

RULE MAKING ACTIVITIES

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

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

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

Department of Civil Service

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-49-12-00002-A
Filing No. 902
Filing Date: 2013-09-12
Effective Date: 2013-10-02

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

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

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

Subject: Jurisdictional Classification.

Purpose: To classify a position in the non-competitive class.

Text or summary was published in the December 5, 2012 issue of the Register, I.D. No. CVS-49-12-00002-P.

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

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-49-12-00003-A
Filing No. 893
Filing Date: 2013-09-12
Effective Date: 2013-10-02

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

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

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

Subject: Jurisdictional Classification.

Purpose: To classify a position in the non-competitive class.

Text or summary was published in the December 5, 2012 issue of the Register, I.D. No. CVS-49-12-00003-P.

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

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-49-12-00004-A
Filing No. 898
Filing Date: 2013-09-12
Effective Date: 2013-10-02

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

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

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

Subject: Jurisdictional Classification.

Purpose: To classify positions in the exempt class.

Text or summary was published in the December 5, 2012 issue of the Register, I.D. No. CVS-49-12-00004-P.

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

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-49-12-00005-A
Filing No. 900
Filing Date: 2013-09-12
Effective Date: 2013-10-02

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

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

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

Subject: Jurisdictional Classification.

Purpose: To classify a position in the non-competitive class.

Text or summary was published in the December 5, 2012 issue of the Register, I.D. No. CVS-49-12-00005-P.

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

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-49-12-00006-A
Filing No. 899
Filing Date: 2013-09-12
Effective Date: 2013-10-02

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

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

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

Subject: Jurisdictional Classification.

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

Text of final rule: Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Department of Agriculture and Markets, by deleting therefrom the position of Program Manager and by increasing the number of positions of Special Assistant from 7 to 8.

Originally had been submitted as increasing the number of positions of Special Assistant from 8 to 9 but the previous request increasing from 7 to 8 was disapproved by DOB.

Final rule as compared with last published rule: Nonsubstantive changes were made in Appendix 1.

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

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-49-12-00007-A
Filing No. 901
Filing Date: 2013-09-12
Effective Date: 2013-10-02

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

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

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

Subject: Jurisdictional Classification.

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

Text or summary was published in the December 5, 2012 issue of the Register, I.D. No. CVS-49-12-00007-P.

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

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-02-13-00001-A
Filing No. 896
Filing Date: 2013-09-12
Effective Date: 2013-10-02

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

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

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

Subject: Jurisdictional Classification.

Purpose: To classify a position in the exempt class.

Text or summary was published in the January 9, 2013 issue of the Register, I.D. No. CVS-02-13-00001-P.

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

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-02-13-00002-A
Filing No. 904
Filing Date: 2013-09-12
Effective Date: 2013-10-02

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

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

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

Subject: Jurisdictional Classification.

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

Text or summary was published in the January 9, 2013 issue of the Register, I.D. No. CVS-02-13-00002-P.

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

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-02-13-00004-A
Filing No. 897
Filing Date: 2013-09-12
Effective Date: 2013-10-02

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

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

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

Subject: Jurisdictional Classification.

Purpose: To classify positions in the exempt class.

Text or summary was published in the January 9, 2013 issue of the Register, I.D. No. CVS-02-13-00004-P.

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

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-02-13-00005-A
Filing No. 905
Filing Date: 2013-09-12
Effective Date: 2013-10-02

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

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

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

Subject: Jurisdictional Classification.

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

Text or summary was published in the January 9, 2013 issue of the Register, I.D. No. CVS-02-13-00005-P.

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

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-02-13-00006-A
Filing No. 894
Filing Date: 2013-09-12
Effective Date: 2013-10-02

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

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

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

Subject: Jurisdictional Classification.

Purpose: To classify positions in the exempt class.

Text or summary was published in the January 9, 2013 issue of the Register, I.D. No. CVS-02-13-00006-P.

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

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-02-13-00007-A
Filing No. 895
Filing Date: 2013-09-12
Effective Date: 2013-10-02

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

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

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

Subject: Jurisdictional Classification.

Purpose: To classify positions in the exempt class.

Text or summary was published in the January 9, 2013 issue of the Register, I.D. No. CVS-02-13-00007-P.

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

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-02-13-00008-A
Filing No. 903
Filing Date: 2013-09-12
Effective Date: 2013-10-02

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

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

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

Subject: Jurisdictional Classification.

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

Text or summary was published in the January 9, 2013 issue of the Register, I.D. No. CVS-02-13-00008-P.

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

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

Assessment of Public Comment

The agency received no public comment.

**State Commission of
Correction**

NOTICE OF ADOPTION

Agreements for Custody of Inmates from Other States

I.D. No. CMC-27-13-00011-A
Filing No. 912
Filing Date: 2013-09-17
Effective Date: 2013-10-02

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

Action taken: Amendment of sections 7002.2(a) and 7205.2(c) of Title 9 NYCRR.

Statutory authority: Correction Law, sections 45(6), (15) and 500-o

Subject: Agreements for custody of inmates from other states.

Purpose: To reconcile a recent statutory amendment regarding foreign-state inmates in the Albany County Correctional Facility.

Text or summary was published in the July 3, 2013 issue of the Register, I.D. No. CMC-27-13-00011-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 agency received no public comment.

Education Department

EMERGENCY RULE MAKING

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

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

Filing No. 917

Filing Date: 2013-09-17

Effective Date: 2013-09-19

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

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

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

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

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

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

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

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

false information, or who has committed fraud, relating to his/her criminal history record check lacks good moral character. In addition to shifting the burden to the teacher or school administrator in Part 83 proceedings, such an amendment would serve as a deterrent for individuals who may be inclined to submit false information relative to a criminal history background check. Based on public comment received following the 45-day public comment period required under the State Administrative Procedure Act, the proposed amendment was revised to clarify that the rebuttable presumption for fingerprinting fraud applies not only to crimes committed after certification, but also to convictions of individuals for submission of false fingerprints or other fraudulent acts undertaken to obtain their certification. In addition, the proposed amendment was revised to allow the Commissioner to initiate a review of the findings and recommendations of a hearing officer or hearing panel, including fingerprinting fraud.

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

Emergency action is also needed for the preservation of the general welfare in order to immediately the revised rule and to ensure that the revised rule remains continuously in effect until it can be adopted as a permanent rule. The proposed amendment was adopted as an emergency rule at the April and July Regents meetings, effective April 23, 2013 and July 22, 2013. A Notice of Emergency Action and Proposed Rule Making was published in the State Register on May 8, 2013. Following the 45-day public comment period required under SAPA, the proposed rule was revised in response to public comment. A Notice of Revised Rule-Making was published in the State Register on August 7, 2013. Because the Board of Regents meets at scheduled intervals, the earliest the proposed amendment can be presented for permanent adoption, after publication of a Notice of Revised Rule Making in the State Register and expiration of the 30-day public comment period required under the State Administrative Procedure Act § 202(4-a) is the September Regents meeting. However, the July emergency rule will expire on September 19, 2013 and the proposed amendment will be not be effective as a permanent rule until October 2, 2013. A lapse in the rule will disrupt the revocation or suspension of certificates of teachers and school administrators who commit a crime involving fraud or submission of information related to their criminal history record checks in order to ensure the safety of the children and faculty of the schools in this State and to otherwise ensure that the emergency rule adopted at the April Regents meeting, as so revised, remains continuously in effect until it can be presented and made effective as a permanent rule on October 2, 2013.

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

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

Text of emergency rule: 1. Subdivision (d) of section 83.4 of the Regulations of the Commissioner of Education shall be amended, effective September 19, 2013, to read as follows:

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

(1) . . .

(2) . . .

(3) . . .

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

2. A new subparagraph (iv) shall be added to paragraph (1) of subdivision (b) of section 83.5 of the Regulations of the Commissioner of Education, effective September 19, 2013, to read as follows:

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

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. EDU-19-13-00006-EP, Issue of May 8, 2013. The emergency rule will expire November 15, 2013.

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

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

Subdivision (7) of section 305 of the Education Law authorizes the Commissioner of Education to annul teaching certificates and establishes other penalties in proceedings brought against individuals holding such certificates.

Paragraph (a) of subdivision (30) of section 305 of the Education Law authorizes the Commissioner of Education to promulgate regulations to authorize the fingerprinting of prospective employees of nonpublic and private elementary and secondary schools, and for the use of information derived from searches of the records of the Division of Criminal Justice Services ("DCJS") and the Federal Bureau of Investigation ("FBI") based on the use of such fingerprints. This paragraph also requires the Commissioner, in cooperation with DCJS to promulgate a form to be provided to nonpublic or private elementary or secondary schools in connection with the submission of fingerprints and a form for the recordation of allegations of child abuse in an educational setting.

Paragraph (b) of subdivision (30) of Section 305 of the Education Law requires the Commissioner of Education, in cooperation with DCJS, to promulgate a form to be provided to all prospective employees of nonpublic and private elementary and secondary schools that elect to fingerprint and seek clearance for prospective employees to inform the prospective employee that the Commissioner is authorized to request his or her criminal history information and that the employee has the right to obtain, review and seek correction of such information.

Paragraph (c) of subdivision (30) of Section 305 of the Education Law requires the prospective employer to obtain the signed, informed consent of the prospective employee on a form supplied by the Commissioner of Education.

Paragraph (d) of subdivision (30) of Section 305 of the Education Law requires the Commissioner to develop forms to be provided to all nonpublic or private elementary and secondary schools that elect to fingerprint their prospective employees, to be completed and signed by prospective employees when conditional appointment or emergency conditional appointment is offered.

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

Subdivision (2) of section 3001-d of the Education Law authorizes nonpublic or private elementary or secondary schools to apply to the Commissioner for criminal history record checks on prospective employees.

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

Section 3004-c provides that when the Commissioner determines that a certification be denied, the applicant shall be afforded notice and the right to be heard and offer proof in opposition to such determination in accordance with regulations of the Commissioner.

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

Subdivision (1) of section 3009 of the Education Law provides that no part of the school moneys apportioned to a district shall be applied to the payment of the salary of an unqualified teacher, nor shall his salary or part thereof, be collected by a district tax except as provided in the Education Law.

Section 3010 of the Education Law provides that any trustee or member of a board of education who applies, or directs, or consents to the application of, any district money to the payment of an unqualified teacher's salary, commits a misdemeanor.

Subdivision (1) of section 3035 of the Education Law authorizes the Commissioner of Education to submit to DCJS two sets of fingerprints for prospective school employees along with processing fees, for the purpose of obtaining criminal history records from DCJS and the FBI.

Paragraph (a) of subdivision (3) of section 3035 of the Education Law requires the Commissioner of Education to promptly notify the nonpublic or private elementary or secondary school when the prospective school employee is cleared for employment based on his or criminal history and provides a prospective school employee who is denied clearance the right to be heard and offer proof in opposition to such determination in accordance with the Regulations of the Commissioner of Education.

Paragraph (b) of subdivision (3) of section 3035 of the Education Law

requires the Commissioner of Education to promptly notify the prospective employee and the appropriate nonpublic or private elementary or secondary school when a prospective employee is conditionally cleared for employment based upon his or her criminal history or that more time is needed to make the determination.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment carries out the objectives of the above-referenced statutes to ensure the security of fingerprints and other information provided as part of a criminal history check of prospective school employees pursuant to Education Law section 305(30), by providing for the expedited removal of school district personnel that commit crimes involving the submission of false information, or the commission of fraud, related to a criminal history record check.

3. NEEDS AND BENEFITS:

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

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

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

4. COSTS:

- (a) Costs to State government: None.
- (b) Costs to local government: None.
- (c) Costs to private regulated parties: None.
- (d) Costs to the regulatory agency: None.

The proposed amendment will not impose any costs on the State, local governments, private regulated parties, or the State Education Department. By establishing a rebuttable presumption that a teacher or school administrator who is convicted of any crime relating to the submission of false information, or who has committed fraud, relating to his/her criminal history record check lacks good moral character, the proposed amendment will reduce costs to the State Education Department associated with conducting moral character hearings under Part 83 of the Commissioner's Regulations, by expediting the removal of teachers and administrators that commit crimes involving the submission of false information, or the commission of fraud, related to a criminal history record check.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment does not impose any program, service, duty or responsibility upon local governments. The proposed amendment relates to evidentiary standards in the conduct of moral character hearings for certified teachers and other certified school personnel under Part 83 of the Commissioner's Regulations, and merely establishes a rebuttable presumption that a certified individual who is convicted of any crime relating to the submission of false information, or who has committed fraud, relating to his/her criminal history record check lacks good moral

character. The proposed amendment also authorizes the Commissioner to initiate a review of the findings and recommendation of a hearing officer or hearing panel in cases involving convictions for any crimes involving the submission of false information, or the commission of fraud, related to a criminal history check. The proposed amendment will thereby expedite the removal of teachers and administrators that commit crimes involving the submission of false information, or the commission of fraud, related to a criminal history record check.

6. PAPERWORK:

The proposed amendment does not impose any additional paperwork or recordkeeping requirements.

7. DUPLICATION:

The proposed amendment does not duplicate other requirements of State and Federal government.

8. ALTERNATIVES:

There are no significant alternatives to the proposed amendment, and none were considered.

9. FEDERAL STANDARDS:

There are no Federal requirements relating to the subject matter of the proposed amendment.

10. COMPLIANCE SCHEDULE:

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

Regulatory Flexibility Analysis

The proposed amendment relates to evidentiary standards in the conduct of moral character hearings for certified teachers and other certified school personnel under Part 83 of the Commissioner's Regulations, and will not impose any adverse economic, reporting, recordkeeping, or any other compliance requirements on small businesses or local governments. Because it is evident from the nature of the rule that it does not affect small businesses or local governments, no further steps were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses and local governments is not required and one has not been prepared.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed amendment would apply to holders of teaching certificates or other certificates issued pursuant to Part 80 of the Commissioner's Regulations in New York State, including those who live or work in the 44 rural counties with fewer than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 square miles.

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

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

3. COSTS:

The proposed amendment will not impose any costs on public or private entities located in rural areas.

4. MINIMIZING ADVERSE IMPACT:

The proposed amendment does not impose any compliance require-

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

5. RURAL AREA PARTICIPATION:

Comments on the proposed amendment were solicited from the Rural Education Advisory Committee, which includes representatives of school districts located in rural areas. In addition, the Department has distributed copies of the proposed amendment for review and comment by the Department's Professional Standards and Practices Board for Teaching, which includes representatives of teachers, school administrators, institutions offering teacher preparatory programs, the general public, and students in teacher education programs. The Board includes members who live or work in rural areas.

