on school conduct and discipline, including but not limited to, guidelines on promoting a safe and supportive school climate while discouraging harassment, bullying, and/or discrimination against students by students and/or school employees; and

(e) include safe and supportive school climate concepts in curriculum and classroom management.

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

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

(4) At least one employee in every school shall be designated as a Dignity Act Coordinator [and] *who shall be:*

(i) instructed in the provisions of this subdivision [and]*;*

(ii) thoroughly trained to handle human relations in the areas of race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender, and sex*;*

(iii) provided with training which addresses the social patterns of harassment, bullying and discrimination, including but not limited to those acts based on a person's actual or perceived race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender, and sex;

(iv) provided with training in the identification and mitigation of harassment, bullying and discrimination; and

(v) provided with training in strategies for effectively addressing problems of exclusion, bias, and aggression in educational settings.

[(i)] *(vi)* The designation of each Dignity Act Coordinator shall be approved by the board of education, trustees or sole trustee of the school district (or in the case of the City School District of the City of New York, by the principal of the school in which the designated employee is employed) or, in the case of a charter school, by the board of trustees. *Each Coordinator shall be employed by such school district, BOCES or charter school, as applicable, and be licensed and/or certified by the Commissioner as a classroom teacher, school counselor, school psychologist, school nurse, school social worker, school administrator or supervisor, or superintendent of schools.*

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

(a) listing such information in the code of conduct and updates posted on the Internet web site, if available, of the school or school district, or of the board of cooperative educational services, pursuant to subclause 100.2(l)(2)(iii)(b)(1) of this Part; *provided that, notwithstanding the provisions of clause 100.2(l)(2)(iii)(a) of this Title, a change in the name and/or contact information of a Dignity Act Coordinator shall not be deemed to constitute a revision to the code of conduct so as to require a public hearing be held pursuant to such clause, and nothing herein shall be deemed to require such public hearing in such instance; and*

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

(c) making such information available at the district and school-level administrative offices; and either

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

[(c)] *(e)* providing such information to parents and persons in parental relation [in] at least [one] *once* per school year [district or school mailing or other method of distribution] *in a manner as determined by the school,* including, but not limited to, *through electronic communication and/or* sending such information home with [each student] *students* [and, if such information changes, in at least one subsequent district or school mailing or other such method of distribution as soon as practicable thereafter;].

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

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

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

(5) Nothing in this subdivision shall be construed to prohibit a denial of admission into, or exclusion from, a course of instruction based on a person's gender that would be permissible under Education Law sections 3201-a or 2854(2)(a) and Title IX of the Education Amendments of 1972 (20 U.S.C. section 1681, et seq.), or to prohibit, as discrimination based on disability, actions that would be permissible under section 504 of the Rehabilitation Act of 1973.

Final rule as compared with last published rule: Nonsubstantive changes were made in section 100.2(jj)(4).

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

Revised Regulatory Impact Statement

Since publication of a Notice of Proposed Rule Making in the State Register on March 13, 2013, nonsubstantial revisions were made to the proposed rule as follows:

In section 100.2(jj)(4)(vi), the phrase ''The Coordinator shall be employed. . .'' was replaced with ''Each Coordinator shall be employed. . .'' for purposes of ensuring internal consistency with the language in subparagraph (vi), as well as ensuring consistency with the requirement in the introductory language to section 100.2(jj)(4) that at least one employee in every school shall be designated as a Dignity Act Coordinator.

The above change does not require any further changes to the previously published Regulatory Impact Statement.

Revised Regulatory Flexibility Analysis

Since publication of a Notice of Proposed Rule Making in the State Register on March 13, 2013, a nonsubstantial revision was made to the proposed rule as set forth in the Statement Concerning the Regulatory Impact Statement submitted herewith.

The change does not require any further changes to the previously published Regulatory Flexibility Analysis.

Revised Rural Area Flexibility Analysis

Since publication of a Notice of Proposed Rule Making in the State Register on March 13, 2013, a nonsubstantial revision was made to the proposed rule as set forth in the Statement Concerning the Regulatory Impact Statement submitted herewith.

The change does not require any further changes to the previously published Rural Area Flexibility Analysis.

Revised Job Impact Statement

Since publication of a Notice of Proposed Rule Making in the State Register on March 13, 2013, a nonsubstantial revision was made to the proposed rule as set forth in the Statement Concerning the Regulatory Impact Statement submitted herewith.

The proposed amendment, as revised, is applicable to school districts, boards of cooperative educational services and charter schools and is necessary to implement the policies, procedures and guideline requirements of the Dignity for All Students Act, as amended by Chapter 102 of the Laws of 2012. The proposed revised amendment will not have an adverse impact on jobs or employment opportunities. Because it is evident from the nature of the proposed revised amendment that it will have a positive impact, or no impact, on jobs or employment opportunities, no further steps were needed to ascertain those facts and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2018, which is the 4th or 5th year after the year in which this rule is being adopted. This review period, justification for proposing same, and invitation for public comment thereon, were contained in a RFA, RAFA or JIS:

Assessment of Public Comment

Since publication of a Notice of Proposed Rule Making in the State Register on March 13, 2013, the State Education Department received the following comments:

1. COMMENT:

Small school districts should have flexibility to appoint one Dignity Act Coordinator instead of a Coordinator for each school. With increased responsibilities, due to shrinking staff size, it is difficult to assign one person responsibility as Coordinator. Having two Coordinators causes small districts to pay a stipend for this position to two people, as this is not a responsibility staff members are willing to do uncompensated; and to send two people to mandatory/recommended trainings. In addition, having two Coordinators may result in discrepancies related to two individuals interpreting and following school policy in their separate buildings. In small school districts one person can do this position very effectively.

DEPARTMENT RESPONSE:

The comment is beyond the scope of the rulemaking. The requirement in section 100.2(jj)(4) that at least one employee in every school shall be designated as a Coordinator has remained unchanged since its adoption by the Regents in 2012, and has not been proposed for amendment pursuant to this rulemaking. In any event, section 100.2(jj)(4) reflects the requirement in Education Law section 13(3) ''. . . that at least one staff member at every school be thoroughly trained. . .'' Therefore, it would require a change in statute before the Commissioner's Regulations could be amended to provide an exception for small school districts.

2. COMMENT:

Section 100.2(jj)(1), regarding definitions, repeats the same language in section 100.2(kk), which seems repetitious and likely to lead to future problems.

DEPARTMENT RESPONSE:

The comment appears to suggest that the definitions used in sections 100.2(jj) and 100.2(kk) be incorporated into a single definitions section. It would not be appropriate to combine the definitions into a single section because the training provisions and the reporting provisions are in two different subdivisions of section 100.2.

3. COMMENT:

Section 100.2(jj)(4)(vi) should be revised to replace ''The Coordinator shall be employed. . .'' with ''Each Coordinator shall be employed. . .'' because referring to ''the Coordinator'' may confuse some school districts that have multiple schools into thinking only one Coordinator is required.

DEPARTMENT RESPONSE:

The Department agrees and has made a nonsubstantial change to section 100.2(jj)(4)(vi) to refer to ''Each Coordinator shall be employed. . .''

4. COMMENT:

The rule imposes licensing and certification requirements on charter school personnel that conflicts with the Charter Schools Act. Charter school administrators are not required to have traditional certification, and charter schools may, consistent with Education Law section 2854(3)(a-1), employ some uncertified teachers. A charter school must be able to select the staff member it feels is appropriate for Coordinator, whether or not that person is certified or licensed. The rule should be revised to exempt charter schools.

DEPARTMENT RESPONSE:

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

Education Law section 13, as amended by Chapter 102 of the Laws of 2012, imposes certain health, safety and civil rights requirements on public schools, including a requirement that such schools create guidelines relating to the development of nondiscriminatory instructional and counseling methods, and requiring at least one staff member at every school be thoroughly trained to handle human relations in the areas of race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender and sex;

Education Law section 14, as amended by Chapter 102 of the Laws of 2012, requires the Commissioner to provide direction, including model policies and, to the extent possible, direct services to school districts in preventing harassment, bullying and discrimination and fostering an environment in every school where all children can learn free of manifestations of bias. Section 14(3), as amended, authorizes the Commissioner to promulgate regulations to assist school districts in developing measured, balanced and age-appropriate response to violations of this policy, with remedies and procedures following a progressive model that makes appropriate use of intervention, discipline and education and provide guidance related to the application of regulations. Section 14(4), as added by Chapter 102, requires the Commissioner to provide guidance and educational materials to schools districts relating to best practices in addressing cyberbullying and helping families and communities work cooperatively with schools in addressing cyberbullying, whether on or off school property or at or away from a school function.

The requirement in section 100.2(jj)(4)(vi) that each Coordinator shall be licensed and/or certified by the Commissioner as a classroom teacher, school counselor, school psychologist, school nurse, school social worker, school administrator or supervisor, or superintendent of schools is consistent with the above statutory authority.

5. COMMENT:

Nothing in the law permits the Department to impose requirements on charter schools with respect to day-to-day curriculum development, instructional content, and/or classroom management. The rule should be revised to exempt charter schools.

DEPARTMENT RESPONSE:

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

The Dignity Act imposes certain health, safety and civil rights requirements on public schools. Education Law section 13, as amended by Chapter 102 of the Laws of 2012, requires school districts to create:

(1) policies and procedures to create a school environment that is free from harassment, bullying and discrimination;

(2) guidelines to be used in school training programs to discourage the development of harassment, bullying and discrimination, and to make school employees aware of the effects of harassment, bullying, cyberbullying and discrimination on students;

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

(4) guidelines relating to the development of measured, balanced and age-appropriate responses to instances of harassment, bullying and discrimination by students with remedies and procedures following a progressive model that make appropriate use of intervention, discipline and education, vary in method according to the nature of the behavior, the

developmental age of the student and the student's history of problem behaviors, and are consistent with the district's code of conduct; and

(5) training that addresses the social patterns of harassment, bullying and discrimination, including but not limited to those acts based on a person's actual or perceived race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender or sex, the identification and mitigation of harassment, bullying and discrimination, and strategies for effectively addressing problems of exclusion, bias and aggression.

To the extent the rule imposes requirements relating to day-to-day curriculum development, instructional content, and/or classroom management, those requirements are necessary in order to implement and conform the Commissioner' s Regulations to the above statutory requirements.

6. COMMENT:

Schools should be permitted to designate a position (as opposed to a specific, named individual) to serve as Coordinator for each school, and the board of trustees should only be required to approve that position designation. A promotion or personnel change affecting this role would require the school to re-designate, obtain board approval within 30 days (which is not always possible, depending on timing of board meetings), and re-issue all documentation to parents with the updated name—a time-consuming and expensive proposition that could be alleviated by simply designating a position rather than an individual name.

DEPARTMENT RESPONSE:

The provisions in section 100.2(jj)(4) that at least one employee be designated as a Coordinator and the designation be approved by the board have remained unchanged since their adoption by the Regents in 2012, and have not been proposed for amendment pursuant to the current rule making. To that extent, the comment is beyond the scope of this rulemaking.

Regardless, boards of education are legally responsible for ensuring that the Dignity Act statute and rules are implemented to ensure safe and supportive environments. Since the Act applies to student-to-student behaviors, employee-to-student behaviors and student and employee to student behaviors, approving the specific individuals designated as the Coordinator in each school is a critical element to ensuring that the Act's integration into the overall school environment will be timely and objective. This provision is necessary to ensure that one or more specifically designated individuals act as Coordinator at all times, and that the board of education, BOCES or governing body of the charter school are directly involved in the delegation of individual(s) as Coordinator in order to elevate the standing of the position and to make it clear that this is an important and necessary position.

7. COMMENT:

Schools should not be required to list specific, individual names or contact information in a code of conduct, any summary of a code of conduct, or any equivalent document, or to post this information throughout the school building. Mailing is not an effective manner of disseminating this information, as the mailed notice is a one-time notice that will likely be quickly discarded and forgotten. Instead, schools should be permitted to disseminate the information in a widely distributed bullying policy, with the name and contact information of the position explicitly and clearly listed. Provision of information on websites should be optional, or required only to the extent that detailed personnel and HR matters are included on the website. Schools should not be required to disseminate contact information prior to the start of the school year; instead, the information should be disseminated at or around the start of the school year.

DEPARTMENT RESPONSE:

The provision in section 100.2(jj)(4)(vii)(d) that the name and contact information of the Coordinator(s) be included in the plain language summary of the code of conduct has remained unchanged since its adoption by the Regents in 2012, and has not been proposed for amendment pursuant to the current pending rule making and is therefore beyond the scope of this proposed amendment. Furthermore, to the extent the comment addresses requirements in the code of conduct itself, such requirements were part of a separate rule making specifically relating to the code of conduct (EDU-07-13-00013-P) and are therefore beyond the scope of this proposed amendment.

The provision requiring schools to provide Coordinator contact information in at least one per school year district mailing or other method of distribution has been deleted in the proposed amendment and replaced with a requirement that such information be provided at least once per school year in a manner as determined by the school, including but not limited to electronic communication and/or sending the information home with students.

Communication between students, parents, persons in parental relation, teachers, administrators, other educational professionals/school employees, and the Coordinator is essential. Posting the name and contact information of the Coordinator by various means as set forth in section 100.2(jj)(4)(vii) will promote the importance of the Dignity Act on a daily basis, remind students and the rest of the school community who the Coordinator is, and encourage communication and interaction related to the Act between all school building occupants and the school community. It will also ensure greater school community awareness of this vital information than mere inclusion of name(s) and contact information in a bullying policy, which would only serve to reference the existence of the Coordinator rather than proactively promoting the Coordinator's availability in the school. Requiring a wide and varying means of disseminating this contact information elevates the importance of the Coordinator and the requirements of the Dignity Act. Finally, since the official start of the school year is July 1st and the official end of the school year is June 30th, requiring Coordinators to be designated in each school by September is not unreasonable.

Department of Financial Services

EMERGENCY RULE MAKING

Rules Governing Valuation of Life Insurance Reserves

I.D. No. DFS-10-13-00008-E
Filing No. 523
Filing Date: 2013-05-17
Effective Date: 2013-05-17

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

Action taken: Amendment Part 98 (Regulation 147) of Title 11 NYCRR.

Statutory authority: Financial Services Law, sections 202 and 302; and Insurance Law, sections 301, 1304, 1308, 4217, 4218, 4240 and 4517

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

Specific reasons underlying the finding of necessity: This amendment to Regulation 147 contains changes to the reserve requirements on universal life with secondary guarantee policies. The Department has been concerned about compliance and reserve adequacy issues with respect to product designs involving an imbalance between the guarantees and reserves held. The National Association of Insurance Commissioners ("NAIC") attempted to address this issue with revisions to Actuarial Guideline 38. To prevent potential substantial reserve increases for in-force business, a bifurcated approach was adopted, which provides for separate reserve methodologies for in-force business and prospective business. The Guideline provides that for universal life with secondary guarantee business written between July 1, 2005 and December 31, 2012, the reserves will be determined using a principles-based approach, as adopted by an NAIC Committee in 2012. For business issued after January 1, 2013, the reserves will be calculated using a formulaic-based approach, until such time that principles-based reserving is enacted through a change in law.