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

Pursuant to State Administrative Procedure Act section 207(1)(b), the State Education Department proposes that the initial review of this rule shall occur in the fifth calendar year after the year in which the rule is adopted, instead of in the third calendar year. The justification for a five year review period is that the proposed amendment is part of long-range Regents policy enactments to ensure the integrity and security of fingerprinting and other aspects of the criminal background checks of prospective school employees. The Department has taken steps to better ensure the security of fingerprints in recent years by growing the number of fingerprints collected electronically. Approximately 75 percent of fingerprints are collected electronically, which reduces the opportunity for the integrity of fingerprints to be compromised. However, the Department has begun to review the fingerprinting process to close potential gaps that may exist, such as the ability of a person to submit false fingerprints. As part of this review, the Department has determined that the proposed amendment is needed to expedite the removal of school district personnel that commit certain crimes. Currently, there are no provisions to expeditiously address actions related to fingerprint fraud, which can result in convicted felons whose presence in the classroom or school poses a danger to the safety of students and/or staff evading the criminal history record check process and gaining access to schools. The proposed amendment establishes a rebuttable presumption that a teacher or school administrator who is convicted of any crime relating to the submission of false information, or who has committed fraud, Accordingly, there is no need for a shorter review period.

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

Job Impact Statement

The proposed amendment relates to evidentiary standards in the conduct of moral character hearings for certified teachers and other certified school personnel under Part 83 of the Commissioner's Regulations, and will not have an adverse impact on jobs or employment opportunities. Because it is evident from the nature of the proposed amendment that it will have a positive impact, or no impact, on jobs or employment opportunities, no further steps were needed to ascertain those facts and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

Assessment of Public Comment

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

EMERGENCY RULE MAKING

Annual Professional Performance Review (APPR)

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

Filing No. 913

Filing Date: 2013-09-17

Effective Date: 2013-09-23

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

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

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

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

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

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

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

Subject: Annual Professional Performance Review (APPR).

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

Text of emergency rule: 1. Subdivision (r) of section 30-2.2 of the Rules of the Board of Regents shall be amended, effective September 23, 2013, to read as follows:

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

2. Subdivision (v) of section 30-2.2 of the Rules of the Board of Regents shall be amended, effective September 23, 2013, to read as follows:

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

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. EDU-28-13-00007-EP, Issue of July 10, 2013. The emergency rule will expire November 15, 2013.

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

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

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

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

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

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

2. LEGISLATIVE OBJECTIVES:

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

3. NEEDS AND BENEFITS:

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

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

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

4. COSTS:

- (a) Costs to State government: none.
- (b) Costs to local government: none.
- (c) Costs to private regulated parties: none. The rule applies to annual professional performance reviews of teachers and building principals that are conducted by school districts/BOCES and does not impose any costs on private parties.
- (d) Cost to regulatory agency for implementing and continued administration of the rule: none.

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

5. LOCAL GOVERNMENT MANDATES:

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

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

The proposed amendment implements Education Law section 3012-c by amending the definitions of “teacher or principal student growth percentile score” and “value-added growth score” for purposes of implementing an enhanced growth model for the 2012-2013 and 2013-2014 school years and a value-added model for the 2014-2015 school year

and thereafter. The proposed amendment does not impose any program, service, duty or responsibility on school districts and BOCES beyond those imposed by the statute.

6. PAPERWORK:

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

7. DUPLICATION:

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

8. ALTERNATIVES:

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

In considering whether and how to enhance the 2011-12 growth model, the Department worked with its vendor American Institutes for Research, its technical advisory board, and the Metrics Workgroup of the Regents Task Force on Teacher and Principal Effectiveness (comprised of representatives of teachers, principals, superintendents of schools, school boards, school districts and board of cooperative educational services officials, and other interested parties) to identify additional factors that should be used in defining “similar students” when comparing a student’s growth to others.

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

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

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

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

9. FEDERAL STANDARDS:

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

10. COMPLIANCE SCHEDULE:

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

Regulatory Flexibility Analysis

(a) Small businesses:

The purpose of the proposed amendment relates to annual professional performance reviews (APPR) classroom teachers and building principals employed by school districts and boards of cooperative educational services (BOCES). Specifically, the proposed amendment will implement Education Law section 3012-c by amending the definitions of “teacher or

principal student growth percentile score” and “value-added growth score” for purposes of implementing a growth model for the 2012-2013 and 2013-2014 school years and a value-added model for the 2014-2015 school year and thereafter. The proposed amendment does not impose any reporting, recordkeeping or other compliance requirements, and will not have an adverse economic impact, on small business. Because it is evident from the nature of the amendment that it does not affect small businesses, no further steps were needed to ascertain that fact and one were taken. Accordingly, a regulatory flexibility analysis for small businesses is not required and one has not been prepared.

(b) Local governments:

1. EFFECT OF RULE:

The rule applies to each of the 695 school districts and 37 boards of cooperative educational services (“BOCES”) in the State.

2. COMPLIANCE REQUIREMENTS:

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

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

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

3. PROFESSIONAL SERVICES:

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

4. COMPLIANCE COSTS:

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

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

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

6. MINIMIZING ADVERSE IMPACT:

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

7. LOCAL GOVERNMENT PARTICIPATION:

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

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

Pursuant to State Administrative Procedure Act section 207(1)(b), the

State Education Department proposes that the initial review of this rule shall occur in the fifth calendar year after the year in which the rule is adopted, instead of in the third calendar year. The justification for a five year review period is that the proposed amendment is necessary to implement Education Law section 3012-c by amending the definitions of “teacher or principal student growth percentile score” and “value-added growth score” for purposes of implementing an enhanced growth model for the 2012-2013 and 2013-2014 school years and a value-added model for the 2014-2015 school year and thereafter. Education Law § 3012-c requires each classroom teacher and building principal to receive an Annual Professional Performance Review (APPR) resulting in a single composite effectiveness score and a rating of “highly effective,” “effective,” “developing,” or “ineffective.” The composite score is determined as follows:

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

Accordingly, the substantive provisions of the proposed amendment cannot be repealed or modified unless there is a further statutory change. Accordingly, there is no need for a shorter review period. The Department invites public comment on the proposed five year review period for this rule. Comments should be sent to the agency contact listed in item 10. of the Notice of Proposed Rule Making published herewith, and must be received within 45 days of the State Register publication date of the Notice.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed amendment applies to all school districts and boards of cooperative educational services (BOCES) and to the evaluation of certain teachers and principals across the State with a State-provided growth score pursuant to Education Law § 3012-c, including those located in the 44 rural counties with fewer than 200,000 inhabitants and the 71 towns and urban counties with a population density of 150 square miles or less.

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

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

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

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

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

3. COSTS:

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

4. MINIMIZING ADVERSE IMPACT:

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

compliance requirements or costs on school districts and BOCES, including those in rural areas, beyond those imposed by the statute. Since the statute applies to all school districts and BOCES throughout the State, it was not possible to establish different compliance and reporting requirements for regulated parties in rural areas, or to exempt them from the rule’s provisions.

5. RURAL AREA PARTICIPATION:

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

Job Impact Statement

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

EMERGENCY RULE MAKING

Employment of Retired Public Employees

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

Filing No. 915

Filing Date: 2013-09-17

Effective Date: 2013-09-23

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

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

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

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

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

Emergency action is necessary at the September 2013 Regents meeting for the preservation of the general welfare in order to timely implement the provisions of the new law and to ensure that proper procedures are in place to ensure that the Commissioner can adequately process requests to eliminate the earnings limitations for retired police officers employed by a school district as a school resource officer. Emergency action is also necessary to ensure that the emergency rule adopted at the June Regents meeting remains continuously in effect until it becomes effective on October 2, 2013.

Subject: Employment of Retired Public Employees.

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

Text of emergency rule: Subdivision (b) of section 80-5.5 of the Regulations of the Commissioner of Education is amended, effective September 23, 2013, to read as follows:

(b) Applicability.

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

(2) . . .

(c) Written request for approval.

(1) . . .

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

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

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

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

(ii) . . .

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

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

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

(iii)

(4)

(d)

(e)

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. EDU-28-13-00008-EP, Issue of July 10, 2013. The emergency rule will expire November 15, 2013.

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

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

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

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

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

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

educational services and county vocational education and extension boards.

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

2. LEGISLATIVE OBJECTIVES:

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

3. NEEDS AND BENEFITS:

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

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

The current regulations only allow for the approval of section 211 waivers for individuals in "unclassified service" positions. As the position of a school resource officer is a "classified service" position, the proposed amendment is needed to conform the current regulations relating to the waiver of earnings limitations to the new law which allows the Commissioner to waive the earnings limitation for school resource officers.

4. COSTS:

(a) Costs to the State: none.

(b) Costs to local government: none.

(c) Costs to private regulated parties: none.

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

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

5. LOCAL GOVERNMENT MANDATES:

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

6. PAPERWORK:

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

7. DUPLICATION:

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

8. ALTERNATIVES:

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

9. FEDERAL STANDARDS:

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

10. COMPLIANCE SCHEDULE:

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

Regulatory Flexibility Analysis**(a) Small Businesses:**

The proposed amendment relates to the process for approval by the Commissioner of Education for the employment of retired police officers as a school resource officer in school districts and boards of cooperative educational services (BOCES), as required by Retirement and Social Security Law section 212(3). The proposed amendment does not impose any adverse economic impact, reporting, recordkeeping or any other compliance requirements on small businesses. Because it is evident from the nature of the proposed amendment that it does not affect small businesses, no further measures were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses is not required and one has not been prepared.

(b) Local Governments:**1. EFFECT OF RULE:**

The proposed amendment applies to the 695 school districts and 37 BOCES located in New York State and establishes the regulatory standards relating to the process for approval by the Commissioner of Education for the employment of retired police officers as a school resource officer in school districts and boards of cooperative educational services, as required by Retirement and Social Security Law section 212(3).

2. COMPLIANCE REQUIREMENTS:

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

3. PROFESSIONAL SERVICES:

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

4. COMPLIANCE COSTS:

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

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

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

6. MINIMIZING ADVERSE IMPACT:

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

Because the statutory requirements apply to school districts and BOCES, it is not possible to exempt them from the proposed amendment

or impose a lesser standard. The proposed amendment has been carefully drafted to meet statutory requirements while minimizing the impact on school districts and BOCES.

7. LOCAL GOVERNMENT PARTICIPATION:

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

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

Pursuant to State Administrative Procedure Act section 207(1)(b), the State Education Department proposes that the initial review of this rule shall occur in the fifth calendar year after the year in which the rule is adopted, instead of in the third calendar year. The justification for a five year review period is that the proposed amendment merely conforms the Commissioner's Regulations to statutory requirements under section 1 of Part Y of Chapter 55 of the Laws of 2013 and therefore the substantive provisions of the proposed amendment cannot be repealed or modified unless there is a further statutory change. Accordingly, there is no need for a shorter review period. The Department invites public comment on the proposed five year review period for this rule. Comments should be sent to the agency contact listed in item 10. of the Notice of Proposed Rule Making published herewith, and must be received within 45 days of the State Register publication date of the Notice.

Rural Area Flexibility Analysis**1. TYPES AND ESTIMATE OF THE NUMBER OF RURAL AREAS:**

The proposed amendment applies to the 695 school districts and 37 BOCES located in New York State and establishes the regulatory standards relating to the process for approval by the Commissioner of Education for the employment of retired police officers as a school resource officer in school districts and boards of cooperative educational services, as required by Retirement and Social Security Law section 212(3), including those located in the 44 rural counties with fewer than 200,000 inhabitants and the 71 towns and urban counties with a population density of 150 square miles or less.

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

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

3. COSTS:

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

4. MINIMIZING ADVERSE IMPACT:

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

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

5. RURAL AREA PARTICIPATION:

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

Job Impact Statement

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

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

Academic Intervention Services (AIS)**I.D. No.** EDU-40-13-00005-EP**Filing No.** 922**Filing Date:** 2013-09-17**Effective Date:** 2013-09-17

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

Proposed Action: Amendment of section 100.2(ee) of Title 8 NYCRR.

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

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

Specific reasons underlying the finding of necessity: The proposed amendment modifies the test cut scores for the required provision of Academic Intervention Services (AIS) to students during the 2013-2014 school year. Under the present rule, those students scoring at or below a scale score of 650 must be provided with AIS. The proposed rule would establish, for the 2013-2014 school year only, specific scale scores for English Language Arts and Mathematics examinations administered in each of the grades 3 through 8 that would require the provision of AIS to students scoring below such scale scores.

Historically, students who have scored below proficient on State assessments in English language arts or mathematics have been required to receive AIS. However, proficiency standards on the 2012 and the 2013 state assessments cannot be directly compared because the 2012 tests were designed to measure the learning standards established in 2005, which are different than the new Common Core Learning Standards (CCLS) measured on the 2013 tests. Despite the change in scales, the Department can determine the scale scores for each respective year that are associated with students who scored at the same percentile rank on the two assessments. The Department proposes using these percentile ranks as the basis for determining which students must be provided Academic Intervention Services during this transition year as this approach ensures that the change in proficiency rates will not result in a significant increase in the percentage of students who must receive AIS. The cut scores that the Department proposes be used will result in districts being required to provide AIS to approximately the same percentages of students Statewide in the 2013-2014 school year as received AIS in the 2012-2013 school year. This is analogous to the action taken by the Regents in 2010 to address the raising of the cut scores on the 2010 Grade 3-8 English language arts and mathematics assessments (see New York State Register, November 10, 2010; EDU-31-10-00004-A).

Since the Board of Regents meets at monthly intervals, the earliest the proposed amendment could be adopted by regular action after publication of a Notice of Proposed Rule Making and expiration of the 45-day public comment period prescribed in State Administrative Procedure Act (SAPA) section 202 would be the December 16-17, 2013 Regents meeting. Because SAPA section 203(1) provides that an adopted rule may not become effective until a Notice of Adoption is published in the State Register, the earliest the proposed amendment could become effective if adopted at the December Regents meeting, is January 1, 2014. However, school districts need to know now what the modified requirements for AIS will be so that they may plan and timely implement AIS for the 2013-2014 school year.

Emergency Action is necessary for the preservation of the general to immediately establish modified requirements for the provision of Academic Intervention Services for the 2013-2014 school year, for purposes of providing districts with flexibility to address the change in student rates of proficiency on the 2013 grades 3-8 assessments in English Language Arts and mathematics, and thereby ensure the timely implementation of

the modified AIS requirements by school districts in the 2013-2014 school year.

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

Subject: Academic Intervention Services (AIS).

Purpose: To establish modified requirements for AIS during the 2013-2014 school year.

Text of emergency/proposed rule: Paragraph (2) of subdivision (ee) of section 100.2 of the Regulations of the Commissioner of Education is amended, effective September 17, 2013, as follows:

(2) Requirements for providing academic intervention services in grade three to grade eight. Schools shall provide academic intervention services when students:

(i) score below:

(a) the State designated performance level on one or more of the State elementary assessments in English language arts, mathematics or science, provided that for the [2010-2011] 2013-2014 school year only, the following shall apply:

(1) those students scoring [at or] below a scale score [of 650] specified in subclause (3) of this clause shall receive academic intervention instructional services; and

(2) those students scoring at or above a scale score [of 650] specified in subclause (3) of this clause but below level 3/proficient shall not be required to receive academic intervention instructional and/or student support services unless the school district, in its discretion, deems it necessary. Each school district shall develop and maintain on file a uniform process by which the district determines whether to offer AIS during the [2010-2011] 2013-2014 school year to students who scored above a scale score [of 650] specified in subclause (3) of this clause but below level 3/proficient on a grade 3-8 English language arts or mathematics State assessment in [2009-2010] 2012-2013, and shall no later than [the commencement of the first day of instruction] November 1, 2013 either post to its Website or distribute to parents in writing a description of such process;

(3) The following scale scores shall be used to determine which students shall receive academic intervention services as specified in subclauses (1) and (2) of this clause:

Grade 3 English language arts, a scale score of 299

Grade 4 English language arts, a scale score of 296

Grade 5 English language arts, a scale score of 297

Grade 6 English language arts, a scale score of 297

Grade 7 English language arts, a scale score of 301

Grade 8 English language arts, a scale score of 302

Grade 3 mathematics, a scale score of 293

Grade 4 mathematics, a scale score of 284

Grade 5 mathematics, a scale score of 289

Grade 6 mathematics, a scale score of 289

Grade 7 mathematics, a scale score of 290

Grade 8 mathematics, a scale score of 293

and/or

(b) the State designated performance level on a State elementary assessment in social studies administered prior to the 2010-2011 school year; provided that beginning in the 2010-2011 school year, at which time a State elementary assessment in social studies shall no longer be administered, a school shall provide academic intervention services when students are determined to be at risk of not achieving State learning standards in social studies pursuant to subparagraph (iii) of this paragraph;

(ii) . . .

(iii) . . .

This notice is intended: to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire December 15, 2013.

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

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

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

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

Education Law section 101 continues the existence of the Education

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

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

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

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

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

Education Law section 3204(3) provides for the courses of study in the public schools.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment is consistent with the authority conferred by the above statutes and is necessary to implement policy enacted by the Board of Regents relating to academic intervention services (AIS).

3. NEEDS AND BENEFITS:

The proposed amendment modifies the test cut scores for the required provision of Academic Intervention Services (AIS) to students during the 2013-2014 school year. Under the present rule, those students scoring at or below a scale score of 650 must be provided with AIS. The proposed rule would establish, for the 2013-2014 school year only, specific scale scores for English Language Arts and Mathematics examinations administered in each of the grades 3 through 8 that would require the provision of AIS to students scoring below such scale scores.

Historically, students who have scored below proficient on State assessments in English language arts or mathematics have been required to receive AIS. However, proficiency standards on the 2012 and the 2013 state assessments cannot be directly compared because the 2012 tests were designed to measure the learning standards established in 2005, which are different than the new Common Core Learning Standards (CCLS) measured on the 2013 tests. Despite the change in scales, the Department can determine the scale scores for each respective year that are associated with students who scored at the same percentile rank on the two assessments. The Department proposes using these percentile ranks as the basis for determining which students must be provided Academic Intervention Services during this transition year as this approach ensures that the change in proficiency rates will not result in a significant increase in the percentage of students who must receive AIS. The cut scores that the Department proposes be used will result in districts being required to provide AIS to approximately the same percentages of students Statewide in the 2013-2014 school year as received AIS in the 2012-2013 school year. This is analogous to the action taken by the Regents in 2010 to address the raising of the cut scores on the 2010 Grade 3-8 English language arts and mathematics assessments (see New York State Register, November 10, 2010; EDU-31-10-00004-A).

Specifically, the proposed amendment provides that for the 2013-2014 school year only:

(1) Students scoring below specific scale scores, as set forth in section 100.2(ee)(2)(i)(a)(3) of the proposed rule, for English Language Arts and Mathematics examinations administered in each of the grades 3 through 8, must receive academic intervention instructional services.

(2) Students scoring at or above such scale scores but below level 3/proficient will not be required to receive academic intervention instructional and/or student support services unless the school district deems it necessary.

(3) Each school district shall develop and maintain on file a uniform process by which the district determines whether to offer AIS during the 2013-14 school year to students who scored above such scale scores but below level 3/proficient on a grade 3-8 English language arts or mathematics State assessment in 2012-2013, and shall either post to its Website or distribute to parents in writing a description of such process no later than November 1, 2013.

4. COSTS:

(a) Costs to State government: None.

(b) Costs to local government: The proposed amendment establishes modified requirements for the provision of AIS during the 2013-2014 school year to provide flexibility to school districts from the potential impact of an anticipated increase in the number of students required to receive AIS as a result of the transition to the new Common Core Learning

Standards. School districts may incur some costs associated with distributing to parents of students a written description of the district's process for determining whether AIS will be offered to students who scored at or above who scored at or above specific scale scores specified in the regulation but below level 3/proficient on a grade 3-8 English language arts or mathematics State assessment in 2012-2013. However, the proposed amendment allows school districts to post the description on its Website in lieu of distributing to parents, and it is anticipated that any associated costs would be minimal and can be absorbed using existing district staff and resources. More importantly, any such costs would be more than offset by the reduction in costs to schools districts resulting from implementation of the modified AIS requirements in the 2013-2014 school year.

(c) Costs to private regulated parties: None.

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

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment does not impose any additional program, service, duty or responsibility upon local governments but merely establishes modified requirements for the provision of AIS during the 2013-2014 school year to provide flexibility to school districts from the potential impact of an anticipated increase in the number of students required to receive AIS as a result of the transition to the new Common Core Learning Standards.

6. PAPERWORK:

The proposed amendment requires each school district to develop and maintain on file a uniform process by which the district determines whether to offer AIS during the 2013-2014 school year to students who scored at or above specific scale scores, as set forth in section 100.2(ee)(2)(i)(a)(3) of the proposed rule for English Language Arts and Mathematics examinations administered in each of the grades 3 through 8, but below level 3/proficient on a grade 3-8 English language arts or mathematics State assessment in 2012-2013, and to either post to its Website or distribute to parents in writing a description of such process no later than November 1, 2013.

7. DUPLICATION:

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

8. ALTERNATIVES:

There were no significant alternatives and none were considered. The proposed rule is necessary to provide flexibility to school districts in providing AIS during the 2013-2014 school year relating to the potential impact of an anticipated increase in the number of students who would otherwise be required to receive AIS as a result of the transition to the new Common Core Learning Standards.

9. FEDERAL STANDARDS:

There are no related federal standards.

10. COMPLIANCE SCHEDULE:

It is anticipated regulated parties will be able to achieve compliance with the proposed rule by its effective date.

Regulatory Flexibility Analysis

Small Businesses:

The proposed amendment establishes modified requirements for the provision of Academic Intervention Services (AIS) during the 2013-2014 school year to provide flexibility to school districts from the potential impact of an anticipated increase in the number of students required to receive AIS as a result of the transition to the Common Core Learning Standards. The proposed amendment does not impose any adverse economic impact, reporting, record keeping or any other compliance requirements on small businesses. Because it is evident from the nature of the proposed amendment that it does not affect small businesses, no further measures were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses is not required and one has not been prepared.

Local Government:

1. EFFECT OF RULE:

The proposed amendment applies to each of the 695 public school districts in the State.

2. COMPLIANCE REQUIREMENTS:

The proposed amendment modifies the test cut scores for the required provision of Academic Intervention Services (AIS) to students during the 2013-2014 school year. Under the present rule, those students scoring at or below a scale score of 650 must be provided with AIS. The proposed rule would establish, for the 2013-2014 school year only, specific scale scores for English Language Arts and Mathematics examinations administered in each of the grades 3 through 8 that would require the provision of AIS to students scoring below such scale scores.

Historically, students who have scored below proficient on State assessments in English language arts or mathematics have been required to receive AIS. However, proficiency standards on the 2012 and the 2013

state assessments cannot be directly compared because the 2012 tests were designed to measure the learning standards established in 2005, which are different than the new Common Core Learning Standards (CCLS) measured on the 2013 tests. Despite the change in scales, the Department can determine the scale scores for each respective year that are associated with students who scored at the same percentile rank on the two assessments. The Department proposes using these percentile ranks as the basis for determining which students must be provided Academic Intervention Services during this transition year as this approach ensures that the change in proficiency rates will not result in a significant increase in the percentage of students who must receive AIS. The cut scores that the Department proposes be used will result in districts being required to provide AIS to approximately the same percentages of students Statewide in the 2013-2014 school year as received AIS in the 2012-2013 school year. This is analogous to the action taken by the Regents in 2010 to address the raising of the cut scores on the 2010 Grade 3-8 English language arts and mathematics assessments (see New York State Register, November 10, 2010; EDU-31-10-00004-A).

Specifically, the proposed amendment provides that for the 2013-2014 school year only:

(1) Students scoring below specific scale scores, as set forth in section 100.2(ee)(2)(i)(a)(3) of the proposed rule, for English Language Arts and Mathematics examinations administered in each of the grades 3 through 8, must receive academic intervention instructional services.

(2) Students scoring at or above such scale scores but below level 3/proficient will not be required to receive academic intervention instructional and/or student support services unless the school district deems it necessary.

(3) Each school district shall develop and maintain on file a uniform process by which the district determines whether to offer AIS during the 2013-14 school year to students who scored above such scale scores but below level 3/proficient on a grade 3-8 English language arts or mathematics State assessment in 2012-2013, and shall either post to its Website or distribute to parents in writing a description of such process no later than November 1, 2013.

3. PROFESSIONAL SERVICES:

The proposed amendment imposes no additional professional service requirements on school districts.

4. COMPLIANCE COSTS:

The proposed amendment establishes modified requirements for the provision of AIS during the 2013-2014 school year to provide flexibility to school districts from the potential impact of an anticipated increase in the number of students required to receive AIS as a result of the transition to the new Common Core Learning Standards. School districts may incur some costs associated with distributing to parents of students a written description of the district's process for determining whether AIS will be offered to students who scored at or above who scored at or above specific scale scores, as set forth in section 100.2(ee)(2)(i)(a)(3) of the proposed rule, for English Language Arts and Mathematics examinations administered in each of the grades 3 through 8, but below level 3/proficient on a grade 3-8 English language arts or mathematics State assessment in 2012-2013. However, the proposed amendment allows school districts to post the description on its Website in lieu of distributing to parents, and it is anticipated that any associated costs would be minimal and can be absorbed using existing district staff and resources. More importantly, any such costs would be more than offset by the reduction in costs to schools districts resulting from implementation of the modified AIS requirements in the 2013-2014 school year.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The proposed amendment does not impose any technological requirements on school districts. Economic feasibility is addressed under the Costs section above.

6. MINIMIZING ADVERSE IMPACT:

The proposed amendment is necessary to implement policy enacted by the Board of Regents and establishes modified requirements for the provision of AIS during the 2013-2014 school year to provide flexibility to school districts from the potential impact of an anticipated increase in the number of students required to receive AIS as a result of the transition to the new Common Core Learning Standards.

7. SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION:

Comments on the proposed rule were solicited from school districts through the offices of the district superintendents of each supervisory district in the State, and from the chief school officers of the five big city school districts.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed rule applies to all school districts in the State, including those located in the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square mile or less.

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

The proposed amendment modifies the test cut scores for the required provision of Academic Intervention Services (AIS) to students during the 2013-2014 school year. Under the present rule, those students scoring at or below a scale score of 650 must be provided with AIS. The proposed rule would establish, for the 2013-2014 school year only, specific scale scores for English Language Arts and Mathematics examinations administered in each of the grades 3 through 8 that would require the provision of AIS to students scoring below such scale scores.

Historically, students who have scored below proficient on State assessments in English language arts or mathematics have been required to receive AIS. However, proficiency standards on the 2012 and the 2013 state assessments cannot be directly compared because the 2012 tests were designed to measure the learning standards established in 2005, which are different than the new Common Core Learning Standards (CCLS) measured on the 2013 tests. Despite the change in scales, the Department can determine the scale scores for each respective year that are associated with students who scored at the same percentile rank on the two assessments. The Department proposes using these percentile ranks as the basis for determining which students must be provided Academic Intervention Services during this transition year as this approach ensures that the change in proficiency rates will not result in a significant increase in the percentage of students who must receive AIS. The cut scores that the Department proposes be used will result in districts being required to provide AIS to approximately the same percentages of students Statewide in the 2013-2014 school year as received AIS in the 2012-2013 school year. This is analogous to the action taken by the Regents in 2010 to address the raising of the cut scores on the 2010 Grade 3-8 English language arts and mathematics assessments (see New York State Register, November 10, 2010; EDU-31-10-00004-A).

Specifically, the proposed amendment provides that for the 2013-2014 school year only:

(1) Students scoring below specific scale scores, as set forth in section 100.2(ee)(2)(i)(a)(3) of the proposed rule, for English Language Arts and Mathematics examinations administered in each of the grades 3 through 8, must receive academic intervention instructional services.

(2) Students scoring at or above such scale scores but below level 3/proficient will not be required to receive academic intervention instructional and/or student support services unless the school district deems it necessary.

(3) Each school district shall develop and maintain on file a uniform process by which the district determines whether to offer AIS during the 2013-14 school year to students who scored above such scale scores but below level 3/proficient on a grade 3-8 English language arts or mathematics State assessment in 2012-2013, and shall either post to its Website or distribute to parents in writing a description of such process no later than November 1, 2013.

The proposed amendment imposes no additional professional services requirements on school districts in rural areas.

3. COMPLIANCE COSTS:

The proposed amendment establishes modified requirements for the provision of AIS during the 2013-2014 school year to provide flexibility to school districts from the potential impact of an anticipated increase in the number of students required to receive AIS as a result of the transition to the new Common Core Learning Standards. School districts may incur some costs associated with distributing to parents of students a written description of the district's process for determining whether AIS will be offered to students who scored at or above who scored at or above specific scale scores, as set forth in section 100.2(ee)(2)(i)(a)(3) of the proposed rule, for English Language Arts and Mathematics examinations administered in each of the grades 3 through 8, but below level 3/proficient on a grade 3-8 English language arts or mathematics State assessment in 2012-2013. However, the proposed amendment allows school districts to post the description on its Website in lieu of distributing to parents, and it is anticipated that any associated costs would be minimal and can be absorbed using existing district staff and resources. More importantly, any such costs would be more than offset by the reduction in costs to schools districts resulting from implementation of the modified AIS requirements in the 2013-2014 school year.