These standards have already been adopted by the NAIC through its Accounting Practices and Procedures Manual. Since New York has a separate regulation addressing this subject matter, the revised standards are not automatically adopted and need to be adopted through an amendment to Regulation 147. This amendment incorporates the NAIC revisions identified in Actuarial Guideline 38, thus resulting in consistency between the NAIC's and New York's rules and promoting regulatory uniformity across the U.S. Companies domiciled in states that do not adopt these changes by December 31, 2012 will be holding reserves at a different level relative to companies domiciled in states that have adopted these changes.

For insurers that have not followed the intent of the current regulation, adoption of this amendment may increase reserves on business issued between July 1, 2005 and December 31, 2012 of New York authorized life insurers. For insurers that have followed the intent of the current regulation, reserves may decrease.

Insurers subject to this regulation must file quarterly financial statements based upon minimum reserve standards in effect on the date of filing. The filing date for the next quarterly statement is June 1, 2013. The insurers must be given advance notice of the applicable standards in order to file their reports in an accurate and timely manner. It is essential that this regulation be adopted on an emergency basis until such time as it can be adopted on a permanent basis.

For all of the reasons stated above, an emergency adoption of this fourth amendment to Regulation 147 is necessary for the general welfare.

Subject: Rules governing valuation of life insurance reserves.

Purpose: Prescribe rules and guidelines for valuing individual life insurance policies and certain group life insurance certificates.

Substance of emergency rule: The Fourth Amendment to Insurance Regulation 147 provides revised reserve standards for universal life with secondary guarantee policies.

Section 98.9(c)(2) is amended to reference new subparagraphs (ix) and (x), which provide revised reserve standards for universal life with secondary guarantee policies.

Section 98.9(c)(2)(viii)(b)(2) is amended to change the applicability dates for applying lapse rates from policies issued on or after January 1, 2007 to before January 1, 2014 to policies issued on or after January 1, 2007 to before January 1, 2013.

Section 98.9(c)(2)(viii)(e) is amended to change the applicability dates for applying lapse rates in the calculation of the net single premium from policies issued on or after January 1, 2007 to before January 1, 2014 to policies issued on or after January 1, 2007 to before January 1, 2013.

Section 98.9(c)(2)(viii)(h)(2) is amended to change the applicability dates, when there is a reduction for surrender charges, from policies issued on or after January 1, 2007 to before January 1, 2014 to policies issued on or after January 1, 2007 to before January 1, 2013.

Section 98.9(c)(2)(viii)(j) is amended to change the applicability dates for universal life with secondary guarantee policies when a stand-alone asset adequacy analysis is required.

A new subparagraph (ix) is added to section 98.9(c)(2) to prescribe reserve standards for certain universal life with secondary guarantee policies that were issued on or after July 1, 2005 to before January 1, 2013. This amendment affects universal life with secondary guarantee products, with or without a shadow account, with multiple sets of interest rates or other credits, or multiple sets of cost of insurance, expense, or other charges that may become applicable to the calculation of the secondary guarantee measures in any one year.

A new subdivision (x) is added to section 98.9(c)(2) to prescribe revised reserve standards for universal life with secondary guarantee policies issued on or after January 1, 2013. The steps for calculating the reserve are specified in section 98.9(c)(2)(x)(a) – (i). Section 98.9(c)(2)(x)(j) adds Actuarial Opinion and Insurer Representation requirements to declare that the policies appropriately fit one of the design categories described in this subdivision. Additionally, if reserves are calculated under Method II, a report that describes the analytical review that was performed with respect to premium payment patterns must also be provided.

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. DFS-10-13-00008-P, Issue of March 6, 2013. The emergency rule will expire July 15, 2013.

Text of rule and any required statements and analyses may be obtained from: Sally Geisel, New York State Department of Financial Services, One State Street, New York, NY 10004, (212) 480-5287, email: sally.geisel@dfs.ny.gov

Regulatory Impact Statement

1. Statutory authority: The Superintendent's authority to promulgate the Fourth Amendment to Insurance Regulation 147 (11 NYCRR 98) derives from sections 202 and 302 of the Financial Services Law ("FSL") and sections 301, 1304, 1308, 4217, 4218, 4240 and 4517 of the Insurance Law.

FSL section 202 establishes the office of the Superintendent and designates the Superintendent as the head of the Department of Financial Services.

FSL section 302 and Insurance Law section 301 authorize the Superintendent to effectuate any power accorded to the Superintendent by the Insurance Law, the Banking Law, the Financial Services Law, or any other law of this state and to prescribe regulations interpreting the Insurance Law, among other things.

Insurance Law section 1304 requires every insurer authorized under the Insurance Law to transact the kinds of insurance specified in Insurance Law section 1113(a)(1)-(3) to maintain reserves as necessary on account of the insurer's policies, certificates and contracts.

Insurance Law section 1308 describes when reinsurance is permitted, and the effect that reinsurance will have on an insurer's reserves.

Insurance Law section 4217 requires the Superintendent to annually value, or cause to be valued, the reserve liabilities ("reserves") for all outstanding policies and contracts of every life insurer doing business in New York. Insurance Law section 4217(a)(1) specifies that the Superintendent may certify the amount of any such reserves, specifying the mortality table or tables, rate or rates of interest and methods used in the calculation of the reserves. Reserving has not historically included lapse as a factor in calculations, because it was not relevant to traditional forms of life insurance contracts; therefore, section 4217 does not expressly include references to lapses. However, the development of new types of life insurance that were not contemplated at the time section 4217 was enacted may cause lapses to be relevant in reserve calculations in certain instances.

Insurance Law section 4217(c)(6)(C) provides that reserves - according to the commissioner's reserve valuation method for life insurance policies that provide for a varying amount of insurance or requiring the payment of varying premiums - shall be calculated by a method consistent with the principles of section 4217(c)(6).

Insurance Law section 4217(c)(6)(D) permits the Superintendent to issue, by regulation, guidelines for the application of the reserve valuation provisions of section 4217 to such policies and contracts as the Superintendent deems appropriate.

Insurance Law section 4217(c)(9) requires that, in the case of any plan of life insurance that provides for future premium determination, the amounts of which are to be determined by the insurer based on estimates of future experience, or in the case of any plan of life insurance or annuity that is of such a nature that the minimum reserves cannot be determined by the methods described in sections 4217(c)(6) and 4218, the reserves that are held under the plan must be appropriate in relation to the benefits and the pattern of premiums for that plan, and must be computed by a method that is consistent with the principles of sections 4217 and 4218, as determined by the Superintendent.

Insurance Law section 4218 requires that when the actual premium charged for life insurance under any life insurance policy is less than the modified net premium calculated on the basis of the commissioners reserve valuation method, the minimum reserve required for the policy shall be the greater of either the reserve calculated according to the mortality table, rate of interest, and method actually used for the policy, or the reserve calculated by the commissioner's reserve valuation method replacing the modified net premium by the actual premium charged for the policy in each contract year for which the modified net premium exceeds the actual premium.

Insurance Law section 4240(d)(6) states that the reserve liability for variable contracts shall be established in accordance with actuarial procedures that recognize the variable nature of the benefits provided and any mortality guarantees provided in the contract. Section 4240(d)(7) states that the Superintendent shall have the power to promulgate regulations, as may be appropriate, to carry out the provisions of section 4240.

Insurance Law section 4517(b)(2) provides, with respect to fraternal benefit societies, that reserves according to the commissioner's reserve valuation method for life insurance certificates that provide for a varying amount of benefits, or requiring the payment of varying premiums, shall be calculated by a method consistent with the principles of subsection (b).

2. Legislative objectives: One of the principal goals of the Legislature in enacting the Insurance Law is maintaining the solvency of insurers doing business in New York. One fundamental way the Insurance Law seeks to ensure solvency is by requiring all insurers and fraternal benefit societies that are authorized to do business in New York State to hold reserve funds in amounts that are sufficient in relation to the obligations made to policyholders. At the same time, an insurer benefits when it has adequate capital for company uses such as expansion, product innovation, and other forms of business development.

3. Needs and benefits: Interpretation of the previous standards for universal life with secondary guarantee products has not been consistent among the insurance industry and regulatory authorities across the U.S. In an effort to provide greater clarification of the standards, the National Association of Insurance Commissioners ("NAIC") revised Actuarial Guideline 38. This amendment to Regulation 147 incorporates the NAIC's revisions to Actuarial Guideline 38, which is intended to establish regulatory uniformity across the U.S. Insurers domiciled in states that do not adopt these changes by December 31, 2012 will be holding reserves at different levels relative to insurers domiciled in states that have adopted these changes, creating solvency concerns and an unlevel playing field among insurers.

The amendment, which is based on the previous NAIC Model, addresses the present situation, experienced nationwide, of insurers calculating reserves based on their various interpretations of the current regulation. The differing interpretations have resulted in some insurers setting imprudently low reserves and raising concerns about solvency and the ability of those insurers to meet their obligations. At the same time, those insurers that have set inappropriately low reserves have greater access to unrestricted funds that can be used for other purposes, creating an unlevel playing field to the disadvantage of those insurers that have properly set their reserves. This amendment will make certain that all insurers use the same approach to calculating reserves and ensure that proper reserves will be set, and insurers will not be under-reserved.

4. Costs: Costs to insurers and fraternal benefit societies that are authorized to do business in New York that are impacted by this amendment could be significant. The cost would include the actual modifications to existing computer software to incorporate the new methodologies for in-

force and prospective business, as well as the testing and implementation of the changes to the software. Some insurers may find it necessary to redesign the policies that are offered for sale to fit one of the policy designs addressed in the regulation.

Insurers that had not been complying with the full intent of the current regulation may find it necessary to increase reserves for policies issued between July 1, 2005 and December 31, 2012 upon adoption of the amendment, which provides greater clarification of the regulation's requirements. Insurers that have complied with the current regulation may find that their reserves have decreased.

Cost estimates range from $100,000 to $1.1 million nationwide for impacted insurers based on information provided by the Life Insurance Council of New York, Inc. Many insurers, however, would be incurring these costs in any event since they must comply with the same requirements imposed by other states in which they are licensed. The changes to reserving methodology contained in the regulation are also being adopted in other states to conform with the NAIC revisions to the Actuarial Guideline. After an insurer has modified its computer systems and developed new policy forms to comply with the regulation, only minimal additional costs should be anticipated.

The amendment is expected to result in the need for significant training of Department staff. The cost of such training will be absorbed through the Department's normal budget. There are no costs to other government agencies or local governments.

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

6. Paperwork: For policies issued between January 1, 2007 and December 31, 2012, the amendment does not alter the regulation's requirement that insurers annually prepare a stand-alone Actuarial Memorandum that sets forth the reserve analysis performed on the business. However, insurers subject to Section 98.9(c)(2)(ix) (respecting certain policies issued July 1, 2005 through December 31, 2012) are made subject to the requirements of Part 98 (Insurance Regulation 172), which provides for the adoption of the NAIC Accounting Practices & Procedures Manual ("NAIC Manual"). Under the 2013 edition of the NAIC Manual, such insurers must submit an additional Actuarial Memorandum to document compliance with the NAIC Manual's valuation of reserves requirements. Also, for policies issued on or after January 1, 2013, the regulation requires, at the time of filing or approval of a new product, each insurer to file with the Superintendent an Actuarial Opinion and an Insurer Representation made with respect to the applicable policy forms. Those insurers that use Method II, as described in section 98.9(c)(2)(x)(a)(2) of the amendment to Regulation 147, must submit a report that briefly describes the analytical review performed, the insurer's conclusions following the analytical review, and whether any additional premium payment patterns, other than those required, were tested as a result of the review.

7. Duplication: The regulation does not duplicate any existing law or regulation.

8. Alternatives: The only alternative considered by the Department was to not adopt the recent changes to the NAIC model regulation or the provisions in the new version of Actuarial Guideline 38. This would create an unlevel playing field for insurers, and reserves calculated by New York domestic insurers would be held at a different level then reserves held by non-domestic insurers.

9. Federal standards: There are no federal standards in this subject area.

10. Compliance schedule: This amendment to the regulation applies to 2012 annual statements due March 1, 2013 and statements filed thereafter. This amendment provides revised reserve standards for calculating reserves on universal life with secondary guarantee policies. The NAIC conducted outreach on a national level. In New York, the Department engaged in discussions with the affected insurers' trade association, the Life Insurance Council of New York (LICONY). The Department was notified by LICONY on December 21, 2012 that its members support the amendment to Regulation 147. Since the standards contained in the amendment were already adopted by the NAIC, insurers should have adequate time to comply with the regulation.

Regulatory Flexibility Analysis

1. Small businesses:

The Department finds that this amendment will not impose any adverse economic impact on small businesses and will not impose any reporting, recordkeeping or other compliance requirements on small businesses. The basis for this finding is that this rule is directed at all insurers and fraternal benefit societies that are authorized to do business in New York State, none of which comes within the definition of "small business" provided in section 102(8) of the State Administrative Procedure Act. The Department reviewed filed Reports on Examination and Annual Statements of authorized insurers and fraternal benefit societies and concludes that none of these entities comes within the definition of "small business," because there are none that are both independently owned and have fewer than one hundred employees.

2. Local governments:

The amendment does not impose any impacts, including any adverse impacts, or reporting, recordkeeping, or other compliance requirements on any local governments.

Rural Area Flexibility Analysis

1. Types and estimated number of rural areas: Insurers and fraternal benefit societies covered by the amendment do business in every county in this state, including rural areas as defined in State Administrative Procedure Act ("SAPA") section 102(10).

2. Reporting, recordkeeping and other compliance requirements; and professional services: There are separate reporting and compliance requirements for policies issued between July 1, 2005 and December 31, 2012 and for policies issued on or after January 1, 2013. Additionally, for policies issued on or after January 1, 2013, the regulation requires insurers to file an Actuarial Opinion with the Superintendent.

3. Costs: Costs to insurers and fraternal benefit societies that are authorized to do business in New York State that are impacted by this amendment could be significant. The costs would include the actual modifications to existing computer software to incorporate the new methodologies for in-force and prospective business, as well as the testing and implementation of the changes to the software. Some insurers may find it necessary to redesign the policies that are offered for sale to fit one of the policy designs addressed in the regulation. Insurers that had not been complying with the full intent of the current regulation may find it necessary to increase reserves for policies issued between July 1, 2005 and December 31, 2012 upon adoption of the amendment, which provides greater clarification of the regulation's requirements. Insurers that have complied with the current regulation may find that their reserves have decreased.

Cost estimates range from $100,000 to $1.1 million nationwide for impacted insurers based on information provided by the Life Insurance Council of New York, Inc. Many insurers, however, would be incurring these costs in any event since they must comply with the same requirements imposed by other states in which they are licensed. The changes to reserving methodology contained in the regulation are also being adopted in other states to conform with the NAIC revisions to Actuarial Guideline 38. After an insurer has modified its computer systems and developed new policy forms to comply with the regulation, only minimal additional costs should be anticipated.