4. MINIMIZING ADVERSE IMPACT:

The proposed amendment is necessary to implement policy enacted by the Board of Regents and establishes modified requirements for the provision of AIS during the 2013-2014 school year to provide flexibility to school districts from the potential impact of an anticipated increase in the number of students required to receive AIS as a result of the transition to the new Common Core Learning Standards. Because the Regents policy upon which the proposed amendment is based applies to all persons seeking a New York State High School Equivalency diploma, it is not possible to establish differing compliance or reporting requirements or timetables

or to exempt school districts in rural areas from coverage by the proposed amendment.

5. RURAL AREA PARTICIPATION:

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

Job Impact Statement

The proposed amendment establishes modified requirements for the provision of AIS during the 2013-2014 school year to provide flexibility to school districts from the potential impact of an anticipated increase in the number of students required to receive AIS as a result of the transition to the new Common Core Learning Standards. The proposed amendment does not impose any adverse economic impact, reporting, record keeping or any other compliance requirements on small businesses. Because it is evident from the nature of the proposed amendment that it does not affect small businesses, no further measures were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses is not required and one has not been prepared.

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Duration of Competition in High School Athletics

I.D. No. EDU-40-13-00006-EP

Filing No. 923

Filing Date: 2013-09-17

Effective Date: 2013-09-17

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

Proposed Action: Amendment of section 135.4 of Title 8 NYCRR.

Statutory authority: Education Law, sections 101 (not subdivided), 207 (not subdivided), 305(1), (2), 803 (not subdivided), and 3204(2) and (3)

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

Specific reasons underlying the finding of necessity: The proposed amendment will eliminate the one additional season restriction in Commissioner's Regulations § 135.4(c)(7)(ii)(d) to allow students with disabilities to participate in a non-contact sport for one or more additional seasons if they meet the criteria for a waiver as specified in the regulation.

Because the Board of Regents meets at scheduled intervals, the earliest the proposed amendment could be presented for regular (non-emergency) adoption, after publication in the State Register and expiration of the 45-day public comment period provided for in State Administrative Procedure Act (SAPA) section 202(1) and (5), is the December 16-17, 2013 Regents meeting. Furthermore, pursuant to SAPA section 203(1), the earliest effective date of the proposed amendment, if adopted at the December meeting, would be January 1, 2014, the date a Notice of Adoption would be published in the State Register. However, emergency action to adopt the proposed rule immediately is necessary for the preservation of the general welfare to ensure that school districts and affected students are given sufficient and timely notice of the availability of a waiver to allow for participation in senior high school non-contact athletic competition during the 2013-2014 school year by students with disabilities who have previously obtained a waiver pursuant to such provision, and thereby enable them to prepare for and timely implement these requirements.

It is anticipated that the emergency rule will be presented to the Board of Regents for adoption as a permanent rule at the December 16-17, 2013 Regents meeting, which is the first scheduled meeting after expiration of the 45-day public comment period mandated by the State Administrative Procedure Act for proposed rulemakings.

Subject: Duration of competition in high school athletics.

Purpose: To eliminate the one additional season limit on waivers for students with disabilities to participate in athletic competition.

Text of emergency/proposed rule: Clause (d) of subparagraph (ii) of paragraph (7) of subdivision (c) of section 135.4 of the Regulations of the Commissioner of Education is amended, effective September 17, 2013, as follows:

(d) Waiver from the age requirement and four-year limitation for interschool athletic competition for students with disabilities in senior high school grades 9, 10, 11, and 12. For purposes of this clause, the term non-contact sport shall include swimming and diving, golf, track and field, cross country, rifle, bowling, gymnastics, skiing and archery, and any other such non-contact sport deemed appropriate by the Commissioner. A

student with a disability, as defined in section 4401 of the Education Law, who has not yet graduated from high school may be eligible to participate in a senior high school noncontact athletic competition [for a fifth year] under the following limited conditions:

(1) such student must apply for and be granted a waiver to the age requirement and four-year limitation prescribed in subclause (b)(1) of this subparagraph. A waiver shall only be granted upon a determination by the superintendent of schools or chief executive officer of the school or school system, as applicable, that the given student meets the following criteria:

(i) such student has not graduated from high school as a result of his or her disability delaying his or her education for one year or more;

(ii) such student is otherwise qualified to compete in the athletic competition for which he or she is applying for a waiver and the student must have been selected for such competition in the past;

[(iii)] such student has not already participated in an additional season of athletic competition pursuant to a waiver granted under this subclause;]

[(iv)] [(iii)] such student has undergone a physical evaluation by the school physician, which shall include an assessment of the student's level of physical development and maturity, and the school physician has determined that the student's participation in such competition will not present a safety or health concern for such student; and

[(v)] [(iv)] the superintendent of schools or chief executive officer of the school or school system has determined that the given student's participation in the athletic competition will not adversely affect the opportunity of the other students competing in the sport to successfully participate in such competition.

(2) Such student's participation in the additional season of such athletic competition shall not be scored for purposes of such competition.

This notice is intended: to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire December 15, 2013.

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

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

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

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

Education Law section 101 charges the Department with the general management and supervision of public schools and the educational work of the State.

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

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

Education Law section 803 provides the Board of Regents with overall authority over physical education instruction in schools.

Education Law section 3204(2) and (3) relates to compulsory education.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment is consistent with the authority conferred by the above statutes and is necessary to implement policy enacted by the Board of Regents relating to the age and four-year duration of competition limitations for athletic competition by students with disabilities.

3. NEEDS AND BENEFITS:

Section 135.4(c)(7)(ii)(b)(1), relating to duration of competition, generally provides, with certain exceptions, that a student shall be eligible for athletic competition in a sport during each of four consecutive seasons of such sport commencing with the student's entry into ninth grade and prior to graduation, and shall be eligible for interschool competition in grades 9, 10, 11 and 12 until the last day of the school year in which the student attains the age of 19.

Section 135.4(c)(7)(ii)(d) currently provides a process for obtaining a waiver from the age requirement and four-year limitation for athletic com-

petition to allow students with disabilities, who would otherwise not be able to participate in interscholastic athletic competition due to their age and/or years in school, to participate in a non-contact athletic sport for an additional season.

The proposed amendment will eliminate the one additional season restriction by allowing students with disabilities to participate in a non-contact sport for one or more additional seasons if they meet all the other specified criteria for this waiver. This amendment will advance initiatives of inclusion by offering students with disabilities continued socialization with teammates and continued opportunity to develop the skills and abilities associated with such students' participation in such sports.

4. COSTS:

(a) Costs to State government: none.

(b) Costs to local government: It is anticipated that the waiver(s) provided by the proposed amendment will be exercised in limited circumstances, given the restrictions on eligibility for such waiver and the specific circumstances the proposed amendment is intended to address, and that any costs associated with the proposed amendment will be minimal and capable of being absorbed by existing staff, who currently are responsible for making similar decisions under existing regulations relating to a student's ability to participate in a sport.

(c) Costs to private regulated parties: For the same reasons as discussed in (b) above, it is anticipated that costs to private schools will be minimal and capable of being absorbed using existing staff and resources.

(d) Costs to the regulating agency for implementation and administration of this rule: It is anticipated that costs to the State Education Department to implement and enforce the regulations will be minimal and capable of being absorbed by existing staff.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment does not impose any additional program, service, duty or responsibility upon local governments, but merely eliminates the one additional season restriction for participation in a non-contact sport by students with disabilities pursuant to a waiver, to allow such students to participate for one or more additional seasons.

6. PAPERWORK:

This proposed amendment does not impose any additional paperwork requirements, but merely eliminates the one additional season restriction for participation in a non-contact sport by students with disabilities pursuant to a waiver, to allow such students to participate for one or more additional seasons.

7. DUPLICATION:

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

8. ALTERNATIVES:

There were no significant alternatives and none were considered.

9. FEDERAL STANDARDS:

There are no related federal standards.

10. COMPLIANCE SCHEDULE:

It is anticipated regulated parties will be able to achieve compliance with the proposed rule by its effective date.

Regulatory Flexibility Analysis

Small Businesses:

The proposed amendment is necessary to implement educational policy as determined by the Board of Regents by permitting, under certain specified circumstances, a waiver from the age requirement and four-year limitation for interschool athletic competition to students with disabilities in senior high school grades 9, 10, 11, and 12 who seek to participate in one or more additional seasons of interschool non-contact sport competition. The proposed amendment does not impose any adverse economic impact, reporting, record keeping or any other compliance requirements on small businesses. Because it is evident from the nature of the proposed amendment that it does not affect small businesses, no further measures were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses is not required and one has not been prepared.

Local Government:

1. EFFECT OF RULE:

The proposed amendment applies to each of the 695 school districts within the State.

2. COMPLIANCE REQUIREMENTS:

The proposed amendment does not impose any additional compliance requirements, but merely eliminates the additional season restriction for participation in a non-contact athletic sport by students with disabilities pursuant to a waiver, to allow such students to participate for one or more additional seasons.

3. PROFESSIONAL SERVICES:

The proposed amendment imposes no additional professional service requirements.

4. COMPLIANCE COSTS:

The proposed amendment does not impose any significant costs, but

merely eliminates the one additional season restriction for participation in a non-contact sport by students with disabilities pursuant to a waiver, to allow such students to participate for one or more additional seasons. It is anticipated that the waiver provided by the proposed amendment will be exercised in limited circumstances, given the restrictions on eligibility for such waiver and the specific circumstances the proposed amendment is intended to address, and that any costs associated with the proposed amendment will be minimal and capable of being absorbed by existing staff, who currently are responsible for making similar decisions under existing regulations relating to a student's ability to participate in a sport.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The proposed amendment does not impose any technological requirements on school districts. Economic feasibility is addressed under the Costs section above.

6. MINIMIZING ADVERSE IMPACT:

The proposed amendment is necessary to implement educational policy as determined by the Board of Regents by permitting, under certain specified circumstances, a waiver from the age requirement and four-year limitation for interschool athletic competition to students with disabilities who seek to participate in one or more additional seasons of non-contact athletic competition.

The proposed amendment has been carefully drafted to address the specific circumstances for granting a waiver and it is anticipated that the waiver will be exercised in limited circumstances, given the restrictions on eligibility for such waiver and the specific circumstances the proposed amendment is intended to address, and that any compliance requirements and costs associated with the proposed amendment will be minimal and capable of being absorbed by existing staff, who currently are responsible for making similar decisions under existing regulations relating to a student's ability to participate in a sport.

7. LOCAL GOVERNMENT PARTICIPATION:

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

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed rule applies to all school districts in the State, including those located in the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square mile or less.

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

The proposed amendment does not impose any additional reporting, recordkeeping or other compliance requirements, but merely eliminates the one additional season restriction for participation in non-contact athletic competition by students with disabilities pursuant to a waiver, to allow such students to participate for one or more additional seasons.

The proposed amendment imposes no additional professional service requirements.

3. COMPLIANCE COSTS:

The proposed amendment does not impose any significant costs, but merely eliminates the one additional season restriction for participation in non-contact athletic competition by students with disabilities pursuant to a waiver, to allow such students to participate for one or more additional seasons. It is anticipated that the waiver provided by the proposed amendment will be exercised in limited circumstances, given the restrictions on eligibility for such waiver and the specific circumstances the proposed amendment is intended to address, and that any costs associated with the proposed amendment will be minimal and capable of being absorbed by existing staff, who currently are responsible for making similar decisions under existing regulations relating to a student's ability to participate in a sport.

4. MINIMIZING ADVERSE IMPACT:

The proposed amendment is necessary to implement educational policy as determined by the Board of Regents by permitting, under certain specified circumstances, a waiver from the age requirement and four-year limitation for interschool athletic competition to students with disabilities who seek to participate in one or more additional seasons of non-contact athletic competition. The proposed amendment does not directly impose any additional compliance requirements or costs on school districts in rural areas.

The proposed amendment has been carefully drafted to address the specific circumstances for granting a waiver and it is anticipated that the waiver will be exercised in limited circumstances, given the restrictions on eligibility for such waiver and the specific circumstances the proposed amendment is intended to address, and that any compliance requirements and costs associated with the proposed amendment will be minimal and capable of being absorbed by existing staff, who currently are responsible

for making similar decisions under existing regulations relating to a student's ability to participate in a sport. Because the Regents policy upon which the proposed amendment is based applies to all school districts in the State, it is not possible to establish differing compliance or reporting requirements or timetables or to exempt schools in rural areas from coverage by the proposed amendment.

5. RURAL AREA PARTICIPATION:

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

Job Impact Statement

The proposed amendment is necessary to implement educational policy as determined by the Board of Regents by permitting, under certain specified circumstances, a waiver from the age requirement and four-year limitation for interschool athletic competition to students with disabilities in senior high school grades 9, 10, 11, and 12 who seek to participate in one or more additional seasons of interschool non-contact sport competition. The proposed amendment will not have an adverse impact on jobs or employment opportunities. Because it is evident from the nature of the amendment that it will have no impact on jobs or employment opportunities, no further steps were needed to ascertain those facts and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

NOTICE OF ADOPTION

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

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

Filing No. 918

Filing Date: 2013-09-17

Effective Date: 2013-10-02

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

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

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

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

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

Text of final rule: 1. Subdivision (d) of section 83.4 of the Regulations of the Commissioner of Education shall be amended, effective October 2, 2013, to read as follows:

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

(1) . . .

(2) . . .

(3) . . .

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

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

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

Final rule as compared with last published rule: Nonsubstantive changes were made in sections 83.4 and 83.5(b)(1)(iv).

Revised rule making(s) were previously published in the State Register on August 7, 2013.

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

Revised Regulatory Impact Statement

1. STATUTORY AUTHORITY:

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

Subdivision (7) of section 305 of the Education Law authorizes the Commissioner of Education to annul teaching certificates and establishes other penalties in proceedings brought against individuals holding such certificates.

Paragraph (a) of subdivision (30) of section 305 of the Education Law authorizes the Commissioner of Education to promulgate regulations to authorize the fingerprinting of prospective employees of nonpublic and private elementary and secondary schools, and for the use of information derived from searches of the records of the Division of Criminal Justice Services ("DCJS") and the Federal Bureau of Investigation ("FBI") based on the use of such fingerprints. This paragraph also requires the Commissioner, in cooperation with DCJS to promulgate a form to be provided to nonpublic or private elementary or secondary schools in connection with the submission of fingerprints and a form for the recordation of allegations of child abuse in an educational setting.

Paragraph (b) of subdivision (30) of Section 305 of the Education Law requires the Commissioner of Education, in cooperation with DCJS, to promulgate a form to be provided to all prospective employees of nonpublic and private elementary and secondary schools that elect to fingerprint and seek clearance for prospective employees to inform the prospective employee that the Commissioner is authorized to request his or her criminal history information and that the employee has the right to obtain, review and seek correction of such information.

Paragraph (c) of subdivision (30) of Section 305 of the Education Law requires the prospective employer to obtain the signed, informed consent of the prospective employee on a form supplied by the Commissioner of Education.

Paragraph (d) of subdivision (30) of Section 305 of the Education Law requires the Commissioner to develop forms to be provided to all nonpublic or private elementary and secondary schools that elect to fingerprint their prospective employees, to be completed and signed by prospective employees when conditional appointment or emergency conditional appointment is offered.

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

Subdivision (2) of section 3001-d of the Education Law authorizes nonpublic or private elementary or secondary schools to apply to the Commissioner for criminal history record checks on prospective employees.

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

Section 3004-c provides that when the Commissioner determines that a certification be denied, the applicant shall be afforded notice and the right to be heard and offer proof in opposition to such determination in accordance with regulations of the Commissioner.

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

Subdivision (1) of section 3009 of the Education Law provides that no part of the school moneys apportioned to a district shall be applied to the payment of the salary of an unqualified teacher, nor shall his salary or part thereof, be collected by a district tax except as provided in the Education Law.

Section 3010 of the Education Law provides that any trustee or member of a board of education who applies, or directs, or consents to the application of, any district money to the payment of an unqualified teacher's salary, commits a misdemeanor.

Subdivision (1) of section 3035 of the Education Law authorizes the Commissioner of Education to submit to DCJS two sets of fingerprints for prospective school employees along with processing fees, for the purpose of obtaining criminal history records from DCJS and the FBI.

Paragraph (a) of subdivision (3) of section 3035 of the Education Law requires the Commissioner of Education to promptly notify the nonpublic or private elementary or secondary school when the prospective school employee is cleared for employment based on his or criminal history and provides a prospective school employee who is denied clearance the right to be heard and offer proof in opposition to such determination in accordance with the Regulations of the Commissioner of Education.

Paragraph (b) of subdivision (3) of section 3035 of the Education Law requires the Commissioner of Education to promptly notify the prospective employee and the appropriate nonpublic or private elementary or secondary school when a prospective employee is conditionally cleared for employment based upon his or her criminal history or that more time is needed to make the determination.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment carries out the objectives of the above-referenced statutes to ensure the security of fingerprints and other information provided as part of a criminal history check of prospective school employees pursuant to Education Law section 305(30), by providing for the expedited removal of school district personnel that commit crimes involving the submission of false information, or the commission of fraud, related to a criminal history record check.

3. NEEDS AND BENEFITS:

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

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

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

4. COSTS:

- (a) Costs to State government: None.
- (b) Costs to local government: None.
- (c) Costs to private regulated parties: None.
- (d) Costs to the regulatory agency: None.

The proposed amendment will not impose any costs on the State, local governments, private regulated parties, or the State Education Department. By establishing a rebuttable presumption that a teacher or school administrator who is convicted of any crime relating to the submission of false information, or who has committed fraud, relating to his/her criminal history record check lacks good moral character, the proposed amendment will reduce costs to the State Education Department associated with conducting moral character hearings under Part 83 of the Commissioner's Regulations, by expediting the removal of teachers and administrators that commit crimes involving the submission of false information, or the commission of fraud, related to a criminal history record check.

5. LOCAL GOVERNMENT MANDATES:

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

the removal of teachers and administrators that commit crimes involving the submission of false information, or the commission of fraud, related to a criminal history record check.

6. PAPERWORK:

The proposed amendment does not impose any additional paperwork or recordkeeping requirements.

7. DUPLICATION:

The proposed amendment does not duplicate other requirements of State and Federal government.

8. ALTERNATIVES:

There are no significant alternatives to the proposed amendment, and none were considered.

9. FEDERAL STANDARDS:

There are no Federal requirements relating to the subject matter of the proposed amendment.

10. COMPLIANCE SCHEDULE:

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

Revised Regulatory Flexibility Analysis

The proposed amendment relates to evidentiary standards in the conduct of moral character hearings for certified teachers and other certified school personnel under Part 83 of the Commissioner's Regulations, and will not impose any adverse economic, reporting, recordkeeping, or any other compliance requirements on small businesses or local governments. Because it is evident from the nature of the rule that it does not affect small businesses or local governments, no further steps were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses and local governments is not required and one has not been prepared.

Revised Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed amendment would apply to holders of teaching certificates or other certificates issued pursuant to Part 80 of the Commissioner's Regulations in New York State, including those who live or work in the 44 rural counties with fewer than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 square miles.

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

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

3. COSTS:

The proposed amendment will not impose any costs on public or private entities located in rural areas.

4. MINIMIZING ADVERSE IMPACT:

The proposed amendment does not impose any compliance requirements or costs on public or private entities located in rural areas. The proposed amendment relates to evidentiary standards in the conduct of moral character hearings for certified teachers and other certified school personnel under Part 83 of the Commissioner's Regulations, and merely establishes a rebuttable presumption that a teacher or school administrator

who is convicted of any crime relating to the submission of false information, or who has committed fraud, relating to his/her criminal history record check lacks good moral character. The proposed amendment also authorizes the Commissioner to initiate a review of the findings and recommendation of a hearing officer or hearing panel in cases involving convictions for any crimes involving the submission of false information, or the commission of fraud, related to a criminal history check. The proposed amendment will thereby expedite the removal of teachers and administrators that commit crimes involving the submission of false information, or the commission of fraud, related to a criminal history record check. Because evidentiary standards in Part 83 moral character hearings must be uniformly applicable throughout the State in order to meet Constitutional requirements, it is not possible to establish differing requirements for or to exempt affected individuals in rural areas.

5. RURAL AREA PARTICIPATION:

Comments on the proposed amendment were solicited from the Rural Education Advisory Committee, which includes representatives of school districts located in rural areas. In addition, the Department has distributed copies of the proposed amendment for review and comment by the Department's Professional Standards and Practices Board for Teaching, which includes representatives of teachers, school administrators, institutions offering teacher preparatory programs, the general public, and students in teacher education programs. The Board includes members who live or work in rural areas.

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

Pursuant to State Administrative Procedure Act section 207(1)(b), the State Education Department proposes that the initial review of this rule shall occur in the fifth calendar year after the year in which the rule is adopted, instead of in the third calendar year. The justification for a five year review period is that the proposed amendment is part of long-range Regents policy enactments to ensure the integrity and security of fingerprinting and other aspects of the criminal background checks of prospective school employees. The Department has taken steps to better ensure the security of fingerprints in recent years by growing the number of fingerprints collected electronically. Approximately 75 percent of fingerprints are collected electronically, which reduces the opportunity for the integrity of fingerprints to be compromised. However, the Department has begun to review the fingerprinting process to close potential gaps that may exist, such as the ability of a person to submit false fingerprints. As part of this review, the Department has determined that the proposed amendment is needed to expedite the removal of school district personnel that commit certain crimes. Currently, there are no provisions to expeditiously address actions related to fingerprint fraud, which can result in convicted felons whose presence in the classroom or school poses a danger to the safety of students and/or staff evading the criminal history record check process and gaining access to schools. The proposed amendment establishes a rebuttable presumption that a teacher or school administrator who is convicted of any crime relating to the submission of false information, or who has committed fraud, Accordingly, there is no need for a shorter review period.

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

Revised Job Impact Statement

The proposed amendment relates to evidentiary standards in the conduct of moral character hearings for certified teachers and other certified school personnel under Part 83 of the Commissioner's Regulations, and will not have an adverse impact on jobs or employment opportunities. Because it is evident from the nature of the proposed amendment that it will have a positive impact, or no impact, on jobs or employment opportunities, no further steps were needed to ascertain those facts and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

Initial Review of Rule

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

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

Assessment of Public Comment

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

1. One commenter notes that currently 8 NYCRR § 83.4(d) lists three

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

DEPARTMENT RESPONSE:

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

2. COMMENT:

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

DEPARTMENT RESPONSE:

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

NOTICE OF ADOPTION

Fiscal Audits of Special Education Preschool Programs and Services for Which a Municipality Bears Responsibility

I.D. No. EDU-24-13-00005-A

Filing No. 921

Filing Date: 2013-09-17

Effective Date: 2013-10-02

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

Action taken: Amendment of section 200.18 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207 (not subdivided), 4401(2), 4403(3), 4410(1)(g), (11)(c)(i), (ii) and (13); and L. 2013, ch. 57, section 24

Subject: Fiscal audits of special education preschool programs and services for which a municipality bears responsibility.

Purpose: Implements L. 2010, ch. 57, section 24 by establishing standards and procedures for municipalities to perform fiscal audits.

Text or summary was published in the June 12, 2013 issue of the Register, I.D. No. EDU-24-13-00005-EP.

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

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

Initial Review of Rule

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Annual Professional Performance Review (APPR)

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

Filing No. 914

Filing Date: 2013-09-17

Effective Date: 2013-10-02

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

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

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

Subject: Annual Professional Performance Review (APPR).

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

Text or summary was published in the July 10, 2013 issue of the Register, I.D. No. EDU-28-13-00007-EP.

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

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

Initial Review of Rule

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

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Employment of Retired Public Employees

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

Filing No. 916

Filing Date: 2013-09-17

Effective Date: 2013-10-02

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

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

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

Subject: Employment of Retired Public Employees.

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

Text or summary was published in the July 10, 2013 issue of the Register, I.D. No. EDU-28-13-00008-EP.

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

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

Initial Review of Rule

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

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Teacher and School District Leader Certification Examinations

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

Filing No. 919

Filing Date: 2013-09-17

Effective Date: 2013-10-02

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

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

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

Subject: Teacher and school district leader certification examinations.

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

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

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

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

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

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

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

(b) . . .

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

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

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

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

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

(iii) Examination.

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

(b) A candidate who applies for certification on or after May 1,

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

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

(iii) Examination.

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

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

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

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

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

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

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

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

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

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

(v) Examination requirement.

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

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

achieved a satisfactory level of performance on the educating all students test.

Final rule as compared with last published rule: Nonsubstantive changes were made in section 80-3.4(c)(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 July 10, 2013, a nonsubstantial revision was made to the proposed rule as follows:

The language in sections 80-3.4(c)(1)(iii) and 80-3.4(c)(2)(iii) was amended to read that candidates will be required to achieve a satisfactory score on CTE performance assessments when “developed and required” instead of when “developed and available” to make the language consistent with language in other sections of the proposed amendment.

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 July 10, 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 July 10, 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 purpose of the proposed amendment, as revised, is to adopt technical amendments to the Commissioner’s Regulations relating to certification examination requirements for certain teachers and school building leaders. Because it is evident from the nature of the proposed amendment that it will have no impact on the number of jobs or employment opportunities in New York State, no further steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, 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.

NOTICE OF ADOPTION

Special Education Space Plans

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

Filing No. 920

Filing Date: 2013-09-17

Effective Date: 2013-10-02

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

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

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

Subject: Special education space plans.

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

Text or summary was published in the July 10, 2013 issue of the Register, I.D. No. EDU-28-13-00012-P.

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

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

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 July 10, 2013, the State Education Department received the following comments on the proposed amendment.

1. COMMENT:

Elimination of the space plan requirements will provide necessary relief and allow for more natural discussions regarding the needs of the region in leadership forums. Overly restrictive regulations cost districts money and remove their ability to devise common sense solutions to meet the learning needs of students and fiscal needs of local communities. Overly redundant procedures are a waste of tax payer dollars. Unless there is a proposed change to existing space there should be no need for review. Proposal greatly reduces bureaucratic waste by decentralizing approval authority for special education instructional space. Placing trust in the hands of local authorities is a sound organizational decision that saves the State and individual districts money while still meeting the needs of students with disabilities.

DEPARTMENT RESPONSE:

Comments are supportive in nature and no response is necessary.

2. COMMENT:

Support adding that the district superintendent of schools of each BOCES must determine the adequacy and appropriateness of the facilities space available to house special education programs in the geographic area served by the BOCES. The district superintendent is well connected with the component district superintendents and will be able to hold these discussions adequately in the monthly forums with school administrators. Monthly regional meetings of various groups such as the superintendents, assistant superintendents for instruction, and Pupil Personnel staff will allow for consideration of the needs of students with disabilities.

DEPARTMENT RESPONSE:

Comments are supportive in nature and no response is necessary.

3. COMMENT:

One commenter indicated opposition to the proposal without reasons or recommendations except to indicate that "It is imperative that standards be developed and adhered to."

DEPARTMENT RESPONSE:

Consistent with Chapter 57, the proposed amendment repeals the special education space plan requirements, but requires the district superintendent of each board of cooperative educational services (BOCES) to determine the adequacy and appropriateness of the facilities space available to house special education programs in the geographic area served by the BOCES. The facilities space must be consistent with the least restrictive environment (LRE) requirement and ensure the stability and continuity of program placements for students with disabilities, including procedures that ensure that special education programs and services located in appropriate facilities will not be relocated without adequate consideration of the needs of participating students with disabilities. In addition, as part of the State Performance Plan and Annual Performance Report, required by the reauthorized Individuals with Disabilities Education Act, New York must collect and publicly report on each school district's LRE placements for students with disabilities in relation to the State's targets. These requirements will continue to ensure that each school district provides appropriate educational space for students with disabilities in the least restrictive environment, which was the intended purpose of special education space planning requirements.

REVISED RULE MAKING NO HEARING(S) SCHEDULED

Regents Research Paper

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

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

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

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

(not subdivided), 208 (not subdivided), 209 (not subdivided), 305(1) and (2), 308 (not subdivided), 309 (not subdivided) and 3204(3)

Subject: Regents research paper.

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

Text of revised rule: Subdivision (a) of section 100.5 of the Regulations of the Commissioner of Education is amended, effective December 4, 2013, as follows:

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

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

(9) All students first entering grade nine in September 2014 and thereafter, shall satisfactorily complete a Regents Research Paper in a format as prescribed by the commissioner including, but not limited to, the following:

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

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

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

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

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

Revised rule compared with proposed rule: Substantial revisions were made in section 100.5(a)(9).