The amendment is expected to result in the need for significant training of Department staff. The cost of such training will be absorbed through the Department's normal budget. There are no costs to other government agencies or local governments.

4. Minimizing adverse impact: The regulation does not impose any adverse impact on rural areas.

5. Rural area participation: The NAIC conducted outreach on a national level. In New York, the Department engaged in discussions with the affected insurers' trade association, the Life Insurance Council of New York (LICONY). The Department was notified by LICONY on December 21, 2012 that its members support the amendment to Regulation 147.

Job Impact Statement

The Department finds that this amendment should have no impact on jobs and employment opportunities. This amendment sets standards for setting life insurance reserves for insurers and fraternal benefit societies. Insurers should not need to hire additional employees or independent contractors to comply with these new standards.

Assessment of Public Comment

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

AMENDED
NOTICE OF ADOPTION

Multiple Parts of Titles 3 and 11 of NYCRR

I.D. No. DFS-08-13-00001-AA

Filing No. 522

Filing Date: 2013-05-16

Effective Date: 2013-08-01

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

Action taken: Amendment of multiple Parts of Titles 3 and 11 NYCRR.

Amended action: This action amends the rule that was filed with the Secretary of State on April 9, 2013, to be effective June 1, 2013, File No. 00388. The notice of adoption, I.D. No. DFS-08-13-00001-A, was published in the April 24, 2013 issue of the *State Register*.

Statutory authority: Financial Services Law, sections 202 and 302; Banking Law, section 14(1); Insurance Law, section 301

Subject: Multiple Parts of Titles 3 and 11 of NYCRR.

Purpose: To revise references, now outdated, as a result the consolidation of the New York State Insurance and Banking Departments.

Substance of amended rule: Consolidated Summary of the Amendment to Multiple Parts of 3 NYCRR and 11 NYCRR; Repeal of Forms NF 1A, NF 1B, NF 4 and NF 5 of Appendix 13; Repeal of Appendices 10A, 10B, 10C, 11, 13-A, 15, 16 and 22; Addition of New Forms NF 1A, NF 1B, NF 4 and NF 5 of Appendix 13; and Addition of New Appendices 10A, 10B, 10C, 11, 16 and 22

This rulemaking revises references that are now outdated as a result of the consolidation of the New York State Insurance and Banking Departments into a new Department of Financial Services, and makes certain other technical changes (e.g., grammatical corrections and repeal of obsolete forms).

Text of amended rule and any required statements and analyses may be obtained from: Sally Geisel, NYS Department of Financial Services, One State Street, New York, NY 10004, (212) 480-5287, email: sally.geisel@dfs.ny.gov

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

Changes made to the last published rule do not necessitate revision to the previously published Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement for the Amendment of Multiple Parts of 3 NYCRR and 11 NYCRR; Repeal of Forms NF 1A, NF 1B, NF 4 and NF 5 of Appendix 13; Repeal of Appendices 10A, 10B, 10C, 11, 13-A, 15, 16 and 22; Addition of New Forms NF 1A, NF 1B, NF 4 and NF 5 of Appendix 13; and Addition of New Appendices 10A, 10B, 10C, 11, 16 and 22.

The amendment to the adopted rule merely changes the effective date of the rule from June 1, 2013 to August 1, 2013.

Department of Health

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Electronic Prescriptions and Records for Hypodermic Needles and Hypodermic Syringes

I.D. No. HLT-23-13-00004-P

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

Proposed Action: Amendment of sections 80.131 and 80.133 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 3381

Subject: Electronic Prescriptions and Records for Hypodermic Needles and Hypodermic Syringes.

Purpose: Allow a practitioner to issue an electronic prescription for hypodermic needles and syringes.

Text of proposed rule: Section 80.131 is amended to read as follows:

80.131 Prescription, sale and possession of hypodermic syringes and hypodermic needles.

(a) *For purposes of this section, "prescription" shall have the same meaning as provided in section 3302 of the public health law, as supplemented by the meaning provided in section 3381 of the public health law.* It shall be unlawful for any person to sell or furnish, to any other person or persons, *or to possess,* a hypodermic syringe*,* [or] hypodermic needle, *or a hypodermic syringe or hypodermic needle pre-filled with a non-controlled substance,* except:

(1) pursuant to [an official New York State prescription or an out-of-state prescription] *a prescription*; or

(2) [to persons who have] *such sale, furnishing or possession has* been authorized by the commissioner [to obtain and possess such instruments]; or

(3) [in an emergency, pursuant to an oral prescription from a practitioner, if the pharmacist complies with the requirements of subdivision (b) of this section; or

(4)] pursuant to Section 80.137 of this Part.

(b) [(1) In an emergency] *Subject to the provisions of this section*, a practitioner may orally prescribe *or authorize a refill,* and *an employee of the prescribing practitioner, or a health care professional in a Residential Health Care Facility (RHCF) who is licensed by the state education department pursuant to the education law, may orally communicate a prescription or refill for, one or more hypodermic syringes or hypodermic needles. Subject to the provisions this section,* a pharmacist may dispense, to an ultimate user, *such hypodermic* syringes *or* [and] hypodermic needles[,]*;* provided*,* however, the pharmacist shall:

[(i)] *(1)* contemporaneously reduce such oral prescription to a written *or electronic* memorandum indicating the name, address and *tele*phone number of the prescriber, *the* name*,* [and] address*, and age* of the ultimate user, date on which the hypodermic *syringe or hypodermic* needle[s and/or syringe] was ordered, quantity prescribed, direction*s* for use, [and] *the name and strength of the drug, if applicable, number of refills authorized, the signature or readily identifiable initials of the pharmacist accepting the oral memorandum and documenting* the fact that it is a telephone order; [and]

[(ii)] *(2)* [the pharmacist filling such oral prescription shall] indicate on the memoranda the date filled[,] and the number of the prescription under which it is recorded in the pharmacy prescription file, and sign *or electronically sign* the memorandum[.]*; and*

[(2)] *(3)* [The pharmacist shall] make a good faith effort to verify the identity of [both] the practitioner *and the practitioner's employee or RHCF professional, if applicable,* and the ultimate user*,* if not known to the pharmacist.

[(3) No oral prescription shall be filled for a quantity of hypodermic syringes and/or needles which would exceed 100 hypodermic syringes and/or needles.

(4) Within 72 hours after authorizing such an oral prescription, the prescribing practitioner shall cause to be delivered to the pharmacist a prescription. If the pharmacist fails to receive such prescription, he shall record on the oral prescription memorandum: ''Prescription not received'', and sign and date the recording.

(5) Follow-up prescriptions from prescribers shall be attached to the corresponding oral prescription memorandum and shall be filed in accordance with this section.

(6) The pharmacist receiving such follow-up prescriptions shall endorse on the face of such prescription his signature, the date of filling, the number of the prescription under which it is recorded in the pharmacy prescription file and that such prescription is a follow-up to the prior oral prescription. In addition, the pharmacist shall place on the back of the follow-up prescription the date of receipt, the pharmacy prescription number and the date the oral prescription was filled, as follows:

''Follow-up prescription to oral prescription, pharmacy prescription number....., filled on....., prescription received.....''

(c) Emergency means that the immediate furnishing of a hypodermic syringe and/or needle is necessary for proper treatment, that no alternative is available and it is not possible for the practitioner to provide a written prescription at the time.

(d) It shall be unlawful for any person to obtain or possess a hypodermic syringe or hypodermic needle unless such possession has been authorized by the commissioner or is pursuant to a prescription or such syringe or needle was provided to such person pursuant to Section 80.137 of this Part.]

[(e)] *(c)* A prescription for [a] *one or more* hypodermic syringe*s* [and/] or *hypodermic* needle*s* shall include:

(1) the name, address and age of the [person for whom intended] *ultimate user*;

(2) the name, address, telephone number and signature *or electronic signature* of *the* practitioner[.]*;*

(3) the date on which it was issued; and

(4) the name, and strength of the drug, if applicable, the directions for use, the quantity of the hypodermic syringes or hypodermic needles prescribed, and the number of authorized refills.

[(f)] *(d)* Any [person] *pharmacist* selling or furnishing a hypodermic syringe or hypodermic needle pursuant to *a* prescription shall record upon [the face of] the prescription, [over] his *or her* signature *or, as applicable, electronic signature*, *and* the date of the sale or furnishing of the hypodermic syringe or hypodermic needle. Prescriptions and oral prescription memorandums shall be retained on file for a period of five years and be readily accessible for inspection by any public officer or employee engaged in the enforcement of this section. A prescription may be refilled not more than the number of times specifically authorized by the prescriber upon the prescription; provided, however, no such authorization shall be effective for a period longer than two years from the date the prescription is signed.

[(g) All renewals shall be recorded on the reverse side of the prescription and the date and quantity dispensed and the signature of the dispensing pharmacist shall be recorded.]

(e) A pharmacist receiving an oral authorization for the refill of a prescription for one or more hypodermic syringes or hypodermic needles shall enter on the original prescription or electronic record maintained on

an electronic data processing system, the date, time, and name of the authorizing practitioner and the name of the practitioner's employee or RHCF professional, if applicable, and shall sign or electronically sign such record.

(f) Pharmacists at registered pharmacies may, at the express request and approval of a patient or a person authorized to act on behalf of the patient, and subject to the requirements of 8 NYCRR Section 63.6(8), transfer information relating to a prescription for one or more hypodermic syringes or hypodermic needles, including a prescription for one or more hypodermic syringes or hypodermic needles pre-filled with a non-controlled substance, or accept a transfer of such information from another registered pharmacy or a pharmacy authorized to do business in another jurisdiction for the exclusive purpose of providing one authorized refill per transfer.

(g) Any prescription for one or more hypodermic syringes or hypodermic needles prefilled with a controlled substance shall be issued and dispensed according to the requirements as set forth in 80.67, 80.68, 80.69, 80.70, 80.73 and 80.74 of this Part.

Section 80.133, subdivision (i) is hereby amended to read as follows:

80.133 Hypodermic syringes and needles; certificate of need.

* * * *

(i) [Destruction] *Disposal* of hypodermic syringes and needles.

(1) All hypodermic syringes and needles which are no longer usable or required shall be [destroyed as follows:] *disposed of in a manner consistent with universal precautions so as to be rendered inoperable.*

[(i) Disposable hypodermic units shall have the needle detached from the syringe prior to disposal.

(ii) Hypodermic syringes shall be crushed, broken or otherwise rendered inoperable.

(iii) Hypodermic needles shall be bent prior to disposal.]

(2) Procedures for disposal may include but are not limited to placement of such syringes, needles and disposable units in a leak-proof, puncture resistant container prior to disposal.

* * * *

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

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

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

Regulatory Impact Statement

Statutory Authority:

Section 3308(2) of the Public Health Law authorizes and empowers the Commissioner to make any regulations necessary to supplement the provisions of Article 33 of the Public Health Law in order to effectuate its purposes and intent.

The Department proposes amendments to the regulations that would effectuate the changes in § 3381 and § 3302 of the Public Health Law (PHL) resulting from Chapter 178 of the Laws of 2010.

Legislative Objectives:

Article 33 of the Public Health Law, officially known as the New York State Controlled Substances Act, was enacted in 1972 to govern and control the possession, prescribing, manufacturing, dispensing, administering and distribution of controlled substances within New York. The legislative purpose of Article 33 is to combat the illegal use of and trade in controlled substances and to allow the legitimate use of controlled substances in health care, including palliative care, veterinary care, research and other uses authorized by the law.

Needs and Benefits:

Hypodermic syringes and hypodermic needles are addressed in Article 33 of the Public Health law and in Part 80 of the Department's regulations. However they are not scheduled as a controlled substance and are, accordingly, not a controlled substance. Nonetheless, current regulations impose many of the same restrictions on their prescription as would otherwise apply to controlled substances. The consequences of such treatment, and the benefits of the proposed amendments, include conforming the treatment of hypodermic syringes and hypodermic needles to that of non-controlled substances under State Board of Pharmacy rules and regulations and implementing the amendments to Article 33 of the Public Health law made by Chapter 178 of the Laws of 2010. A more specific description of the difficulties created by the current structure, and the benefits provided by the amendments, follows.

The current regulations allow a pharmacist to dispense a hypodermic needle and syringe only pursuant to a handwritten or oral prescription of a practitioner. That limitation precludes the use of an electronic prescription for hypodermic syringes and hypodermic needles and prevents a pharmacy from being able to transfer a prescription for hypodermic syringes and hypodermic needles to another pharmacy for dispensing of a refill. The amendments would allow pharmacists to transfer refills of a prescription for hypodermic syringes and hypodermic needles to another pharmacy, and would allow a practitioner to transmit an electronic prescription for hypodermic syringes and hypodermic needles to the pharmacy, thereby removing the current inconsistent treatment between hypodermic syringes and hypodermic needles and non-controlled substances. Allowing a prescription for hypodermic syringes and hypodermic needles to be electronically transmitted from the practitioner to the pharmacy and transferring an authorized refill from one pharmacy to another will ensure greater access of medications administered via injection.

The written prescription requirement also precludes the dispensing of hypodermic syringes and hypodermic needles by pharmacists to patients in nursing homes pursuant to a patient specific prescription form, which would otherwise be permitted under the Education Law. The proposed amendments would allow a practitioner to prescribe all non-controlled substances, including hypodermic syringes and hypodermic needles, on one patient-specific prescription form.

Existing regulations only allow the prescribing practitioner to orally authorize a prescription for up to 100 hypodermic syringes or hypodermic needles, in an emergency situation, and require that a written follow-up prescription be sent to the pharmacy within 72 hours. The amendments would allow oral prescriptions for hypodermic syringes and hypodermic needles to be issued in the same manner as for non-controlled substances, the prescribing of which is not currently subject to either quantity or refill limitations or the requirement for a follow-up hard copy prescription. The proposed amendments would also authorize an employee of the prescribing practitioner or a health care professional in a Residential Health Care Facility (RHCF) to orally communicate a prescription for hypodermic syringes and hypodermic needles to the pharmacist.

Existing regulations require a pharmacist to reduce an oral prescription for hypodermic syringes and hypodermic needles to a written memorandum. The amendments would allow, but not require, an oral prescription to be reduced to an electronic, rather than a written, memorandum, simplifying the refill process as many pharmacists already create an electronic record when dispensing a prescription. Providing that option will eliminate the need for duplicate record-keeping by those pharmacists who utilize electronic systems.

The current regulations require pharmacists to endorse a prescription with a handwritten signature and other required information upon the original hardcopy prescription when dispensing refills for prescriptions issued for hypodermic syringes and hypodermic needles. Retrieving the hard copy of the prescription in order to document the authorized refills is a time-consuming process. At the time of dispensing, the pharmacist must search for the folder in which the original hard copy prescription is filed, find that particular prescription, endorse and document the dispensing, place the prescription back in the file folder and return the folder to the storage cabinet. The same process is repeated for all refill requests for hypodermic syringe and hypodermic needle prescriptions. As noted previously, many pharmacists already utilize electronic record-keeping systems, and an electronic record is often already created at the time of dispensing, including refills. The amendments would eliminate the need for duplicate recording and record-keeping, as it would allow the dispensing record to be made and kept in electronic form, as it currently is the case for non-controlled substance prescriptions.