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

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

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

Revised Regulatory Impact Statement

Since publication of a Notice of Proposed Rule Making in the State Register on July 10, 2013, the proposed rule has been revised as follows:

Paragraph (9) of subdivision (a) of section 100.5 has been revised to provide for implementation of the Regents Research Paper requirement beginning with all students who first enter grade nine in September 2014, instead of September 2013. This will provide more time for school districts, staff and students to prepare for and ensure implementation of the research paper requirement consistent with the Common Core State Standards (CCSS).

The above change requires that the Needs and Benefits, Costs, Local Government Mandates, Alternatives, and Compliance Schedule sections of the previously published Regulatory Impact Statement be revised to as follows:

3. NEEDS AND BENEFITS:

The Board of Regents adopted the Common Core State Standards (CCSS) for English Language Arts & Literacy and Mathematics at its July 2010 meeting and incorporated New York-specific additions, creating the Common Core Learning Standards (CCLS), at its January 2011 meeting.

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

The proposed addition of section 100.5(a)(9) of the Commissioner's regulations would establish a Regents Research Paper requirement as an opportunity for students to demonstrate necessary college and career readiness skills and CCLS writing standards that cannot be measured in an examination setting due to time constraints. The rule would require the completion of a Regents Research Paper for graduation with a Regents or local high school diploma, beginning with those students who first enter grade 9 in September 2014 and thereafter, and would establish the following minimum standards for the Regents Research Paper:

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

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

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

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

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

4. COSTS:

(a) Costs to State government: None.

(b) Costs to local government: None.

(c) Costs to private regulated parties: None.

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

The proposed rule would require the completion of a Regents Research Paper for graduation with a Regents or local high school diploma, beginning with those students who first enter grade 9 in September 2014 and thereafter. The rule does not impose any direct costs on school districts. Instruction and guidance in the research process would occur in English class to address the CCLS. The educator(s) within the school responsible for coordination, logistics, and scoring of the paper could be determined locally by the school district or building principal. It is anticipated that any indirect costs associated with these actions will be minimal and capable of being absorbed using existing school resources.

5. LOCAL GOVERNMENT MANDATES:

The proposed rule would require the completion of a Regents Research Paper for graduation with a Regents or local high school diploma, beginning with those students who first enter grade 9 in September 2014 and thereafter. The proposed rule does not impose any additional program, service, duty or responsibility upon school districts, charter schools or other local governments. Instruction and guidance in the research process would occur in English class to address the CCLS. The educator(s) within the school responsible for coordination, logistics, and scoring of the paper could be determined locally by the school district or building principal.

8. ALTERNATIVES:

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

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

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

10. COMPLIANCE SCHEDULE:

It is anticipated regulated parties will be able to achieve compliance with the proposed rule by its effective date. The Research Paper will be a graduation requirement for a Regents or local diploma that is applicable to students who first enter grade 9 in September 2014 and thereafter. Therefore, Research Papers will not need to be completed until at least four years from September 2014. Furthermore, the Department intends to take steps to provide sufficient notice of the proposed rule to ensure that school districts and students are made aware of the rule's requirements so they may timely prepare for and implement this requirement. The Department will also take steps to share a variety of resources to school districts to provide guidance with implementation.

Revised Regulatory Flexibility Analysis

Since publication of a Notice of Proposed Rule Making in the State Register on July 10, 2013, the proposed rule has been revised as set forth in the Revised Regulatory Impact Statement published herewith.

The revision requires that the Compliance Requirements, Compliance Costs and Minimizing Adverse Impact sections of the previously published Regulatory Flexibility Analysis be revised as follows:

2. COMPLIANCE REQUIREMENTS:

The proposed rule would require the completion of a Regents Research Paper for graduation with a Regents or local high school diploma, beginning with those students who first enter grade 9 in September 2014 and thereafter. The proposed rule does not impose any compliance requirements upon school districts, charter schools or other local governments. Instruction and guidance in the research process would occur in English class to address the CCLS. The educator(s) within the school responsible for coordination, logistics, and scoring of the paper could be determined locally by the school district or building principal.

4. COMPLIANCE COSTS:

The proposed rule would require the completion of a Regents Research Paper for graduation with a Regents or local high school diploma, beginning with those students who first enter grade 9 in September 2014 and thereafter. The rule does not impose any direct costs on school districts. Instruction and guidance in the research process would occur in English class to address the CCLS. The educator(s) within the school responsible for coordination, logistics, and scoring of the paper could be determined locally by the school district or building principal. It is anticipated that any indirect costs associated with these actions will be minimal and capable of being absorbed using existing school resources.

6. MINIMIZING ADVERSE IMPACT:

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

The proposed amendment is necessary to ensure implementation of the Common Core Learning Standards (CCLS) adopted by the Board of Regents in January 2011. To ensure implementation of the CCLS in line with the Regents Reform Agenda and the State's approved Race to the Top (RTTT) application, the proposed rule requires that all students entering grade nine in September 2014 and thereafter must complete a Regents Research Paper for graduation with a Regents or local high school diploma. Because the Regents policy upon which the proposed rule is based applies to all school districts in the State and to charter schools authorized to issue Regents diplomas, it is not possible to establish differing compliance or reporting requirements or timetables or to exempt school districts or charter schools from coverage by the proposed rule.

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

Revised Rural Area Flexibility Analysis

Since publication of a Notice of Proposed Rule Making in the State Register on July 10, 2013, the proposed rule has been revised as set forth in the Revised Regulatory Impact Statement published herewith.

The revision requires that the Reporting, Recordkeeping and Other Compliance Requirements; and Professional Services, Compliance Costs and Minimizing Adverse Impact sections of the previously published Rural Area Flexibility Analysis be revised as follows:

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

The proposed rule would require the completion of a Regents Research Paper for graduation with a Regents or local high school diploma, beginning with those students who first enter grade 9 in September 2014 and thereafter. The proposed rule does not impose any compliance requirements upon schools in rural areas. Instruction and guidance in the research

process would occur in English class to address the CCLS. The educator(s) within the school responsible for coordination, logistics, and scoring of the paper could be determined locally by the school district or building principal.

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

3. COMPLIANCE COSTS:

The proposed rule would require the completion of a Regents Research Paper for graduation with a Regents or local high school diploma, beginning with those students who first enter grade 9 in September 2014 and thereafter. The rule does not impose any direct costs on schools in rural areas. Instruction and guidance in the research process would occur in English class to address the CCLS. The educator(s) within the school responsible for coordination, logistics, and scoring of the paper could be determined locally by the school district or building principal. It is anticipated that any indirect costs associated with these actions will be minimal and capable of being absorbed using existing school resources.

4. MINIMIZING ADVERSE IMPACT:

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

The proposed amendment is necessary to ensure implementation of the Common Core Learning Standards (CCLS) adopted by the Board of Regents in January 2011. To ensure implementation of the CCLS in line with the Regents Reform Agenda and the State's approved Race to the Top (RTTT) application, the proposed rule requires that all students entering grade nine in September 2014 and thereafter must complete a Regents Research Paper for graduation with a Regents or local high school diploma. Because the Regents policy upon which the proposed rule is based applies to all school districts in the State and to charter schools authorized to issue Regents diplomas, it is not possible to establish differing compliance or reporting requirements or timetables or to exempt schools in rural areas from coverage by the proposed amendment.

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

Revised Job Impact Statement

Since publication of a Notice of Proposed Rule Making in the State Register on July 10, 2013, the proposed rule has been revised as set forth in the Revised Regulatory Impact Statement published herewith. The proposed rule, as revised, relates to State learning standards, State assessments, graduation and diploma requirements, and higher levels of student achievement, and will not have an adverse impact on jobs or employment opportunities. Because it is evident from the nature of the proposed revised rule that it will have a positive impact, or no impact, on jobs or employment opportunities, no further steps were needed to ascertain those facts and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

Assessment of Public Comment

Since publication of a Notice of Proposed Rule Making in the State Register on July 10, 2013, the State Education Department received the following comments:

1. COMMENT:

Recommend moving the research paper to 12th grade to allow the content of the research paper to be broadened to include other subject areas where students may have a greater interest, and to provide more time for out-of-state transfer students, students with disabilities, and English Language Learners to complete the paper. Also, creating a seminar class for students in their senior year would provide time for in-class research, discussion with the teacher, peer review, and discussion and writing.

DEPARTMENT RESPONSE:

The Regents Research Paper requirement allows for the research paper to be completed at any point during high school, including 12th grade, prior to graduation. Local school districts or building administrators will determine when the research paper is implemented.

2. COMMENT:

Instruction on process of preparing a research paper should be part of a coherent, developed spiral of instruction and practice throughout k-12 education. Students need to prepare short research assignments in the grades preceding the requirement in order to acquire the requisite skills and familiarity with the framework and process of preparing a paper. Instruction on the credibility of information from the Internet and digital sources must be part of the process.

DEPARTMENT RESPONSE:

The Common Core Learning Standards (CCLS) require that research is included at each grade level, from prekindergarten through high school. Local school district curriculum should be aligned with the standards to build a coherent P-12 practice through the grade levels. The NYSED Common Core Curriculum Modules for English Language Arts will include instruction on research writing through the grades, including how to assess the credibility of information and find valid sources, and will provide opportunities for short and long-term research.

3. COMMENT:

Requiring English teachers to handle all aspects of the research paper would undermine the new push to teach writing across the content areas because it suggests that reading and writing instruction are the responsibility of the English teacher only. Rewriting the proposed regulation to reflect the responsibility all teachers have in teaching writing/research skills would help move the State in a positive direction.

DEPARTMENT RESPONSE:

The forthcoming Regents Research Paper Framework guidance document allows for the district or building administrator to select the teacher who will implement the research paper. This requirement is not limited to English teachers. Cross-disciplinary collaboration is recommended since research is reflected in the cross-subject literacy standards in the CCLS.

4. COMMENT:

Concern was expressed that the proposed rule may provide too much flexibility so that research papers will lack uniform State-wide standards.

DEPARTMENT RESPONSE:

The Framework for the Regents Research Paper will include a procedural checklist that must be submitted to the building administrator as a prerequisite for graduating. All research papers must be aligned to the expectations under research that are included in the CCLS; however, local school districts will have flexibility in how to implement the process and resources.

5. COMMENT:

The Research Paper requirement should be held in abeyance until such time as it can be evaluated within the context of anticipated upcoming deliberations of the Board of Regents concerning multiple pathways to a high school diploma.

DEPARTMENT RESPONSE:

The Research Paper requirement is aligned with the high school research writing expectations included in the CCLS. Research is a skill that prepares students for college, careers, and life and should be a part of high school coursework prior to graduation. In any event, the proposed rule has been revised to provide for implementation of the Research Paper requirement beginning with students entering grade nine in September 2014, instead of September 2013. This will provide more time for school districts, staff and students to prepare for and ensure implementation of the research paper requirement consistent with the CCLS.

6. COMMENT:

Some students with learning disabilities, due to the very nature of their disability, may not be able to demonstrate their academic achievement and proficiency with a high stakes test, while others may be better suited to demonstrating their learning through a research paper. Consider offering research paper as an alternative to all or part of the high stakes testing for graduation so that students with disabilities may choose the assessment that best meets their learning style and accommodates their disability.

DEPARTMENT RESPONSE:

The Regents Research Paper is a graduation requirement that is separate from the Board of Regents high school graduation assessment requirements. The Department will continue to consider public input as discussions about graduation requirements are ongoing.

7. COMMENT:

Proposal does not offer enough specificity to assure that students with disabilities will be provided necessary accommodations. It is strongly recommended that the proposal provide better specificity concerning other possible appropriate accommodations, including extra time for completion of paper, spell check, simplification/modification of directions and extra assistance when needed in translating research to writing.

DEPARTMENT RESPONSE:

The Regents Research Paper Framework provides guidance for implementation of the research paper for students with disabilities, including information about accommodations. Accommodations may apply to changes in the method of how the assignment is presented, changes in the method of how a student may respond to the assignment, and flexibility in the scheduling or timeframes of the assignment.

8. COMMENT:

Consider allowing the Research paper to serve as an alternative to English Language Arts (ELA) Regents examination to provide students with a meaningful opportunity to demonstrate their college and career readiness skills and attainment of the Common Core standards without penalizing those students who are not able to do so in a high-stakes examination setting.

DEPARTMENT RESPONSE:

The Regents Research Paper requirement will be separate from the NYS assessments that are required for graduation.

9. COMMENT:

Requiring Research Paper be typed will place students who lack ready access to a computer at a disadvantage. The State must ensure districts and schools have the resources available to provide all students with computer access.

DEPARTMENT RESPONSE:

Proposed subparagraph 100.5(a)(9)(v) allows hand-written papers and other accommodations where appropriate or in extenuating circumstances. Further guidance on this matter is addressed in the Regents Research Paper Framework.

10. COMMENT:

It is premature to move forward with Research Paper requirement without a more comprehensive review of graduation requirements and the development of a plan to meet the needs of the diversity of students in the State. The State should develop multiple pathways to a regular diploma for all students. There is a need for alternative forms of assessment for students who cannot adequately demonstrate their knowledge and skills on standardized tests but can show proficiency through other forms of assessment.

DEPARTMENT RESPONSE:

This concern is noted. Discussion by the Board of Regents about pathways for graduation is ongoing. In addition, the proposed rule has been revised to provide for implementation of the Research Paper requirement beginning with students entering grade nine in September 2014, instead of September 2013. This will provide more time for school districts, staff and students to prepare for and ensure implementation of the research paper requirement consistent with the CCLS.

11. COMMENT:

Many school districts have already incorporated a research paper or portfolio in to their graduation requirements and should be encouraged to continue these practices.

DEPARTMENT RESPONSE:

The guidance on the research paper allows school districts to build off already incorporated research practices as long as they adhere to the procedural checklist.

12. COMMENT:

The decision to waive the research paper as a requirement prior to sitting for the ELA Regents is supported.

DEPARTMENT RESPONSE:

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

13. COMMENT:

Additional concerns were shared regarding local school district capacity, resources and funding, as it relates to implementing the CCLS and research requirement.

DEPARTMENT RESPONSE:

The Department will provide sample curricula in the form of the curriculum modules that will help to provide guidance to school districts. All materials that support the Regents Research paper will be posted on EngageNY (www.engageny.org/).

Proposed Action: Addition of section 4038.5(c) to Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 103(2), 104(1), (19) and 122

Subject: Implementation of procedure to disclose horses' recent corticosteroid joint injections to claimants.

Purpose: To protect the healthy and safety of thoroughbred race horses, jockeys, and exercise riders.

Text of proposed rule: Subdivision (c) is added to Section 4038.5 of 9 NYCRR to read as follows:

(c) The previous trainer of a claimed horse shall, within 48 hours after the race is made official, provide to the new owner an accurate record of all corticosteroid joint injections that were administered to the horse within 30 days before the race.

Text of proposed rule and any required statements and analyses may be obtained from: Kristen M. Buckley, New York State Gaming Commission, One Broadway Center, Suite 600, Schenectady, NY 12305-2553, (518) 388-3332, email: info@gaming.ny.gov

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

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

Regulatory Impact Statement

1. Statutory authority and legislative objectives of such authority: The New York State Gaming Commission ("Commission") is authorized to promulgate these rules pursuant to Racing Pari-Mutuel Wagering and Breeding Law sections 103(2), 104 (1, 19), and 122. Under section 103(2), the Commission is responsible to supervise, regulate, and administer all horse racing and pari-mutuel wagering activities in the state. Subdivision (1) of Section 104 confers upon the Commission general jurisdiction over all such gaming activities within the state and over the corporations, associations, and persons engaged in such activities. Subdivision (19) of Section 104 authorizes the Commission to promulgate any rules and regulations that it deems necessary to carry out its responsibilities. Section 122 continues previous rules and regulations of the legacy New York State Racing and Wagering Board, subject to the authority of the Commission to modify or abrogate such rules and regulations.

2. Legislative objectives: To enable the Commission to protect the health and safety of thoroughbred horses and human participants in pari-mutuel racing, while generating reasonable revenue for the support of government.

3. Needs and benefits: This rulemaking is necessary to permit the new owner of a claimed thoroughbred race horse to make fully informed decisions about veterinary care.

On September 27, 2012, the New York State Task Force on Racehorse Health and Safety released its report on the investigation of 21 equine fatalities at the 2011-12 fall and winter meet at Aqueduct Racetrack. The Task Force determined that there might have been opportunities to prevent 11 of those 21 fatalities. The Task Force recommended that the Commission make several amendments to its equine drug rules for thoroughbred race horses, many of which have since been adopted by the Commission. Two of the Task Forces' recommendations concern the sharing of information about corticosteroid joint injections given to race horses.

The Task Force reported, "The failure of trainers to report intra-articular injections ... prevented the NYRA [New York Racing Association, Inc.] veterinarians from identifying a pattern of redundant... treatments that had the potential to misrepresent the true clinical condition of a horse." This reduced the ability of the track's veterinarians to conduct their physical pre-race examinations to evaluate the soundness of each race horse. To ensure proper notification, at the recommendation of the Task Force, in December 2012 the Commission amended Section 4043.4 of 9 NYCRR to require that trainers submit a corticosteroid joint injection record to the Board within 48 hours of treatment. The Commission also designed and implemented a web-based reporting system to collect such information from trainers and to disseminate it immediately to such examining veterinarians.

The Task Force further reported, "Currently, there is no way for a claimant to determine if the claimed horse has been recently injected with an intra-articular corticosteroid, putting that horse at risk for redundant medical treatment as well as preventing an accurate assessment of the horse's soundness." Claiming races are a common type of race in which the formation of a competitive field is ensured by requiring each owner, upon starting a horse in the race, to offer the horse for sale at a pre-determined price. Four of the fatally injured horses in its investigation had received intra-articular corticosteroid injections within seven days of racing. The Task Force, in response to this concern, further recommended the addition of a new subdivision (c) to Section 4038.5 of 9 NYCRR, requiring that the previous trainer promptly disclose to the successful claimant any intra-articular corticosteroid injections performed within 30 days before the claiming race. The proposed amendment will adopt such a requirement.

New York State Gaming Commission

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Implementation of Procedure to Disclose Horses' Recent Corticosteroid Joint Injections to Claimants

I.D. No. SGC-40-13-00002-P

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

The Commission has achieved better compliance with the reporting by trainers (and treating veterinarians, when designated by the trainer) of corticosteroid joint injections through its design and implementation of a web-based reporting system. Such system has been improved to facilitate compliance with the proposed new rule. A claimant who is registered to use the system may generate an email request to the previous trainer for such information. When the previous trainer confirms the claim within such system, the information is made confidentially available on the web site to such claimant.

The proposed amendment to the claiming rules will protect the health and safety of thoroughbred race horses by making recent corticosteroid joint injection treatments a matter of record for new owners who have claimed the race horse in a claiming race conducted in New York. The previous trainer will be required to make available to the new owner, within 48 hours after a horse has been claimed in a claiming race, the veterinary record of any corticosteroid joint injections given to the race horse within the preceding 30 days.

4. Costs:

(a) Costs to regulated parties for the implementation of and continuing compliance with the rule: These amendments will not add any new mandated costs to the existing rules.

(b) Costs to the agency, the state and local governments for the implementation and continuation of the rule: None. The New York State Gaming Commission has already designed and implemented a web-based reporting system used to record all corticosteroid joint injections to thoroughbred race horses that participate in New York racing activities. This system now includes a feature that allows a previous trainer to verify the identity of a person who has claimed a race horse in a claiming race, upon a request for such veterinary information, which will allow such claimant to view the reported information through the web site.

(c) The information, including the source(s) of such information and the methodology upon which the cost analysis is based: The Commission relied on a review of its current, web-based corticosteroid joint injection reporting system.

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

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

6. Paperwork: There will be no additional paperwork. The Commission will utilize the existing personnel to ensure compliance and the availability of the Commission's own web-based reporting system permits all compliance to occur by electronic means.

7. Duplication: None.

8. Alternatives: This rule amendment is based upon the finding and recommendations of the Task Force and no other alternatives were considered.

9. Federal standards: None.

10. Compliance schedule: The rule can be implemented immediately upon publication as an adopted rule.

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

As is evident by the nature of this rulemaking, this will not have an adverse affect on small businesses, local governments, jobs, or rural areas. This proposal requires the disclosure of recent corticosteroid joint injection veterinary treatments from previous horse trainers to new owners who have claimed the horse in a claiming race. The trainers are currently reporting such information to the Commission through a web-based portal designed and operated by the Commission. The Commission's portal now has been adapted to permit the previous trainer to share such information with a new owner by an exchange of emails. The previous trainer will confirm the claim and thereby release access of the already-reported information to the new owner. This will have no impact on small businesses, local governments, jobs or rural areas. The rule does not impose any significant technological changes on the industry. It imposes no adverse economic impact on reporting, recordkeeping, or other compliance requirements on small businesses in rural or urban areas or on employment opportunities. No local government activity is involved. Trainers have been given ample time, since December 2012, to become acclimated to using the Commission's web-based reporting system. Even though small businesses that own and train thoroughbred race horses will be affected, they have been reporting all of this information online to the Commission for several months, and will benefit from having access to such information when they claim a horse themselves. This amendment is intended to improve veterinary care and to reduce equine deaths in thoroughbred racing, and as such will have a positive effect on horseracing and the revenue generated through pari-mutuel wagering and breeding in New York State.

This proposal will not adversely impact small businesses, local governments, jobs, or rural areas. It does not require a Regulatory Flexibility Analysis (for Small Businesses and Local Governments), Rural Area Flexibility Analysis, or Job Impact Statement.

Department of Health

EMERGENCY RULE MAKING

Medicaid Managed Care Programs

I.D. No. HLT-40-13-00001-E

Filing No. 907

Filing Date: 2013-09-12

Effective Date: 2013-09-12

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

Action taken: Repeal of Subparts 360-10 and 360-11, sections 300.12 and 360-6.7; and addition of new Subpart 360-10 to Title 18 NYCRR.

Statutory authority: Public Health Law, sections 201 and 206; and Social Services Law, sections 363-a, 364-j and 369-ee

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

Specific reasons underlying the finding of necessity: Chapter 59 of the laws of 2011 enacted a number of proposals recommended by the Medicaid Redesign Team established by the Governor to reduce costs and increase quality and efficiency in the Medicaid program. The changes to Social Services Law section 364-j to expand mandatory enrollment into Medicaid managed care by eliminating many of the prior exemptions and exclusions from enrollment began to be phased in as of April 1, 2011. Paragraph (t) of section 111 of Part H of Chapter 59 authorizes the Commissioner to promulgate, on an emergency basis, any regulations needed to implement such law. The Commissioner has determined it necessary to file these regulations on an emergency basis to achieve the savings intended to be realized by the Chapter 59 provisions regarding expansion of Medicaid managed care enrollment.

Subject: Medicaid Managed Care Programs.

Purpose: To repeal old and outdated regulations and to consolidate all managed care regulations to make them consistent with statute.

Substance of emergency rule: The proposed rule repeals various sections of Title 18 NYCRR that contain managed care regulations and replaces them with a new Subpart 360-10 that consolidates these managed care regulations in one place and makes the regulations consistent with Section 364-j of the Social Services Law (SSL). Section 364-j of the SSL contains the Medicaid managed care program standards. The new Subpart 360-10 will also apply to the Family Health Plus (FHP) program authorized in Section 369-ee of the Social Services Law. FHP-eligible individuals must enroll in a managed care organization (MCO) to receive services and FHP MCOs must comply with most of the programmatic requirements of Section 364-j of the SSL.

The new Subpart 360-10 identifies the Medicaid populations required to enroll and those that are exempt or excluded from enrollment, defines good cause reasons for changing/disenrolling from an MCO, or changing primary care providers (PCPs), adds enrollee fair hearing rights, adds marketing/outreach and enrollment guidelines, and identifies unacceptable practices and the actions to be taken by the State when an MCO commits an unacceptable practice.

The proposed rule repeals the existing Subparts 360-10 and 360-11 and Sections 300.12 and 360-6.7 of Title 18 NYCRR. Section 300.12 applied to the Monroe County Medicap program, a managed care demonstration project that was undertaken in the mid-1980s and that no longer exists. Section 360-6.7 addresses processes and timeframes for disenrollment from the various types of MCOs and these provisions are included in the new Subpart 360-10. Subpart 360-11 implemented provisions relating to special care plans formerly contained in SSL Section 364-j; these provisions were added by Chapter 165 of the Laws of 1991 and later removed by Chapter 649 of the Laws of 1996.

360-10.1 Introduction

This section provides an introduction to the managed care program. Section 364-j of Social Services Law provides the framework for the Statewide Medicaid managed care program. Certain Medicaid recipients are required to receive services from Medicaid managed care

organizations. Section 369-ee added the Family Health Plus (FHP) program to Social Services Law. Individuals eligible for FHP are required to receive services from a managed care plan unless they are participating in the Family Health Plus premium assistance program.

360-10.2 Scope

This section identifies the topics addressed by the Subpart.

360-10.3 Definitions

This section includes definitions necessary to understand the regulations.

360-10.4 Individuals required to enroll in a Medicaid managed care organization

This section identifies the individuals who will be required to enroll in an MCO.

360-10.5 Individuals exempt or excluded from enrolling in a Medicaid mandatory managed care organization

This section identifies the circumstances in which a Medicaid recipient is exempt or excluded from enrollment in a mandatory managed care program. The section also includes the procedures for requesting an exemption or exclusion and the timeframes for processing the request. This section also describes the notices that must be provided to a Medicaid recipient if his/her request is denied.

360-10.6 Good cause for changing or disenrolling from an MCO

This section describes the good cause reasons for an enrollee to change MCOs and the process for requesting a change or disenrollment. This section also identifies the timeframes for processing the request and the notices that must be provided to the enrollee regarding his/her request.

360-10.7 Good cause for changing primary care providers

This section describes the good cause reasons for a managed care enrollee to change primary care providers, the process through which the enrollee may request such a change and the timeframes for processing the request.

360-10.8 Fair Hearing Rights

This section identifies the circumstances in which a Medicaid or FHP enrollee may request a fair hearing. Enrollees may request a fair hearing for enrollment decisions made by the local social services district and decisions made by an MCO or its management contractor about services. The section describes the notices that must be sent to advise the enrollee of his/her of her fair hearing rights. The section also explains when aid continuing is available for managed care issues and how the enrollee requests it when requesting a fair hearing.

360-10.9 Marketing/Outreach

This section defines marketing/outreach and establishes marketing/outreach guidelines for MCOs including requiring MCOs to submit a marketing/outreach plan, requiring MCOs to get approval of materials before distribution, and establishing limits for marketing/outreach representative reimbursement.

360-10.10 MCO unacceptable practices

This section identifies additional unacceptable practices for MCOs. These are generally related to marketing/outreach.

360-10.11 MCO sanctions and due process

This section identifies the actions the Department is authorized to take when an MCO commits an infraction.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire December 10, 2013.

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

Regulatory Impact Statement

Statutory Authority:

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

Legislative Objectives:

Section 364-j of the SSL governs the Medicaid managed care program, under which certain Medicaid recipients are required or allowed to enroll in and receive services through managed care organizations (MCOs). Section 369-ee of Social Services Law authorized the State to implement the Family Health Plus (FHP) program, a managed care program for individuals aged 19 to 64 who have income too high to qualify for Medicaid. The intent of the Legislature in enacting these programs was to assure that low-income citizens of the State receive quality health care and that they obtain necessary medical services in the most effective and efficient manner.

Chapter 59 of the Laws of 2011 amended SSL section 364-j to expand mandatory enrollment into Medicaid managed care by eliminating many of the exemptions and exclusions from enrollment previously contained in the statute.

Needs and Benefits:

The proposed regulations reflect current program practices and requirements, consolidate all managed care regulations in one place, and conform the regulations to the provisions of SSL section 364-j, including the amendments made by Chapter 59 of the Laws of 2011. The proposed regulations identify the individuals required to enroll in Medicaid managed care and identify the populations who are exempt or excluded from enrollment.

The proposed regulations also contain provisions, which apply to both the Medicaid managed care and the FHP programs: specifying good cause criteria for an enrollee to change MCOs or to change their primary care provider; explaining enrollees' rights to challenge actions of their MCO or social services district through the fair hearing process; establishing marketing/outreach guidelines for MCOs; and identifying unacceptable practices and sanctions for MCOs that engage in them.

Costs:

The proposed regulations do not impose any additional costs on local social services districts beyond those imposed by law. The current managed care program operates under a federal Medicaid waiver pursuant to section 1115 of the Social Security Act. Through the waiver, the State receives federal dollars for its Safety Net and FHP populations. Administrative costs associated with implementation of the managed care program incurred at start-up were covered by planning grants. Since 2005, administrative costs for the managed care program have been included with all other Medicaid administrative costs and there is no local share for administrative costs over and above the Medicaid administrative cap.

Local Government Mandates:

The proposed regulations do not create any additional burden to local social services districts beyond those imposed by law.