In addition to decreasing practitioner's and pharmacist's workloads, these proposed regulations will increase efficiency, minimize the potential for medication errors and ensure that patients in New York state will have greater access to their practitioners and pharmacists when questions arise or counseling is needed on their prescription medications, which will ultimately lead to enhanced patient care and safety. Populations that would especially benefit from these changes include patients requiring medication administration via injection including, but not limited to, patients with diabetes, Hepatitis C, clotting and other blood disorders. This patient population is often non-ambulatory or requires nursing care assistance or assistance by family members, and is less likely to obtain a written official prescription for their necessary injectable medications directly from their prescriber.

Costs:

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

The State Education Commissioner's regulations currently allow prescriptions for non-controlled substances to be electronically transmitted from a practitioner to a pharmacy and the transfer of a prescription to another pharmacy for the dispensing of a refill. Although the proposed rule is not mandatory, pharmacies and practitioners may require changes to electronic system menus and procedures to include hypodermic syringes and hypodermic needles, which could result in additional programming costs.

Costs to State and Local Government:

The proposed rule does not require the state or local government to perform any additional tasks therefore; it is not anticipated to have a fiscal impact on the State or local government, except that electronic prescribing of hypodermic syringes and hypodermic needles will reduce the number of prescriptions written on official New York State prescription forms, which are paid for by the State. Similarly, as the regulations permit, but do not require, the use of electronic prescriptions or records, it will not require local government to incur any costs beyond those assumed voluntarily as part of a decision to move towards electronic prescribing and electronic records. Furthermore, the proposed amendments do not result in any costs to state or local government beyond or different from those applicable to private practices or pharmacies.

Costs to the Department of Health:

The proposed rule will affect how prescriptions for hypodermic syringes and hypodermic needles may be issued and dispensed but does not impose additional recordkeeping or system processes to the State. Therefore, there will be no additional costs to the Department.

Local Government Mandates:

The proposed rule does not constitute a mandate, as it does not require the use of electronic prescriptions or records, nor does it impose any new programs, services, duties or responsibilities upon any county, city, town, village, school district, fire district or other specific district.

Paperwork:

Authorizing electronic prescriptions and electronic recordkeeping for prescriptions of hypodermic syringes and hypodermic needles, including those prefilled with non-controlled substance medication, will result in a reduction of paperwork. Authorizing a practitioner to prescribe hypodermic syringes and hypodermic needles on a patient specific prescription form for residents in nursing homes rather than being issued on a separate official prescription will save valuable time and decrease paperwork for the practitioner.

Not requiring a written follow-up prescription to the oral communication of a prescription for hypodermic syringes and hypodermic needles decreases paperwork for both the practitioner and pharmacist.

Duplication:

The requirements of the proposed regulation conform to those of the State Education Law and the State Education Commissioner's regulations. The requirements of this proposed regulation do not duplicate any other state or federal requirement.

Alternatives:

Changing the regulations was required by virtue of amendments to statute. There were no significant alternatives to be considered during the regulatory process.

Federal Standards:

The regulatory amendments do not exceed any minimum standards of the federal government.

Compliance Schedule:

The proposed rule does not constitute a mandate, as it does not require the use of electronic prescriptions or records; therefore, a time schedule is not necessary to achieve compliance with the rule.

Regulatory Flexibility Analysis

Effect of Rule:

This proposed rule will affect all New York State registered pharmacies and pharmacists dispensing hypodermic syringes and hypodermic needles. Records retrieved from the Education Department's Board of Pharmacy show that as of March 31, 2011 there were a total of 4,874 registered pharmacies and 22,344 registered pharmacists in the State of New York. Of these totals, 2,336 represent small business establishments and 94 are owned by government entities, accounting for 48% and 1.9% respectively of the total number of pharmacies.

Compliance Requirements:

The State Education Commissioner's regulations currently allow prescriptions for non-controlled substances to be electronically transmitted from a practitioner to a pharmacy. They also allow for the transfer of information related to a prescription to another pharmacy for the dispensing of a refill. Practitioners and pharmacists are required to maintain a record when a prescription for hypodermic syringes or hypodermic needles is issued or dispensed, respectively. The proposed amendments simply conform the requirements with regard to hypodermic syringes and hypodermic needles to these requirements, and eliminate unnecessary requirements imposed by the current regulations. They do not require the undertaking of processes not already in use with regard to non-controlled substances, and provide the option of using electronic prescriptions and records with regard to hypodermic syringes and hypodermic needles. Small businesses and local governments would retain the option to prescribe, dispense, and keep records manually. Accordingly, a small business regulation guide will not be prepared.

Professional Services:

The regulations do not require the use of any additional professional services. However, if an entity chose to implement the option of utilizing an electronic prescription or electronic record with regard to hypodermic syringes and hypodermic needles, professional information technology assistance might be required to alter electronic system menus and procedures to accommodate that change.

Compliance Costs:

Since the amendments would allow practitioners and pharmacists to retain the option to prescribe, dispense and keep records manually, initial and annual costs for continuing compliance with the proposed rule is not a factor. However, if an entity chose to implement the option of utilizing an electronic prescription or electronic record with regard to hypodermic syringes and hypodermic needles, professional information technology assistance might be required for implementation and maintenance of the altered electronic system menus and procedures.

A cure period is not required to be incorporated in the regulations pursuant to Chapter 524 of the Laws of 2011 insofar as the proposed amendments do not involve the establishment or modification of a violation or of penalties associated with a violation.

Economic and Technological Feasibility:

Compliance with the proposed regulations is economically and technologically feasible since most pharmacies already use an electronic system as part of the process of dispensing prescriptions. According to data from the Department's Bureau of Narcotic Enforcement, as of April 25, 2011, approximately 4.4% of the 80,605 practitioners registered with the New York State Official Prescription Program are currently using an electronic medical record system. The option of an electronic prescription for a hypodermic syringe or hypodermic needle is simply being made available as an alternative to the use of an Official New York State prescription. Those practitioners that do not currently use an electronic medical record system will not be required to begin using one.

Minimizing Adverse Impact:

The regulations are not expected to result in any adverse impact upon pharmacies, pharmacists, practitioners, or patients.

Small Business and Local Government Participation:

During the drafting of these regulations, the Department consulted with the State Education Department's Board of Pharmacy. The Department also consulted with representatives from 1) the Pharmaceutical Society of the State of New York, the membership of which consists of pharmacists and others who have an interest in the practice of pharmacy, including owners of small businesses, vendors, employees of pharmacies and employees of private and government institutions and 2) the New York Chapter of the American Society of Consultant Pharmacists, the membership of which consists of pharmacists who provide consulting services to private or government owned residential health care facilities. Issues and comments relevant to dispensing, recordkeeping, transfer of refills, electronic prescriptions and use of a patient specific prescription form in different pharmacy settings were discussed at open forums such as the New York State Pharmacy Conference meetings and the Pharmacy Advisory Committee (PAC) meetings. Pharmacy conferences are held quarterly for the purpose of sharing information among stakeholders in the practice of pharmacy, including representatives from the colleges of pharmacy in New York State, government agencies, regulatory agencies, and all pharmacy practice settings. The PAC acts as an advisory body to the Department of Health on pharmacy issues related to the Medicaid Program. Pharmacists have been utilizing electronic records for over 30 years and the State Education Department's Board of Pharmacy has allowed such records for non-controlled substances for over 15 years. The regulations were drafted taking into consideration the pharmacist's comments and suggestions with respect to the current laws and regulations and how the amendments would affect the overall dispensing process.

The Department also consulted with the New York State Veterinary Medical Society, the New York State Society of Physician Assistants, the Medical Society of the State of New York, the Nurse Practitioner Association of New York State, and the New York State Nurses Association. The proposed amendments met with general approval and the feedback received from the licensed health care providers was positive.

Rural Area Flexibility Analysis

Types and Estimated Numbers of Rural Areas:

The proposed rule will apply to pharmacies and pharmacists located in all rural areas of the state. Outside of major cities and metropolitan population centers, the majority of counties in New York contain rural areas. These can range in extent from small towns and villages and their surrounding areas, to locations that are sparsely populated. According to the Education Department's Board of Pharmacy, there are a total of 735 registered pharmacies and 2,381 registered pharmacists located in rural counties, which account for 15.1% of the pharmacists and 13.5% of the pharmacies registered in the State of New York.

Reporting, Recordkeeping and Other Compliance Requirements; and Professional Services:

Electronic recordkeeping systems have been available to pharmacists for over 30 years. And, for over 15 years the State Education Department's

Board of Pharmacy has allowed electronic records for non-controlled substances. The proposed amendments reflect the industry's widespread and ongoing use of electronic records. Practitioners and pharmacists would retain the option to prescribe, dispense and keep records manually as the amendments permit, but do not require, the use of electronic prescriptions or data systems.

Costs:

Since the amendments would allow practitioners and pharmacists to retain the option to prescribe, dispense and keep records manually, initial and annual costs for continuing compliance with the proposed rule is not a factor in rural areas. However, if practitioners and pharmacists in a rural area chose to implement the option of utilizing an electronic prescription or electronic record with regard to hypodermic syringes and hypodermic needles, professional information technology assistance might be required for implementation and maintenance of the altered electronic system menus and procedures.

Minimizing Adverse Impact:

The proposed regulations allow, but do not mandate, the use of electronic data systems for the prescribing and dispensing of prescriptions for hypodermic syringes and hypodermic needles. Therefore, no adverse impact on rural areas is anticipated.

Rural Area Participation:

During the drafting of this regulation, the Agency met with and solicited comments from the New York Chapters of the American College of Clinical Pharmacy, the American Society of Consultant Pharmacists, the Chain Pharmacy Association of New York, the New York State Council of Health-System Pharmacists, the Pharmacists Society for the State of New York, the New York State Education Department's Board of Pharmacy, the New York State Veterinary Medical Society, the New York State Society of Physician Assistants, the Medical Society of the State of New York, the Nurse Practitioner Association of New York State and the New York State Nurses Association, all of which provide representation to licensed health care providers in rural areas. The suggestions were met with approval and the feedback received from the licensed health care providers was positive.

Job Impact Statement

A Job Impact Statement is not included because the Department has concluded that the proposed regulatory amendments will not have a substantial adverse effect on jobs and employment opportunities. The basis for that conclusion is that these amendments merely authorize, but do not require, the use of electronic prescriptions, recordkeeping, and simplified dispensing obligations with regard to hypodermic syringes and hypodermic needles, as provided by Article 33 of the Public Health Law. Accordingly, they provide the opportunity for increased efficiency, and will not, in themselves, have a substantial adverse effect upon jobs and employment opportunities. The amendments do not fundamentally change any obligations under the existing regulations.

New York State Joint Commission on Public Ethics

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

Source of Funding Reporting

I.D. No. JPE-37-12-00006-ERP

Filing No. 524

Filing Date: 2013-05-17

Effective Date: 2013-05-17

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

Action Taken: Addition of Part 938 to Title 19 NYCRR.

Statutory authority: Executive Law, section 94(9)(c); Legislative Law, sections 1-h(c)(4) and 1-j(c)(4)

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

Specific reasons underlying the finding of necessity: The Public Integrity Reform Act of 2011 ("PIRA") was enacted in August 2011. PIRA established the new "source of funding" disclosure requirement, which became effective on June 1, 2012. The purpose of source of funding disclosure requirements is to promote transparency so that the public can appreciate the actual parties in interest who are substantially influencing the governmental decision making process.

The Source of Funding disclosure requirement was created by amending the Legislative Law to include a requirement that Client Filers, which are lobbyists and clients of lobbyists who spend at least $50,000 in reportable compensation and expenses and 3% of total expenditures on lobbying activities in New York State in a calendar year or twelve-month period (the "$50,000/3% expenditure threshold"), disclose the sources of funding over $5,000 from each single source used for such lobbying activities in New York State. PIRA mandates that JCOPE promulgate regulations implementing this new disclosure requirement. PIRA also provides that JCOPE shall specify a procedure for filers to seek an exemption if disclosure of a particular single source—or, in the case of certain organizations with tax-exempt status under I.R.C. § 501(c)(4), a class of sources—would cause harm, threats, harassment, or reprisals to the single source or to individuals or property affiliated with the single source, as well as an appeal procedure from denials of requests for such exemptions.

This emergency re-adoption is necessary because the source of funding reporting requirement is continuous and ongoing. The first filings under the new disclosure requirements occurred in January 2013. The next filing deadline is July 15, 201, which covers the period January 1, 2013 through June 30, 2013. JCOPE seeks to amend this emergency rule and keep it in effect until it adopts as final a version of the regulations, which will be informed by the revised rulemaking process.

By setting forth when and how sources of funding must be disclosed by Client Filers, as well as the narrow standards for exemptions from the mandated disclosure, this emergency rule provides the clarity that is imminently needed by the public and regulated population to ensure compliance with PIRA's statutory provisions and effective dates.

Subject: Source of funding reporting.

Purpose: To implement reporting that will inform the public of efforts to influence government decision making by lobbying entities.

Substance of emergency/revised rule: The Public Integrity Reform Act of 2011 ("PIRA") authorizes JCOPE to exercise the powers and duties set forth in Executive Law Section 94 with respect to lobbyists and clients of lobbyists as such terms are defined in article one-A of the Legislative Law. PIRA also amended the Legislative Law to include a requirement that lobbyists and clients of lobbyists who spend at least $50,000 in reportable compensation and expenses and 3% of total expenditures on lobbying activities in New York State in a calendar year or twelve-month period (the "expenditure threshold"), disclose the sources of funding over $5,000 from each single source used for such lobbying activities in New York State. PIRA mandates that JCOPE promulgate regulations implementing this new disclosure requirement. PIRA also provides that JCOPE shall specify a procedure in these regulations for filers to seek an exemption if disclosure of a particular single source - or, in the case of certain organizations with tax-exempt status under I.R.C. § 501(c)(4), a class of sources - would cause harm, threats, harassment, or reprisals to the single source or to individuals or property affiliated with the single source, as well as an appeal procedure from denials of requests for such exemptions. Thus, these regulations provide comprehensive reporting requirements that set forth when and how sources of funding must be disclosed by lobbyists and clients who meet the expenditure threshold, articulate narrow standards for exempting single sources from disclosure and establish an appeal process for denials from such exemptions.

This notice is intended to serve as both a notice of emergency adoption and a notice of revised rule making. The notice of proposed rule making was published in the *State Register* on September 12, 2012, I.D. No. JPE-37-12-00006-EP. The emergency rule will expire August 14, 2013.

Revised rule making(s) were previously published in the State Register on January 9, 2013.

Emergency rule compared with proposed rule: Substantive revisions were made in sections 938.3(e), 938.4(a) and (b).

Text of rule and any required statements and analyses may be obtained from: Shari Calnero, Senior Counsel, Joint Commission on Public Ethics, 540 Broadway, Albany, New York 12207, (518) 408-3976, email: scalnero@jcope.ny.gov

Data, views or arguments may be submitted to: Shari Calnero, Senior Counsel, Joint Commission on Public Ethics, 540 Broadway, (518) 408-3976, email: scalnero@jcope.ny.gov

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

Revised Regulatory Impact Statement

1. Statutory authority: Legislative Law Section 1-h(c)(4) requires certain registered lobbyists whose lobbying activity is performed on its

own behalf and not pursuant to retention by a client, and who meet the "$50,000-3% Expenditure Threshold" (referred to herein), to report the names of each source of funding over $5,000 from a single source used to fund lobbying activities in New York State. Similarly, Legislative Law Section 1-j(c)(4) requires certain clients who have retained, employed or designated a registered lobbyist, and who meet the "$50,000-3% Expenditure Threshold," to report the names of each source of funding over $5,000 from a single source used to fund lobbying activities in New York State. These lobbyists and clients are referred to in the proposed revised regulation and herein as "Client Filers." The statute also provide that, in certain circumstances, Client Filers can seek an exemption from disclosing one or more of their single sources provided certain criteria for exemption are met. Legislative Law Sections 1-h(c)(4) and 1-j(c)(4) direct the Joint Commission on Public Ethics ("JCOPE") to promulgate regulations to implement these requirements. More generally, Executive Law Section 94(9)(c) directs JCOPE to adopt, amend, and rescind rules and regulations to govern JCOPE procedures.

2. Legislative objectives: The Public Integrity Reform Act of 2011 ("PIRA") established JCOPE. PIRA authorizes JCOPE to exercise the powers and duties set forth in Executive Law Section 94 with respect to lobbyists and clients of lobbyists as such terms are defined in article one-A of the Legislative Law. PIRA also amended the Legislative Law to include a requirement that Client Filers who spend at least $50,000 in reportable compensation and expenses and 3% of total expenditures on lobbying activities in New York State in a calendar year or twelve-month period (the "$50,000/3% Expenditure Threshold"), disclose the sources of funding over $5,000 from each single source used for such lobbying activities in New York State. PIRA mandates that JCOPE promulgate regulations implementing this new disclosure requirement. PIRA also provides that JCOPE shall specify a procedure for filers to seek an exemption if disclosure of a particular single source—or, in the case of certain organizations with tax-exempt status under I.R.C. § 501(c)(4), a class of sources—would cause harm, threats, harassment, or reprisals to the single source or to individuals or property affiliated with the single source, as well as an appeal procedure from denials of requests for such exemptions. By setting forth when and how sources of funding must be disclosed by lobbyists and clients who meet the statutory conditions, as well as the narrow standards for exempting single sources from disclosure, these rules provide comprehensive reporting requirements for lobbyists and clients.

3. Needs and benefits: The proposed revised rulemaking is limited in its scope and encompasses both non-substantive and substantive revisions. As for the non-substantive changes, based on comments and the filings the Commission has received, it was apparent that some filers were confused by the definition of "Single Source." The proposed revisions are an attempt to mitigate this confusion. The definition of "Single Source" has been changed to "Source" and a new definition – "Affiliate Relationship" has been added to help clarify existing aggregation rules and reporting requirements. Additionally, subsections a, b, and c of the previous definition of "Single Source" (now, merely "Source") are incorporated into the definition of "Affiliate Relationship."

There are two sets of substantive revisions. The first set of revisions is in response to comments received noting that the identity of some Sources of funding can be effectively shielded from public disclosure when the contribution is made through certain entities, such as an LLC. The proposed revisions address this issue, in part, by requiring certain additional disclosures when the entity making the contribution has a relationship with the Client Filer that satisfies any one of a number of criteria. Specifically, under Part 938.3(e)(iv), when any of the following are present, additional disclosure is required for contributions made by a corporation, partnership, organization, or entity:

(1) The Client Filer makes decisions or establishes policy for the corporation, partnership, organization, or entity;

(2) The corporation, partnership, organization, or entity makes decisions or establishes policy for the Client Filer;

(3) The Client Filer has the authority to hire, appoint, discipline, discharge, demote, remove, or otherwise influence other persons who make decisions or establish policies for the corporation, partnership, organization, or entity;

(4) The corporation, partnership, organization, or entity has the authority to hire, appoint, discipline, discharge, demote, remove, or otherwise influence other persons who make decisions or establish policies for the Client Filer; or

(5) The Client Filer and the corporation, partnership, organization, or entity, share a majority of directors on their governing boards, or share a majority of executive management, or maintain banks accounts with shared signatories.

Under Part 938.3(e)(iii), the additional required disclosures are the following: (1) name address and principal place of business of at least one natural person (such as an officer, director, partner or proprietors) who shares or exercises discretion or control over the activities of the corporation, partnership, organization, or entity, or (2) the sources of the funds contributed by the corporation, partnership, organization, or entity to the Client Filer.

The second set of revisions is in response to comments concerning the constitutionality of the standard for reviewing an application for an exemption from the disclosure requirements. The proposed revisions address the constitutional concerns by changing the standard for an exemption in Part 938.4(b) from "substantial likelihood" to a "reasonable probability." In this same vein, the proposed revisions clarify Part 938.4(a) by also including the "reasonable probability language." Finally, consistent with both constitutional mandates and the statutory language, the proposed revisions alter Part 938.4(a) and Part 938.4(b) to provide that when the standard of an exemption has been satisfied, the Commission "shall" grant the exception. The previous version of the regulations provided that the Commission "may" grant the exception upon a showing that the standard had been satisfied.

4. Costs:

a. costs to regulated parties for implementation and compliance: Minimal.

b. costs to the agency, state and local government: No costs to state and local governments. Moderate administrative costs to the agency during the implementation phase.

c. cost information is based on the fact that there will be no costs to regulated parties and state and local government. The cost to the agency is based on the estimated increase in staff resources to implement the regulations.

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

6. Paperwork: This proposed revised regulation may require the preparation of additional forms or paperwork. Such additional paperwork is expected to be minimal, and many filers will complete any additional forms online.

7. Duplication: This proposed revised regulation does not duplicate any existing federal, state or local regulations.

8. Alternatives: PIRA created an affirmative duty on JCOPE's part to promulgate these regulations, therefore there is no alternative to conducting a formal rulemaking.

9. Federal standards: The proposed revised rulemaking pertains to a new lobbying disclosure requirement that specifically relates to lobbying activity in New York State. These regulations do not exceed any federal minimum standard with regard to a similar subject area.

10. Compliance schedule: Compliance will take effect upon adoption.

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

Changes made to the last published rule do not necessitate revision to the previously published Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement.

Assessment of Public Comment

The Public Integrity Reform Act of 2011 ("PIRA") amended the Legislative Law to require source of funding disclosure for certain lobbyists and clients who devote substantial resources to lobbying in New York State. PIRA also mandated that the Commission promulgate regulations to implement this new disclosure requirement. A Notice of Proposed Rule Making was published in the State Register on September 12, 2012. In response to comments received during the public comment period, the Commission made proposed changes to the regulations. On January 9, 2013, a Notice of Emergency Adoption and Revised Rulemaking was published in the State Register. Subsequent to the publication of this January 9 Notice, the Commission received five comments during the public comment period.

Four of the comments related to the definition of "Contribution" in the proposed regulations. The comments generally take the position that the definition is inconsistent with the statutory language of PIRA -- which requires disclosure of each source of funding over $5,000 that was "used to fund the lobbying activities reported" by the Client Filer – and would result in inaccurate data and frustrate PIRA's goal of promoting transparency. See Legislative Law § 1-j(c)(4)(ii). Notably, the proposed regulations that were submitted as part of the January 9, 2013 Notice did not alter the definition of "Contribution" that was contained in the proposed regulations submitted as part of the September 12, 2012 Notice. These four comments, therefore, were largely duplicative of comments previously received with respect to the definition of "Contribution." The Commission's response, then, to these comments is identical to the one it supplied as part of the January 9, 2013 Notice.

Of these four comments, one also expressed the view that the standard for exemptions in Part 938.4 was unconstitutional based on a number of Supreme Court cases. The Commission, after review of the applicable

law, proposes modifying Part 938.4(a) and Part 938.4(b) to better comport with the Supreme Court's jurisprudence with respect to the standard for granting an exemption from the regulation's disclosure requirements. To this end, the proposed regulations replace the "substantial likelihood" standard for showing the requisite harm with a "reasonable probability" standard. Additionally, the proposed regulations now provide that once the standard has been met, the Commission "shall" grant the exemption. The previous version of the regulations provided that the Commission, upon a showing that the standard was satisfied, "may" grant the exemption.

The fifth comment expressed support for the "Amount of Contribution" definition in the proposed regulations. This definition was added to the proposed regulations in response to the public comments received after the September 12, 2012 Notice was published in the State Register.

Department of Law

NOTICE OF ADOPTION

Contents of Annual Financial Reports Filed with the Attorney General by Certain Nonprofits

I.D. No. LAW-52-12-00013-A
Filing No. 535
Filing Date: 2013-05-21
Effective Date: 2013-06-05

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

Action taken: Amendment of Part 91 of Title 13 NYCRR.

Statutory authority: Executive Law, section 177(1); Estates, Powers and Trusts Law, section 8-1.4(h)

Subject: Contents of annual financial reports filed with the Attorney General by certain nonprofits.

Purpose: To require certain nonprofits to disclose information regarding election advocacy to the Attorney General and the public.

Text of final rule: 13 NYCRR Sections 91.6-91.12 are renumbered to sections 91.7-91.13.

A new section 91.6 is added to title 13 to read as follows:

91.6 Annual Disclosure of Electioneering Activities by Non-501(c)(3) Registrants

(a) Definitions. For purposes of this section:

(1) "Annual Financial Report" means any report filed pursuant to section 91.5 or 91.7 of this part.

(2) "Covered organization" means any organization that is: (i) registered or required to be registered with the Attorney General pursuant to Article 7-A of the Executive Law and/or Article 8 of the Estates, Powers and Trusts Law; and (ii) not prohibited by Internal Revenue Code section 501(c) from participating in, or intervening in, any political campaign on behalf of, or in opposition to, any candidate for public office.

(3) "Election" means any general, special, or primary election for federal, state or local office, or at which any proposition, referendum or other question is submitted to the voters in any state or any locality in the United States.

(4) "New York Election" means only those general, special, or primary elections conducted by a New York state or local government entity for New York state or local office, or any election at which any New York state or local constitutional amendment, proposition, referendum or other question is submitted to the voters.

(5) "Election related expenditure" means (i) any expenditure made, liability incurred, or contribution provided for express election advocacy or election targeted issue advocacy; or (ii) any other transfer of funds, assets, services or any other thing of value to any individual, group, association, corporation whether organized for profit or not-for-profit, labor union, political committee, political action committee, or any other entity for the purpose of supporting or engaging in express election advocacy or election targeted issue advocacy by the recipient or a third party.

(6) "Express election advocacy" means any communication made at any time that:

(i) contains words such as "vote," "oppose," "support," "elect," "defeat," or "reject," which call for the nomination, election or defeat of one or more clearly identified candidates, the election or defeat of one or more political parties, or the passage or defeat of one or more constitutional amendments, propositions, referenda or other questions submitted to voters at any election; or

(ii) refers to or depicts one or more clearly identified candidates, political parties, constitutional amendments, propositions, referenda or other questions submitted to the voters in a manner that is susceptible of no reasonable interpretation other than as a call for the nomination, election or defeat of such candidates in an election, the election or defeat of such political parties, or the passage or defeat of such constitutional amendments, propositions, referenda or other questions submitted to the voters in any election.

(7) "Election targeted issue advocacy"

(i) means any communication other than express election advocacy made within forty-five days before any primary election or ninety days before any general election that: (A) refers to one or more clearly identified candidates in that election; (B) depicts the name, image, likeness or voice of one or more clearly identified candidates in that election; or (C) refers to any clearly identified political party, constitutional amendment, proposition, referendum or other question submitted to the voters in that election;

(ii) does not mean a communication that is: (A) directed, sent or distributed by the covered organization to individuals who affirmatively consent to be members of the covered organization, contribute funds to the covered organization, or, pursuant to the covered organization's articles or bylaws, have the right to vote directly or indirectly for the election of directors or officers, or on changes to bylaws, disposition of all or substantially all of the covered organization's assets or the merger or dissolution of the covered organization; or (B) for the purpose of promoting or staging any candidate debate, town hall or similar forum to which at least two candidates seeking the same office, or two proponents of differing positions on a referendum or question submitted to voters, are invited as participants, and which does not promote or advance one candidate or position over another.

(8) "Communication" means: (i) paid advertisements broadcast over radio, television, cable, or satellite; (ii) paid placement of content on the Internet or other electronic communication networks; (iii) paid advertisements published in a periodical or on a billboard; (iv) paid telephone communications to one thousand or more households; (v) mailings sent or distributed through the United States Postal Service or similar private mail carriers to five thousand or more recipients; or (vi) printed materials exceeding five thousand copies.

(9) "Covered donation" means any contribution, gift, loan, advance, or deposit of money or any thing of value made to a covered organization unless such donation is deposited into an account the funds of which are not used for making New York election related expenditures.

(b) Disclosure of Election Related Expenditures.

(1) The annual financial report filed by any covered organization shall include the amount and the percentage of total expenses during the reporting period that are election related expenditures.

(2) The annual financial report filed by any covered organization that has made New York election related expenditures in an aggregate amount or fair market value exceeding ten thousand dollars during the reporting period shall include an itemized schedule disclosing information related to each New York election related expenditure exceeding fifty dollars in value, unless the information is exempt from disclosure pursuant to paragraph d of this section. Such information shall include for each New York election related expenditure: (i) the amount or fair market value of any funds, services or assets provided, and any liabilities incurred; (ii) the date that such funds, services or assets were provided, and that any liabilities were incurred; (iii) the name and address of the recipients of the expenditure; and (iv) a clear description of the expenditure and its purpose, including but not limited to support for or opposition to a candidate, political party, referendum or other question put before the voters in an election.

(c) Disclosures of Donations Related to New York Elections.

(1) The annual financial report filed by a covered organization that has made New York election related expenditures in an aggregate amount or fair market value exceeding ten thousand dollars during the reporting period shall include an itemized schedule disclosing information related to each covered donation it has received during the reporting period, unless the information is exempt from disclosure pursuant to paragraph d of this section. Such information shall include: (i) the name and address of each donor who made covered donations in an aggregate amount of one thousand dollars or more during the reporting period; (ii) the employer of each such individual donor, if known to the covered organization; and (iii) the date and amount of each such covered donation.

(2) If a covered organization keeps one or more segregated bank accounts containing funds used solely for New York election related expenditures, and makes all of its New York election related expenditures from such accounts, then the annual financial report need only include information specified in the preceding subparagraph concerning donations deposited into such accounts.

(d) Exceptions for Disclosures to Multiple Agencies. The annual

financial report filed by a covered organization is not required to include the information specified by subparagraph two of paragraph b of this section, or paragraph c of this section, if: (i) any law or rule requires that such information be disclosed to any other government agency that makes such information available to the public, and (ii) the covered organization is in compliance with the requirements of such law or rule at the time it files the annual financial report.

(e) Schedule to be Provided by the Attorney General. Upon adoption of this regulation, the Attorney General shall make available a schedule ("Electioneering Disclosure Schedule") to the Annual Filing for Charitable Organizations and if necessary amend existing forms to allow covered organizations to make the disclosures required by this section.

(f) Guidance to be Provided by the Attorney General. Upon adoption of this regulation, the Attorney General shall make available to the public guidance concerning compliance with this rule.

(g) Public Disclosure. The Attorney General shall make information contained in the completed Electioneering Disclosure Schedule available to the public on the Attorney General's website, except for:

(1) information related to any covered donation received prior to the effective date of this rule; and

(2) information the Attorney General deems exempt from disclosure pursuant to paragraph (h) of this section.

(h) Exemption from Public Disclosure.

(1) Notwithstanding paragraph (g) of this section, the Attorney General may, upon application by a donor or covered organization to be made in a form and manner prescribed by the Attorney General, grant an exemption and refrain from disclosing any information to the public related to any covered donation if the applicant shows that the covered organization's primary activities involve areas of public concern that create a reasonable probability that disclosure will cause undue harm, threats, harassment or reprisals to any person or organization.

(2) An application for such exemption shall be submitted no later than forty-five days prior to the due date for the applicable annual filing. The Attorney General will inform the applicant and may inform other persons or organizations to which the exemption would apply, in writing, whether the application for exemption has been granted or denied. Any denial issued by the Attorney General shall include a statement of findings and conclusions, and the reasons or basis for the denial.

(3) The submission of an application does not relieve the covered organization of its obligation to timely file annual financial reports, including an Electioneering Disclosure Schedule disclosing all donors for which the covered organization has not sought exemption.

(4) To the extent permitted by federal and state law, the Attorney General will exempt from public disclosure all materials submitted in support of an application for an exemption; provided that the Attorney General may disclose such materials to a court in response to any judicial subpoena or court order. The Attorney General may publicly disclose that a covered organization has submitted one or more applications for an exemption, or that one or more of a covered organization's requests for an exemption has been granted or denied.

(i) Filing Deadlines and Extensions. Covered organizations shall annually file the Electioneering Disclosure Schedule by the fifteenth day of the fifth month after the organization's accounting period ends. No covered organization may obtain any extension to file an Electioneering Disclosure Schedule, including any extension otherwise available under section 91.5(f)(3) of this chapter.

(j) Severability. If any provision in this section or the application of such provision to any persons or circumstances shall be held invalid, the validity of the remainder of the provisions and/or the applicability of such provisions to other persons or circumstances shall not be affected thereby.

Section 91.5(c)(2)(iii) is added to title 13 to read as follows:

Schedule EDS (Electioneering Disclosure Schedule) or a successor form is required for covered organizations that must file such form pursuant to section 91.6 of this part.

Section 91.7(b)(2)(iv) is added to title 13 to read as follows:

Schedule EDS (Electioneering Disclosure Schedule) or a successor form is required for covered organizations that must file such form pursuant to section 91.6 of this part.

The introductory paragraph to section 91.3 of title 13 is amended to read as follows:

Certain organizations are exempt from registration with the Attorney General. Unregistered organizations that are exempt from registration are not required to submit an exemption request to the Attorney General, except that an organization that receives a failure to register notice from the Attorney General but believes it is exempt from registration must claim an exemption from registration. Organizations that wish to request exemption from registration under Article 7-A or the EPTL or both, shall claim such exemption by completing the appropriate registration, amended registration or reregistration statement form, defined in sections 91.4, 91.[7]*8* and 91.[8]*9*, respectively, of this Chapter, or a successor form, including the exemption request section of such form, and attaching Schedule E (Request for Exemption for Charitable Organizations) or a successor form along with all required attachments listed in both the registration and exemption request forms.

Final rule as compared with last published rule: Nonsubstantive changes were made in section 91.6(h)(1).

Revised rule making(s) were previously published in the State Register on April 17, 2013.

Text of rule and any required statements and analyses may be obtained from: Gregory Krakower, Department of Law, 120 Broadway, New York, NY 10271, (212) 416-8030, email: gregory.krakower@ag.ny.gov

Revised Regulatory Impact Statement

1. Statutory Authority. Article 7-A of the Executive Law (hereinafter "Article 7-A") and Article 8 of the Estates, Powers & Trusts Law (hereinafter "EPTL") require certain organizations and trusts to file annual financial reports and other disclosures with the Attorney General, and require the Attorney General to establish and maintain a register of such disclosures. Section 177(1) of the Executive Law and section 8-1.4(h) of the EPTL empower the Attorney General to make rules and regulations necessary for the administration of these provisions.

2. Legislative Objectives. The rule requires certain organizations that are registered with the Attorney General and that may participate or intervene in political campaigns (hereinafter "covered organizations") to disclose information concerning expenditures and donations related to such election related activity in annual financial reports that are submitted to the Attorney General. The rule does not apply to organizations exempt from taxation under section 501(c)(3) of the U.S. Internal Revenue Code. The rule aims to, among other things: enhance detection and deterrence of illegal conduct by covered organizations and related individuals; inform and protect prospective donors to such organizations; protect the integrity and reputation of nonprofit organizations that do not intervene in political campaigns; maintain the anonymity of donors to covered organizations if their donations are restricted to purposes unrelated to influencing New York elections; protect the public interest in transparent financing of state and local elections; shield donors to covered organizations that intervene in political campaigns from public disclosure if there is a reasonable probability of undue harm, threats, harassment or reprisal; and ensure that there is clear guidance to covered organizations and related individuals concerning compliance.

3. Needs and Benefits. New York donors should know how nonprofit organizations that solicit donations from them are likely to use those funds. However, covered organizations, many of which enjoy tax-exempt status on the basis that they act to promote social welfare, may utilize funds solicited from the public to engage in direct and indirect election related activities. Donors to nonprofit organizations may be unaware that their donations to a charitable, social welfare or similar organization can be used to influence elections. Furthermore, such organizations can solicit funds without disclosing critical information about the political nature of their expenditures or sources of funding. There is substantial evidence in the public record that some nonprofit organizations are increasingly raising and spending funds to influence elections. The lack of transparency in this area creates the potential for covered organizations and related individuals to: mislead donors about the uses of their donations; violate tax and other laws without detection by regulators or law enforcement; and evade state and local campaign finance laws in a manner contrary to the public interest. The rule will, among other things:

(A) Better enable regulators to enforce tax and other laws and rules that restrict election related activities and other political activities by covered organizations, and deter illegal conduct;

(B) Protect donors from fraudulent, false or misleading solicitations by covered organizations;

(C) Protect the integrity and reputation of charities and other nonprofits that refrain from impermissible or excessive election related activity;

(D) Assist regulators in ensuring that charities, including organizations exempt from taxation pursuant to section 501(c)(3) of the U.S. Internal Revenue Code, do not illegally transfer assets to covered organizations to be used for election related activity, and deter such illegal conduct;

(E) Inform potential donors that contributions to covered organizations may be used to advance particular outcomes in elections, and provide relevant information to allow donors to take into account the political goals, interests, and activities of the organization and related individuals when contributing or responding to a solicitation;

(F) Protect the public interest in transparency in the electoral process by disclosing contributions that covered organizations transfer directly to candidates for elective office in New York, or are otherwise used to influence New York state and local elections;

(G) Maintain the anonymity of donors to covered organizations if their donations are restricted to purposes unrelated to influencing New York state and local elections;

(H) Protect donors to covered organizations from disclosure if there is reasonable probability that donors will be unduly harmed by such disclosure; and

(I) Provide clear guidance to covered organizations and related individuals concerning compliance.

4. Costs. Covered organizations that do not engage in election related activity will face de minimis costs associated with the rule. Covered organizations that choose to devote over $10,000 of their expenditures in any fiscal year to influencing New York state and local elections by engaging in either express election advocacy or election targeted issue advocacy, and that are not otherwise required to disclose those activities to other state or local agencies, might bear small costs associated with the tracking and accounting of funds raised and spent for purposes related to such advocacy. Some covered organizations that engage in election advocacy may choose to deposit donations available for election related activities into a segregated bank account or establish a separate political action committee to avoid disclosure of donors whose funds are not used for New York election related purposes. Such measures are not required by the rule but could entail small costs if taken by covered organizations that engage in election related activity. The Department of Law will also incur de minimis costs associated with processing filings of the new disclosure schedule by covered organizations, and with reviewing and making determinations concerning any applications for exemption from disclosure, as provided in the rule.

5. Paperwork. As part of their existing annual filing obligations, covered organizations will have to indicate what portion of expenditures were spent on election related activities, and covered organizations that spend at least $10,000 in a fiscal year to influence state or local elections in New York will be required to disclose itemized information concerning such election related expenditures and donations, unless they have disclosed this information to another government agency that makes the information publicly available.

6. Local Government Mandates. None.

7. Duplications. The rule has been drafted to coordinate with existing state and federal laws concerning disclosure of expenditures and contributions related to election related activities. Accordingly, the rule does not require a covered organization to disclose itemized information related to donations and expenditures that is disclosed to other government agencies and made publicly available.

8. Alternatives. (A) $10,000 Expenditure Threshold. The Department of Law considered thresholds both lower and higher than $10,000 in a year on election related expenditures to trigger additional disclosure under the rule. While establishing a threshold lower than $10,000 would provide benefits with respect to protecting donors from fraudulent solicitations, law enforcement functions, and transparency in New York state and local elections, the Department of Law determined that the added costs to organizations that engage in this level of election related activity outweighed these benefits. The Department of Law rejected establishing a threshold higher than $10,000, because this could reduce benefits the rule is designed to promote with respect to, among other things, law enforcement, fraud reduction, integrity of nonprofits, and transparency. (B) $1,000 Contribution Threshold. The Department of Law considered and rejected alternatives to the $1,000 contribution threshold at or above which a covered organization might have to disclose information concerning a specific donor. The Department of Law, in response to public comments, rejected a $100 threshold in the revised rule as unduly burdensome relative to the benefits to be achieved by this rule. A $1,000 threshold is less burdensome on covered organizations and donors while still advancing the goals of the rule. Additionally, the $1,000 amount is consistent with the contribution disclosure threshold required by the New York City Campaign Finance Board's Independent Expenditure Regulations, and with certain pre-election reports required to be filed with the Federal Election Commission in connection with federal elections. (C) Application to federal elections. The Department of Law considered applying the rule's itemized disclosure requirements to expenditures and donations in connection with federal campaigns but chose not to address this issue. (D) Disclosure of election targeted issue advocacy by a covered organizations to its members. The prior proposed rule did not exclude communications by a covered organization to its members from the definition of ''election targeted issue advocacy.'' The Department of Law determined in response to comments that this would have imposed burdens on covered organizations unnecessary to achieve the goals of the rule. (E) Granting extensions to file the Electioneering Disclosure Schedule. The granting of extensions otherwise available in connection with the filing of other portions of annual reports would reduce the benefits sought to be achieved by the rule.

9. Federal Standards. Federal tax law requires tax-exempt nonprofit organizations to report certain information concerning expenses, donations and donors to the Internal Revenue Service, and federal campaign law requires disclosures of certain federal election related expenditures and donors to the Federal Election Commission. EPTL article 8, Executive Law article 7-A, and existing regulations require nonprofit organizations, regardless of tax exempt status, that solicit $25,000 or use a professional fundraiser in New York to register with the Attorney General and file annual financial reports. For such organizations that are allowed under federal and state tax law to influence elections, the proposed rule requires their annual reports to indicate the amount and percentage of the organization's revenue spent on influencing elections. For such organizations that spend $10,000 or more in a fiscal year to influence New York state and local elections, the proposed rule requires their annual financial reports to include information concerning certain expenditures and donations relating to these elections. However, in order to avoid burdensome and unnecessary duplication and multiple filings, the rule does not require the annual financial reports to include specific information related to New York state or local elections that is disclosed to any other agency and made available to the public. The rule requires these additional disclosures, because, while federal law requires such organizations to publicly disclose certain types of expenditures and donations relating to federal elections, it does not require a statement of the percentage of expenses used to influence elections, or any disclosures relating to New York state or local elections. And to the extent federal law requires tax-exempt organizations to disclose the total amount of certain election related expenditures, it defines election related expenditures in a manner that leaves donors and regulators in the dark about nonprofit activity that could run afoul of New York state tax or charities law, or federal tax law, or that could otherwise constitute deceptive solicitations or practices. The rule accordingly requires these additional disclosures in order to, among other things: help regulators identify when a covered organization might be primarily engaged in influencing elections and thus in violation of federal tax law, state tax law, and other New York state laws; inform donors about election related activities of covered organizations; deter and detect fraudulent solicitations of funds by covered organizations; and support the public's interest in transparency in regard to nonprofits and elections.

10. Compliance Schedule. Prior to filing annual financial reports with the Attorney General pursuant to Article 7-A and/or the EPTL for the fiscal year beginning on or after the effective date of the rule, covered organizations that made election related expenditures in excess of $10,000 during that year must compile the information necessary to make the required disclosures. Covered organizations shall annually file the Electioneering Disclosure Schedule by the fifteenth day of the fifth month after the organization's accounting period ends. No covered organization may obtain any extension to file an Electioneering Disclosure Schedule, including any extension otherwise available under section 91.5(f)(3) of this chapter. Covered organizations wishing to identify and deposit covered donations into a segregated bank account to prevent disclosure of donors who prohibit their donations from being used for election related expenditures will need to open and begin utilizing such segregated accounts if they do not use them already.

Revised Regulatory Flexibility Analysis

Changes made to the last published rule do not necessitate revision to the previously published Regulatory Flexability Analysis.

Revised Rural Area Flexibility Analysis

Changes made to the last published rule do not necessitate revision to the previously published Rural Area Flexibility Analysis.

Initial Review of Rule

As a rule that requires a Regulatory Flexability Analysis, Rural Area Flexibility Analysis or Job Impact Statement, this rule will be initially reviewed in the calendar year 2017, which is the 4th or 5th year after the year in which this rule is being adopted. This review period, justification for proposing same, and invitation for public comment thereon, were contained in a Regulatory Flexability Analysis, Rural Area Flexibility Analysis or Job Impact Statement.

Assessment of Public Comment

Proposed Rule to Require Certain Nonprofits To Disclose Information Regarding Election Advocacy To The Attorney General And The Public.

A Notice of Proposed Rule Making was published in the State Register on December 26, 2012 under I.D. LAW-52-12-00013 - P. The Department of Law convened four hearings on the regulations throughout the state, heard oral testimony from over 20 witnesses, and received thousands of written comments. The Department of Law reviewed and evaluated all comments that it received. The vast majority of written comments received by the Department of Law expressed support for the regulations as proposed with no changes. Some witnesses also expressed support for the regulations as written, including members of the State Assembly and State Senate, as well as local elected officials. Some witnesses suggested changes to the regulations.

In response to these comments, a Notice of Revised Rule Making was published in the State Register on April 17, 2013 under ID No. LAW-52-12-00013-RP that contained substantive revisions to the proposed rule. In

response to this notice, the department received only a few comments that addressed: (A) treating contributions by subsidiaries of corporations and family members of a donor as a ''single source'' of funding; (B) changing the timing of filing by covered organizations to better coincide with filings with the Board of Elections; (C) conforming the definition of election related expenditures to other federal and local definitions; (D) exempting certain communications from being considered as election targeted issue advocacy; (E) clarifying the donor disclosure threshold; (F) changing the language of the rule that governs when waivers are granted from the requirements to disclose donor information; and (G) delaying the effective date of the rule.

As described in the analysis of these comments below, the Department of Law has responded to these comments by making a nonsubstantive change to the rule in regards to the granting of waivers from disclosure of donor information. The rest of the comments were rejected as either unnecessary, contrary to the purposes of the rule, or because the burdens resulting from the suggested change would outweigh any benefit.

ANALYSIS OF ISSUES

A. Single Source

General Issue/Concern: The rule should define families and parent-subsidiary corporations as "single sources" for purposes of determining if contributions exceed the thousand dollar threshold for itemized disclosure under section 91.6(c)(1) of the rule.

Response: This proposal could further the objectives of the rule but would also place a burden on covered organizations to gather additional information from donors. While rejecting this proposal, the Department of Law will continue to consider the burdens and benefits of this proposed change.

B. Timing of Filing

General Issue/Concern: The Department of Law should require all registered nonprofits to file their annual reports on a date that aligns more closely with deadlines for candidate committees to file with the Board of Elections.

Response: The Department of Law rejects this proposal. This proposal would contradict state law requiring that registered charities file annual reports on the fifteenth day of the fifteenth month after the end of their fiscal year. See, e.g., Executive Law, section 172-b.

C. Election Related Expenditures

General Issue/Concern: The Department of Law should conform its definition of "election related expenditures" to federal law or to those of other municipalities in New York State.

Response: The Department of Law rejects this proposal as inconsistent with the purposes of the rule. To the extent federal law requires tax-exempt organizations to disclose political expenses, it defines political expenses in a manner that leaves donors and regulators uninformed about nonprofit activity that could run afoul of New York law, or could otherwise constitute deceptive solicitations or practices. Similarly, the Department of Law rejects adopting the standards that have been and that may be adopted by the myriad of municipalities of New York State. Additionally, the rule limits redundant reporting by not requiring covered organizations to itemize information related to election related expenditures that they have already disclosed to other government agencies that make the information publically available.

D. Election Targeted Issue Advocacy

General Issue/Concern: The rule's provision related to election targeted issue advocacy violates the First Amendment, and the Department of Law misreads the Supreme Court's opinion in Citizens United v. FEC.

Response: The Department of Law has reviewed the Supreme Court's opinion in Citizens United v. FEC and subsequent cases, and determined that the rule is constitutional.

General Issue/Concern: The Department of Law should change the pre-election windows for election targeted issue advocacy from 45 days before "any" primary election and 90 days before "any" election to 45 days before a New York primary election and 90 days before a New York general election.

Response: The Department of Law rejects this proposal. The rule is not limited to New York elections because a purpose of the rule is to provide donors and regulators with information to determine if, and to what extent, a covered organization is engaged in political advocacy. Information about an organization's total election related expenditures, including on election targeted issue advocacy in other states, is relevant to that purpose. To the extent that the comment might be addressing the concern that a communication in New York might be considered election targeted issue advocacy if it happens to be within 45 or 90 days of a primary or general election somewhere in the country, that concern is misplaced. The rule states that election targeted issue advocacy includes only communications within forty-five or ninety days of an election if the communication refers to a candidate or issue "in that election."

General Issue/Concern: The Department of Law should revise the definition of election targeted issue advocacy to exempt legislative lobbying.

Response: The Department of Law rejects this proposal. The rule applies only to issue advocacy in close temporal proximity to an election that: (A) refers to one or more clearly identified candidates in that election; (B) depicts the name, image, likeness or voice of one or more clearly identified candidates in that election; or (C) refers to any clearly identified political party, constitutional amendment, proposition, referendum or other question submitted to the voters in that election. In addition, the rule exempts from disclosure information on contributions and expenditures that must be disclosed to other regulators that make the information public, including lobbying and ethics agencies. Also, with respect to issue advocacy, the rule also only applies to communications - in close proximity to an election - typically associated with electioneering and not with ''lobbying''. Accordingly, the proposed change could weaken the rule without providing clear benefits.

General Issue/Concern: The rule should exempt "voter guides" from the definition of election targeted issue advocacy as IRS rules do.

Response: The Department of Law rejects this proposal. The IRS rule relates to when and whether a voter guide issued by a 501(c)(3) organization is deemed to be intervention in a political campaign, and thus prohibited by federal tax law. The Department of Law's rule does not concern whether an organization may or may not legally issue a voter guide; the rule determines when the activity of a covered organization warrants additional disclosures about the expenditures and donations of an organization to protect donors and inform regulators. Because of the inherent risk that a voter guide issued in close proximity of an election is a partisan exercise for the purpose of influencing an election, the Department of Law has determined that any benefits of including an exemption for ''voter guides'' are outweighed by the potential reduction in the benefits that the rule is promoting.

General Issue/Concern: The rule should exempt from the definition of election targeted issue advocacy communications related to events in which at least two candidates seeking the same office participate, but at different times.

Response: Revision of the rule is unnecessary to effect this proposal. A communication for the purpose of promoting or staging any candidate debate, town hall or similar forum to which at least two candidates seeking the same office, or two proponents of differing positions on a referendum or question submitted to voters, are invited as participants, and which does not promote or advance one candidate or position over another, is exempt from the definition of a communication related to election targeted issue advocacy in the adopted rule. This exemption does not require that the two candidates or proponents appear at the same time, rather than sequentially.

General Issue/Concern: The rule should exempt "printed material" from the definition of "communications."

Response: The Department of Law rejects this proposal as inconsistent with the purposes of the rule.

E. Donor Disclosures

General Issue/Concern: The rule should state clearly that itemized disclosure of donor information is required only for donations from donors who have made $1,000 or more in donations during a reporting period.

Response: The Department of Law rejects this proposal because the proposed rule adequately states that itemized disclosure of donor information is required only for donations from donors who have made $1,000 or more in donations during a reporting period.

F. Exemption for Undue Harm, Threats, Harassment or Reprisals

General Issue/Concern: The Department of Law should allow waivers from the disclosure of donor information whenever a donor or organization shows a "reasonable probability" that disclosure will cause undue harm, threats, harassment or reprisals.

Response: The Department of Law adopts this proposal as a non-substantial revision to the proposed rule. Previously, the rule allowed waivers from disclosure of donor information upon the showing of a "substantial likelihood" that disclosure will cause undue harm, threats, harassment or reprisals. The Department of Law intended that language standard to meet the test articulated in Brown v. Socialist Workers' '74 Campaign Committee, 459 U.S. 87, 93 (1982). The Department of Law adopts this comment to conform the rule to the precise language of the Brown decision. This rule is not a substantial revision of the rule because it does not materially alter its purpose, meaning or effect. The two standards in this context are interchangeable in accordance with the cases of Matter of Ridge Rd. Fire Dist. v. Schiano, 16 N.Y.3d 494, 499 (2011) (recognizing that "substantial evidence" of a fact may exist so long as the fact is "reasonable and plausible") and Harrington v. Richter, 131 S. Ct. 770, 792 (2011) (using "reasonably likely" interchangeably with "substantial" likelihood).

G. Effective Date

General Issue/Concern: The Department of Law should extend the effective date of the rule to allow covered organizations to prepare to comply.

Response: The Department of Law rejects this proposal. The hearings and the extensive comment periods for the proposed rule and revised proposed rule have afforded covered organizations time to prepare for compliance. In addition, few, if any, covered organizations will have to file Schedule EDS prior to November 15, 2013, providing additional months to prepare to comply with the rule.

Office of Mental Health

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Operation of Residential Treatment Facilities for Children and Youth

I.D. No. OMH-23-13-00001-P

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

Proposed Action: This is a consensus rule making to amend section 584.5 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 7.09(b), 31.04(a)(2) and 31.26(b)

Subject: Operation of Residential Treatment Facilities for Children and Youth.

Purpose: To provide for the temporary increase in capacity of certain facilities for an additional three years.

Text of proposed rule: Subdivision (e) of section 584.5 of Title 14 NYCRR is amended to read as follows:

(e) An operating certificate shall be issued for a residential treatment facility for a resident capacity of no fewer than 14 and no more than 56 residents; provided, however, that for the period commencing April 1, 2000 through [September 30, 2013] *September 30, 2016*, bed capacity for facilities primarily serving New York City residents may be temporarily increased up to an additional ten beds over the maximum certified capacity with the prior approval of the Commissioner. In order to receive such approval, the residential treatment facility must demonstrate that the additional capacity will be used to serve those children and youth deemed most in need of RTF services by the New York City Preadmission Certification Committee as set forth in Section 583.8 of this Title.

Text of proposed rule and any required statements and analyses may be obtained from: Sue Watson, NYS Office of Mental Health, 44 Holland Avenue, Albany, NY 12229, (518) 474-1331, email: Sue.Watson@omh.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

This rule making is filed as a Consensus rule on the grounds that it is non-controversial and makes a technical correction. No person is likely to object to this proposed rule since it merely continues the existing capacity of Residential Treatment Facilities (RTF) serving children and youth who are residents of New York City and who have a diagnosis of serious emotional disturbance.

14 NYCRR Part 584 sets forth standards for the operation of RTFs. This amendment to Section 584.5(e) of this Part allows for the temporary increase in capacity of certain facilities to allow additional children and youth to be served in the program. The Office of Mental Health has determined that it is necessary to continue the existing capacity of RTFs serving primarily New York City residents by up to 10 additional beds over the permitted maximum of 56 per facility. Current regulations provide for this bed increase only through September 30, 2013. Although significant improvements in the development of residential alternatives, including supervised community residences, have been made in the past several years, the existing need for children's services is such that these beds must continue to be an available resource. The expiration date must be changed to September 30, 2016, in order to permit the continued necessary increase in RTF capacity for an additional three years.

Statutory Authority: 7.09(b), 31.04(a)(2) and 31.26(b) of the Mental Hygiene Law grant the Commissioner the power and responsibility to adopt regulations that are necessary and proper to implement matters under his or her jurisdiction, to set standards of quality and adequacy of facilities, and to adopt regulations governing Residential Treatment Facilities for Children and Youth, respectively.

Job Impact Statement

A Job Impact Statement is not submitted with this notice because this consensus rule merely continues the existing capacity of residential treatment facilities for children and youth in New York City. There will be no impact on jobs and employment opportunities as a result of this rule making.

Public Service Commission

NOTICE OF ADOPTION

Approval of Additional Stock Acquisition of Corning by Mirabito

I.D. No. PSC-37-11-00013-A

Filing Date: 2013-05-17

Effective Date: 2013-05-17

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

Action taken: On 5/16/13, the PSC adopted an order approving the joint petition of Corning Natural Gas Corporation (Corning) and Mirabito Holdings, Inc. (Mirabito) approving additional stock acquisition of Corning by Mirabito.

Statutory authority: Public Service Law, section 70

Subject: Approval of additional stock acquisition of Corning by Mirabito.

Purpose: To approve additional stock acquisition of Corning by Mirabito.

Substance of final rule: The Commission, on May 16, 2013, adopted an order approving the joint petition of Corning Natural Gas Corporation (Corning) and Mirabito Holdings, Inc. (Mirabito) authorizing additional stock acquisition of Corning by Mirabito, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(11-G-0417SA1)

NOTICE OF ADOPTION

Denial of the Complaint Made by Metro Eleven Hotels, LLC Regarding Alleged Slamming by Just Energy

I.D. No. PSC-14-12-000012-A

Filing Date: 2013-05-21

Effective Date: 2013-05-21

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

Action taken: On 5/16/13, the PSC adopted an order denying the petition filed by Metro Eleven Hotels LLC against Just Energy, an energy services company (ESCO) for slamming allegation.

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

Subject: Denial of the complaint made by Metro Eleven Hotels, LLC regarding alleged slamming by Just Energy.

Purpose: To deny the complaint made by Metro Eleven Hotels, LLC regarding alleged slamming by Just Energy.

Substance of final rule: The Commission, on May 16, 2013, adopted an order denying the petition filed by Metro Eleven Hotels, LLC alleging that it was slammed by an energy service company (ESCO), Just Energy, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Deborah Swatling, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518)

486-2659, email: deborah.swatling@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(12-M-0113SA1)

NOTICE OF ADOPTION

Authorization to Form a Holding Company and for Approval of Certain Related Transactions

I.D. No. PSC-17-12-00012-A

Filing Date: 2013-05-17

Effective Date: 2013-05-17

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

Action taken: On 5/16/13, the PSC adopted an order approving a joint proposal authorizing Corning Natural Gas Corporation to reorganize its current and prospective businesses into a holding company structure with modifications and conditions.

Statutory authority: Public Service Law, sections 70, 107, 108 and 110

Subject: Authorization to form a holding company and for approval of certain related transactions.

Purpose: To authorize forming a holding company and for approval of certain related transactions.

Substance of final rule: The Commission, on May 16, 2013, adopted an order approving the terms and conditions of a joint proposal by Corning Natural Gas Corporation and Staff of the Department of Public Service approving the formation of a holding company and certain related transactions, 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-G-0141SA1)

NOTICE OF ADOPTION

Allowing the Use of the Romet RM56000 DCID Rotary Meter for Use in Commercial Gas Meter Applications

I.D. No. PSC-35-12-00016-A

Filing Date: 2013-05-16

Effective Date: 2013-05-16

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

Action taken: On 5/16/13, the PSC adopted an order approving the petition of Consolidated Edison Company of New York, Inc. allowing the use of the Romet RM56000 DCID rotary meter, manufactured by Romet LTD., Mississauga, Canada.

Statutory authority: Public Service Law, section 61(1)

Subject: Allowing the use of the Romet RM56000 DCID rotary meter for use in commercial gas meter applications.

Purpose: To allow gas utilities in New York State the use of the Romet RM56000 DCID rotary meter.

Substance of final rule: The Commission, on May 16, 2013, adopted an order approving the petition of Consolidated Edison Company of New York, Inc. to allow the use of the Romet 56000 DCID rotary meter in commercial natural gas meter applications.

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

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

Assessment of Public Comment

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

(12-G-0363SA1)

NOTICE OF ADOPTION

Approval of the Transfer of Property

I.D. No. PSC-51-12-00004-A

Filing Date: 2013-05-20

Effective Date: 2013-05-20

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

Action taken: On 5/16/13, the PSC adopted an order approving the petition of the Brooklyn Union Gas Company (BUG) for the transfer of property at 809-873 Neptune Ave., Brooklyn, NY to 809 Neptune Avenue LLC d/b/a Storage Deluxe (Storage Deluxe).

Statutory authority: Public Service Law, section 70

Subject: Approval of the transfer of property.

Purpose: To approve the sale of property at 809-873 Neptune Ave., Brooklyn, NY from BUG to Storage Deluxe for $15 million.

Substance of final rule: The Commission, on May 16, 2013, adopted an order approving the petition of the Brooklyn Union Gas Company d/b/a National Grid (BUG) for the transfer of property at 809-873 Neptune Ave., Brooklyn, NY to 809 Neptune Avenue LLC d/b/a Storage Deluxe for $15 million, 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-G-0539SA1)

NOTICE OF ADOPTION

Approving, with Modifications a Compliance Filing and Denying Request for Reconsideration

I.D. No. PSC-06-13-00007-A

Filing Date: 2013-05-20

Effective Date: 2013-05-20

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

Action taken: On 5/16/13, the PSC adopted an order approving, with modifications, a compliance filing by Con Edison Co. of NY, Inc., revising its East River Repowering Project fuel allocation and denying request for reconsideration of the cost allocation methodology.

Statutory authority: Public Service Law, sections 65, 66, 78 and 79

Subject: Approving, with modifications a compliance filing and denying request for reconsideration.

Purpose: To approve, with modifications, a compliance filing and to deny request for reconsideration.

Substance of final rule: The Commission, on May 16, 2013, adopted an order approving, with modifications, a compliance filing made by Consolidated Edison Company of New York, Inc. (Con Edison) to implement the phase in of the above-market method applicable to the East River Repowering Project Fuel costs. In addition, the Commission denied Con Edison's request for reconsideration of the cost allocation methodology, 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.

(09-S-0794SA5)

NOTICE OF ADOPTION

Amendments to 16 NYCRR Parts 10 and 255

I.D. No. PSC-08-13-00016-A

Filing No. 533

Filing Date: 2013-05-21

Effective Date: 2013-05-21

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

Action taken: On 5/16/13, the PSC adopted the final rules approving amendments to 16 NYCRR, part 10 and Part 255.

Statutory authority: Public Service Law, sections 4(1), 66(1), 64, 65, 71, 72, 72-a, 75, 79 and 210

Subject: Amendments to 16 NYCRR Parts 10 and 255.

Purpose: To approve amendments to 16 NYCRR Parts 10 and 255.

Substance of final rule: The Commission, on May 16, 2013, adopted the final rules approving amendments to 16 NYCRR Chapter I, Rules of Procedure, Subchapter A, General, Part 10, Referenced Material and Chapter III, Gas Utilities, Subchapter C, Safety, Part 255, Transmission and Distribution of Gas.

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-G-0005SA1)

NOTICE OF ADOPTION

Modifying Its Allocation Ratio for Standby Service Customers Served Under Certain Economic Development Programs

I.D. No. PSC-09-13-00004-A

Filing Date: 2013-05-16

Effective Date: 2013-05-16

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

Action taken: On 5/16/13, the PSC adopted an order approving Consolidated Edison Company of NY, Inc.'s tariff revisions to modify its Allocation Ratio under General Rule II for standby service customers served under certain economics development programs.

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

Subject: Modifying its Allocation Ratio for standby service customers served under certain economic development programs.

Purpose: To modify its Allocation Ratio for standby service customers served under certain economic development programs.

Substance of final rule: The Commission, on May 16, 2013, adopted an order approving Consolidated Edison Company of New York, Inc.'s tariff revisions, to modify its Allocation Ratio of standby service customers served under General Rule 11 – Billing Applicable to Service Under Certain Economic Development Programs, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(11-E-0176SA11)

NOTICE OF ADOPTION

Revisions to Rider J - Business Incentive Rate (BIR)

I.D. No. PSC-09-13-00006-A

Filing Date: 2013-05-16

Effective Date: 2013-05-16

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

Action taken: On 5/16/13, the PSC adopted an order approving Consolidated Edison Company of New York, Inc.'s revisions to Rider J-Business Incentive Rate, with modifications, contained in PSC No. 10-Electricity, with an effective date of 5/20/13.

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

Subject: Revisions to Rider J - Business Incentive Rate (BIR).

Purpose: To approve revisions to Rider J-BIR, with modifications, to remove the 25% residential-use ceiling for certain customers.

Substance of final rule: The Commission, on May 16, 2013, adopted an order approving Consolidated Edison Company of New York, Inc's revisions to Rider J - Business Incentive Rate Applicability, with modifications, 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-0043SA1)

NOTICE OF ADOPTION

Modifying Tariff Language Regarding the Implementation of the Temporary State Assessment

I.D. No. PSC-11-13-00010-A

Filing Date: 2013-05-16

Effective Date: 2013-05-16

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

Action taken: On 5/16/13, the PSC adopted an order approving the tariff filing of Consolidated Edison Company of New York, Inc. to modify the language regarding the implementation of the Temporary State Assessment Surcharge.

Statutory authority: Public Service Law, sections 66(12) and 18-a

Subject: Modifying tariff language regarding the implementation of the Temporary State Assessment.

Purpose: To modify the tariff language regarding the implementation of the Temporary State Assessment.

Substance of final rule: The Commission, on May 16, 2013, adopted an order approving Consolidated Edison Company of New York, Inc.'s amendments to PSC 10 and 11-Electricity, PSC 9-Gas, and PSC 4-Steam, to modify its tariff language regarding the implementation of the Temporary State Assessment Surcharge, 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.

(09-M-0311SA4)

NOTICE OF ADOPTION

Modifying Tariff Language Regarding the Implementation of the Temporary State Assessment

I.D. No. PSC-11-13-00011-A

Filing Date: 2013-05-16

Effective Date: 2013-05-16

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

Action taken: On 5/16/13, the PSC adopted an order approving the tariff filing of Orange and Rockland Utilities, Inc. to modify the tariff language regarding the implementation of the Temporary State Assessment Surcharge.

Statutory authority: Public Service Law, sections 66(12) and 18-a

Subject: Modifying tariff language regarding the implementation of the Temporary State Assessment.

Purpose: To modify the tariff language regarding the implementation of the Temporary State Assessment.

Substance of final rule: The Commission, on May 16, 2013, adopted an order approving Orange and Rockland Utilities, Inc.'s, amendments to PSC 3-Electricity and PSC 4-Gas, to modify its tariff language regarding the implementation of the Temporary State Assessment Surcharge, 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.

(09-M-0311SA5)

NOTICE OF ADOPTION

Modification and Clarification of Transportation Service Under Service Classification Nos. 7 and 14

I.D. No. PSC-11-13-00013-A

Filing Date: 2013-05-17

Effective Date: 2013-05-17

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

Action taken: On 5/16/13, the PSC adopted an order approving the petition of KeySpan Gas East dba National Grid proposing modifications to add and clarify provisions related to electric generators that take transportation service under Service Classification Nos. 7 and 14.

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

Subject: Modification and clarification of transportation service under Service Classification Nos. 7 and 14.

Purpose: To modify and clarify transportation service under Service Classification Nos. 7 and 14.

Substance of final rule: The Commission, on May 16, 2013, adopted an order approving the petition of KeySpan Gas East Company d/b/a National Grid to make modifications to add and clarify provisions related to electric generators that take transportation service under Service Classification (SC) No. 7 – Interruptible Transportation Service and SC No. 14 – Non-Core Transportation for Electric Service, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(13-G-0063SA1)

NOTICE OF ADOPTION

Approving, with Modifications, the Default Service Support and Price to Compare Riders

I.D. No. PSC-11-13-00015-A

Filing Date: 2013-05-21

Effective Date: 2013-05-21

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

Action taken: On 5/16/13, the PSC adopted an order approving, with modifications, a filing by Pennsylvania Electric Co. regarding its tariff schedule PSC No. 6—Electricity, to modify the Default Service Support and Price to Compare Riders.

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

Subject: Approving, with modifications, the Default Service Support and Price to Compare Riders.

Purpose: To approve, with modifications, the Default Service Support and Price to Compare Riders.

Substance of final rule: The Commission, on May 16, 2013, adopted an order approving, with modifications, a tariff filing by Pennsylvania Electric Company to modify its electric tariff schedule, PSC No. 6—Electric, to Default Service Support and Price to Compare Riders, 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-0067SA1)

NOTICE OF ADOPTION

Approval of the 2013 Reliability Support Services Agreement

I.D. No. PSC-12-13-00013-A

Filing Date: 2013-05-20

Effective Date: 2013-05-20

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

Action taken: On 5/16/13, the PSC adopted an order approving the March 5, 2013 filing by Niagara Mohawk Power Corporation d/b/a National Grid to procure Reliability Support Services from Dunkirk Power LLC's generating facility located in Dunkirk, New York.

Statutory authority: Public Service Law, sections 4(1), 5(1)(b), 5(2), 65(1), (2) and (3), 66(1), (2), (3), (4), (5), (6), (8), (9), (10), (11), (12), (12-a), (12-b), (16) and (20)

Subject: Approval of the 2013 Reliability Support Services Agreement.

Purpose: To approve the 2013 Reliability Support Services Agreement.

Substance of final rule: The Commission, on May 16, 2013, adopted an order approving the 2013 Reliability Support Services Agreement to procure Reliability Support Services from Dunkirk Power LLC to National Grid, 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-0136SA2)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Stock Acquisition

I.D. No. PSC-23-13-00003-P

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

Proposed Action: The Commission is considering the joint petition of Corning Natural Gas Corporation and the Anita G. Zucker Revocable Trust whereas the Anita G. Zucker Revocable Trust proposes to acquire more shares of Corning Natural Gas Corporation up to 15 percent.

Statutory authority: Public Service Law, section 70

Subject: Stock Acquisition.

Purpose: To authorize the acquisition of the Anita G. Zucker Revocable Trust to buy shares of Corning's capital stock up to 15 percent.

Substance of proposed rule: The Public Service Commission is considering whether to approve, deny, or modify, in whole or in part, a joint petition by Corning Natural Gas Corporation and the Anita G. Zucker Revocable Trust for the approval of the Anita G. Zucker Revocable Trust to increase its holdings in Corning from below 10 percent up to 15 percent.

Corning has major ongoing infrastructure investment obligations that are required under its current Rate Plan and depends on significant equity infusions by investors to supply some of the funding for such obligations.

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-0202SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Waiver of Partial Payment, Directory Database Distribution, Service Quality Reporting, and Service Termination Regulations

I.D. No. PSC-23-13-00005-P

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

Proposed Action: The Commission is considering whether to approve, modify, or reject, in whole or in part, a petition by Time Warner Cable for waiver of partial payment, directory database distribution, service quality reporting, and service termination regulations.

Statutory authority: Public Service Law, sections 94(2) and 91(1)

Subject: Waiver of partial payment, directory database distribution, service quality reporting, and service termination regulations.

Purpose: Equalize regulatory treatment based on level of competition and practical considerations.

Substance of proposed rule: The Commission is considering whether to adopt, modify, or reject, in whole or in part, Time Warner Cable Information Services' (TWCIS) petition for waiver of regulations pertaining to (1) allocation of partial payments to local service first and then, if funds remain, as determined by TWCIS (16 NYCRR § 606.5); (2) distribution of white page directory listings to customers requesting a directory (16 NYCRR § 602.10(a)); (3) limiting suspension or termination of service to residential customers from 8 am to 9 pm, Monday through Friday, and between 8 am and 5 pm on Saturday (16 NYCRR § 609.4(d)); (4) partial waiver of 16 NYCRR §§ 603.3 and 603.4 monthly service quality reports regarding timeliness of repair performance to core customers, i.e., customers subscribed to Lifeline service or characterized as having special needs, and suspension of those reports until TWCIS has 5000 core customers in New York State.

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-C-0510SP2)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Cost Allocation/Recovery for Reliability Contingency Plans to Address the Potential Retirement of Indian Point Energy Center

I.D. No. PSC-23-13-00006-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 adopt, modify, or reject, in whole or in part, a filing made by the Department of Public Service on June 4, 2013, concerning the cost allocation and cost recovery for certain reliability contingency plans.

Statutory authority: Public Service Law, sections 4(1), 5(1)(b) and (2), 65(1), 66(1), (2), (4), (5), (9) and (12)

Subject: Cost allocation/recovery for reliability contingency plans to address the potential retirement of Indian Point Energy Center.

Purpose: To establish a method for cost allocation and cost recovery for the Indian Point Energy Center reliability contingency plans.

Substance of proposed rule: The Public Service Commission (Commission) is considering a filing made by the Department of Public Service on June 4, 2013, concerning a proposed method for allocating and recovering the costs associated with the reliability contingency plans to address the potential retirement of the Indian Point Energy Center (Filing). The Department of Public Service also included in the Filing a proposed Reimbursement Agreement to address the costs incurred by the New York Power Authority in connection with the Indian Point Energy Center reliability contingency plans. The Commission is considering whether to adopt, modify, or reject, in whole or in part, the Filing, and may address related matters.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website http://www.dps.ny.gov/f96dir.htm. For questions, contact: David Drexler, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 473-8178, email: David.Drexler@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) 474-6530, email: Secretary@dps.ny.gov

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

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

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

(12-E-0503SP2)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Water Rates and Charges

I.D. No. PSC-23-13-00007-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 Windham Village, Inc., requesting approval to increase its annual revenues by approximately $15,000 or 61.3% in P.S.C. No. 2—Water, and to convert its tariff to an electronic format.

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

Subject: Water rates and charges.

Purpose: To approve an increase in annual revenues by approximately $15,000 or 61.3%.

Substance of proposed rule: The Commission is considering whether to approve, modify or reject, in whole or in part, a tariff filing by Windham Village, Inc. (Windham Village or the Company) to increase its annual revenues by approximately $15,000 or 61.3%. The Company also requested that its existing tariff be converted to an electronic tariff schedule, P.S.C. No. 2—Water. The proposed filing has an effective date of October 1, 2013.

The Company's proposed tariff is available on the Commission's Home Page on the World Wide Web (www.dps.ny.gov) located under Commission Documents – Tariffs). 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-0212SP1)

Urban Development Corporation

NOTICE OF ADOPTION

Capital Access Program

I.D. No. UDC-12-13-00002-A

Filing No. 536

Filing Date: 2013-05-21

Effective Date: 2013-06-05

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

Action taken: Addition of Part 4251 to Title 21 NYCRR.

Statutory authority: Urban Development Corporation Act, section 5(4); L. 1968, ch. 174; L. 2011, ch. 103, section 16-K

Subject: Capital Access Program.

Purpose: Provide the basis for administration of the Capital Access Program.

Text or summary was published in the March 20, 2013 issue of the Register, I.D. No. UDC-12-13-00002-P.

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

Text of rule and any required statements and analyses may be obtained from: Antovk Pidedjian, Sr. Counsel, ESD - Lending Programs, Urban Development Corporation, 633 Third Avenue, New York, NY 10017, (212) 803-3792, email: apidedjian@esd.ny.gov

Initial Review of Rule

As a rule that requires a Regulatory Flexability Analysis, Rural Areal Flexability Analysis or Job Impact Statement, this rule will be initially reviewed in the calendar year 2016, which is no later than the 3rd year after the year in which this rule is being adopted.

Assessment of Public Comment

The agency received no public comment.