Paperwork:

Social Services Law requires that Medicaid recipients be advised in writing regarding enrollment, benefits and fair hearing rights. In compliance with the law, the proposed regulations describe the circumstances under which a Medicaid managed care participant should be provided with such notices, who is responsible for sending the notice and what should be included in the notice. Medicaid managed care program reporting requirements for social service districts and MCOs have been in place since 1997 when the mandatory Medicaid managed care program began. The social services district is required to report on exemptions granted, complaints received and other enrollment issues. MCOs must submit network data, complaint reports, financial reports and quality data. There are no new requirements for the social services districts or the MCOs in the proposed regulations.

Duplication:

The proposed regulations do not duplicate any State or federal requirements unless necessary for clarity.

Alternative Approaches:

The Department is required by SSL section 364-j to promulgate regulations to implement a statewide managed care program. The proposed regulations implement the provisions of SSL section 364-j in a way which balances the needs of MA recipients, managed care providers and local social services districts. No alternatives were considered.

Federal Standards:

Federal managed care regulations are in 42 CFR 438. The proposed regulations do not exceed any minimum standards of the federal government.

Compliance Schedule:

The mandatory Medicaid managed care program has been in operation since 1997. As a result, all counties in the State have some form of managed care. The requirements in the proposed rules have been implemented through the contract between the State and participating MCOs.

Regulatory Flexibility Analysis

Effect on Small Businesses and Local Governments:

Section 364-j of Social Services Law (SSL) authorizes a Statewide Medicaid managed care program that includes mandatory enrollment of most Medicaid beneficiaries. In 1997, the State applied for and received approval of a Federal waiver under Section 1115 of the Social Security Act to implement mandatory enrollment. Section 369-ee of SSL authorizes the Family Health Plus (FHP) program and requires eligible persons to receive services through managed care organizations (MCOs). Counties with a choice of MCOs were eligible to run a mandatory Medicaid managed care program, while counties with only one MCO ran a voluntary program until such time as at least one additional MCO began operating in the county. As of November 2012, all sixty-two counties operate a mandatory Medicaid managed care program. All counties also operate a FHP program.

As a result of the implementation of the Medicaid managed care and FHP programs, most Medicaid recipients and all FHP eligible persons are required to enroll and receive services from providers who contract with a managed care organization (MCO). MCOs must have a provider network that includes a sufficient array and number of providers to serve enrollees, but they are not required to contract with any willing provider. Consequently, local providers may lose some of their patients. However, this loss may be offset by an increase in business as a result of the implementation of FHP.

The proposed regulations do not impose any additional requirements beyond those in law and the benefits of the program outweigh any adverse impact.

Compliance Requirements:

No new requirements are imposed on local governments beyond those included in law and there are no requirements for small businesses.

Professional Services:

No professional services will be necessitated as a result of this rule. However, the services of a professional enrollment broker will be available to counties that choose to access them. The costs of these services are shared by the State and the local districts.

Compliance Costs:

No additional costs for compliance will be incurred as a result of this rule beyond those imposed by law. Administrative costs associated with implementation of the managed care program incurred at start-up were covered by planning grants. Since 2005, administrative costs for the managed care program have been included with all other Medicaid administrative costs and there is no local share for administrative costs over and above the Medicaid administrative cap. Additionally, the 1115 waiver reduced local government costs by authorizing Federal participation for the Safety Net and Family Health Plus (FHP) populations.

Economic and Technological Feasibility:

Administrative costs incurred at program start-up were covered by planning grants. Since 2005, administrative costs for the managed care program are included with all other Medicaid administrative costs and there is no local share for administrative costs over and above the Medicaid administrative cap.

The Medicaid managed care program utilizes existing state systems for operation (Welfare Management System, eMedNY, etc.).

The Department provides ongoing technical assistance to counties to assist in all aspects of planning, implementing and operating the local program.

Minimizing Adverse Impact:

The mandatory Medicaid managed care program is implemented only when there are adequate resources available in a local district to support the program. No new requirements are imposed beyond those included in law.

The benefits of the managed care program outweigh any adverse effects. Managed care programs are designed to improve the relationship between individuals and their health care providers and to ensure the proper delivery of preventive medical care. Such programs help avoid the problem of individuals not receiving needed medical care until the onset of advanced stages of illness, at which time the individual would require higher levels of medical care such as emergency room care or inpatient hospital care. The State has many years of Quality Data that demonstrate that Medicaid beneficiaries enrolled in managed care receive better quality care than those in fee-for-service Medicaid.

Small Business and Local Government Participation:

The regulations do not introduce a new program. Rather, they codify current program policies and requirements and make the regulations consistent with section 364-j of SSL. During the development of the 1115 waiver application and the design of the managed care program, input was obtained from many interested parties.

Rural Area Flexibility Analysis

Effect on Rural Areas:

All rural counties with managed care programs will be affected by this rule. As of April 2011, all rural counties have a Medicaid managed care and Family Health Plus (FHP) program.

Compliance Requirements:

This rule imposes no additional compliance requirements other than those already contained in Section 364-j of the Social Services Law (SSL).

Professional Services:

No professional services will be necessitated as a result of this rule. However, the services of a professional enrollment broker will be available to counties that choose to access them. The costs of these services are shared by the State and the local districts.

Compliance Costs:

No additional costs for compliance will be incurred as a result of this rule beyond those imposed by law. The administrative costs incurred by local governments for implementing the Statewide managed care program are included with all other Medicaid administrative costs and beginning in

2005, there was no local share for administrative costs over and above the administrative cost base of the Medicaid administrative cap. Additionally, the Federal Section 1115 waiver which allowed the State to implement mandatory enrollment, reduced local government costs by authorizing Federal participation for the Safety Net and FHP populations.

Minimizing Adverse Impact:

The benefits of the managed care program outweigh any adverse effects. Managed care programs are designed to improve the relationship between individuals and their health care providers and to ensure the proper delivery of preventive medical care. Such programs help avoid the problem of individuals not receiving needed medical care until the onset of advanced stages of illness, at which time the individual would require higher levels of medical care such as emergency room care or inpatient hospital care. The State has many years of Quality Data that demonstrate that Medicaid beneficiaries enrolled in managed care receive better quality care than those in fee-for-service Medicaid.

Feasibility Assessment:

Administrative costs incurred at program start-up were covered by planning grants. Since 2005, administrative costs for the managed care program are included with all other Medicaid administrative costs and there is no local share for administrative costs over and above the Medicaid administrative cap.

The Medicaid managed care program utilizes existing state systems for operation (Welfare Management System, eMedNY, etc.).

The Department provides ongoing technical assistance to counties to assist in all aspects of planning, implementing and operating the local program.

Rural Area Participation:

The proposed regulations do not reflect new policy. Rather, they codify current program policies and requirements and make the regulations consistent with section 364-j of the SSL. During the development of the 1115 waiver application and the design of the managed care program, input was obtained from many interested parties.

Job Impact Statement

Nature of Impact:

The rule will have no negative impact on jobs and employment opportunities. The mandatory Medicaid managed care program authorized by Section 364-j of the Social Services Law (SSL) will expand job opportunities by encouraging managed care plans to locate and expand in New York State.

Categories and Numbers Affected:

Not applicable.

Regions of Adverse Impact:

None.

Minimizing Adverse Impact:

Not applicable.

Self-Employment Opportunities:

Not applicable.

EMERGENCY RULE MAKING

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

I.D. No. HLT-40-13-00003-E

Filing No. 908

Filing Date: 2013-09-17

Effective Date: 2013-09-17

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) The nursing assessment shall document that: the functions required by the patient[.]; the degree of assistance required for each function, including that the patient requires total assistance with toileting,

walking, transferring or feeding; and the time of this assistance require the provision of continuous [24-hour care] *personal care services*.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire December 15, 2013.

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

Regulatory Impact Statement

Statutory Authority:

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

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

Under SSL § 365-a(2)(e)(iv), personal care services shall not exceed eight hours per week for individuals whose needs are limited to nutritional and environmental support functions.

Legislative Objectives:

The Legislature sought to reform the Medicaid personal care services program by controlling expenditure growth and promoting self-sufficiency.

The Legislature authorized the Commissioner of Health to adopt standards for the provision and management of personal care services for Medicaid recipients whose need for such services exceeds a specified level. The regulations adopt such standards for Medicaid recipients who seek continuous personal care services or continuous consumer directed personal assistance for more than 16 hours per day.

The Legislature additionally sought to promote the goal of self-sufficiency among Medicaid recipients who do not need hands-on assistance with personal care functions such as bathing, toileting or transferring. It determined that recipients whose need for personal care services is limited to nutritional and environmental support functions, such as shopping, laundry and light housekeeping, could receive no more than eight hours per week of such assistance.

Needs and Benefits:

The regulations have two general purposes: to conform the Department's personal care services and consumer directed personal assistance program (CDPAP) regulations to State law limiting the amount of services that can be authorized for individuals who require assistance only with

nutritional and environmental support functions; and, to implement State law authorizing the Department to adopt standards for the provision and management of personal care services for individuals whose need for such services exceeds a specified level that the Commissioner may determine.

The term "nutritional and environmental support functions" refers to housekeeping tasks including, but not limited to, laundry, shopping and meal preparation. Department regulations refer to these support functions as "Level I" personal care services. Department regulations have long provided that social services districts cannot initially authorize Level I services for more than eight hours per week; however, an exception permitted authorizations for Level I services to exceed eight hours per week under certain circumstances.

The Legislature has nullified this regulatory exception. The regulations conform the Department's personal care services regulations to the new State law. They repeal the regulatory exception that permitted social services districts to authorize up to 12 hours of Level I services per week, capping such authorizations at no more than eight hours per week.

The regulations similarly amend the Department's CDPAP regulations. Some CDPAP participants are authorized to receive only assistance with nutritional and environmental support functions. Since personal care services are included within the CDPAP, it is consistent with the Legislature's intent to extend the eight hour weekly cap on nutritional and environmental services to that program.

The regulations also implement the Department's specific statutory authority to adopt standards pursuant to emergency regulation for the provision and management of personal care services for individuals whose need for such services exceeds a specified level. The Commissioner has determined to adopt such standards for individuals whose need for continuous personal care services or continuous consumer directed personal assistance exceeds 16 hours per day.

The regulations repeal the definition of "continuous 24-hour personal care services," replacing it with a definition of "continuous personal care services." The prior definition applied to individuals who required total assistance with certain personal care functions for 24 hours at unscheduled times during the day and night. The new definition applies to individuals who require such assistance for more than 16 hours per day at times that cannot be predicted.

Cases in which continuous personal care services are indicated must be referred to the local professional director or designee. Such referrals would now be required in additional cases: those involving provision of continuous care for more than 16 hours per day.

The regulations permit the local professional director or designee to consult with the recipient's treating physician and conduct an additional assessment of the recipient in the home.

The regulations amend the documentation requirements for nursing assessments in continuous personal care services cases.

The regulations add a definition of live-in 24 hour personal care services. This level of service has long existed, primarily in New York City, but has never been explicitly set forth in the Department's regulations. The regulations also require that, for recipients who may be eligible for such services, the social assessment evaluate whether the recipient's home has adequate sleeping accommodations for the live-in aide.

The regulations provide that personal care services shall not be authorized when the recipient's need for assistance can be met by the voluntary assistance of informal caregivers or by formal services or by adaptive or specialized equipment or supplies that can be provided safely and cost-effectively. The regulations require that the nursing assessments that districts currently complete or obtain include an evaluation whether adaptive or specialized equipment or supplies can meet the recipient's need for assistance and whether such equipment or supplies can be provided safely and cost-effectively.

The regulations adopt conforming amendments to the Department's CDPAP regulations.

Costs to Regulated Parties:

Regulated parties include entities that voluntarily contract with social services districts to provide personal care services to, or to perform certain CDPAP functions for, Medicaid recipients. These entities include licensed home care services agencies, agencies that are exempt from licensure, and CDPAP fiscal intermediaries.

Social services districts may no longer authorize certain Medicaid recipients to receive more than eight hours per week of assistance with nutritional and environmental support functions. To the extent that regulated parties were formerly reimbursed for more than eight hours per week for these services, their Medicaid revenue will decrease. This is a consequence of State law, not the regulations. The regulations do not impose any additional costs on these regulated parties.

Costs to State Government:

The regulations impose no additional costs on State government.

The statutory cap on nutritional and environmental support functions will result in cost-savings to the State share of Medicaid expenditures. The

estimated annual personal care services and CDPAP cost-savings for subsequent State fiscal years are approximately \$3.4 million.

This estimate is based on 2010 recipient and expenditure data for the personal care services program. According to such data, 2,377 New York City recipients received more than eight hours per week of Level I services, the average being 11 weekly hours of such service. The number of Level I hours that exceeded eight hours per week was thus approximately 370,800 hours (2,377 recipients x 3 hours per week x 52 weeks). Multiplying this hourly total by the 2010 average hourly New York City personal care aide cost (\$17.30) results in total annual savings of \$6.4, or \$3.2 million in State share savings. Application of this calculation to the Rest of State recipient and expenditure data yields an additional \$200,000 in State share savings, or \$3.4 million.

State Medicaid cost-savings are also projected to occur as a result of changes to continuous personal care services authorizations. It is not possible to accurately estimate such savings. However, the Department anticipates that most recipients currently authorized for continuous 24-hour personal care services will continue to receive that level of care. Others may be authorized for continuous services for 16 hours per day or live-in 24 hour personal care services. Still others may be authorized for services for more than 16 hours per day but fewer than 24 hours per day.

The estimated State share savings for this portion of the regulations are \$33.1 million. This comprises approximately \$17.1 million in personal care savings and \$15.9 million in CDPAP savings. This estimate is based on 2010 personal care services and CDPAP recipient and expenditure data. In 2010, 1,809 Medicaid recipients were authorized to receive more than 16 hours of services per day. The assumption is that these recipients were authorized for continuous 24-hour services, which has an average annual per person cost of approximately \$166,000. Assuming that 20 percent were authorized for live-in 24-hour services at an average annual per person cost of approximately \$83,000, and 15 percent were authorized for 16 hours per day at an average hourly cost of between approximately \$17.00 and \$22.00, depending on service and location, the annual State share savings per recipient would range from approximately \$28,000 to \$35,000.

Costs to Local Government:

The regulation will not require social services districts to incur new costs. State law limits the amount that districts must pay for Medicaid services provided to district recipients. Districts may claim State reimbursement for any costs they may incur when administering the Medicaid program.

Costs to the Department of Health:

There will be no additional costs to the Department.

Local Government Mandates:

The regulations require social services districts to refer additional cases to their local professional directors or designees. Currently, the regulations require that such referrals be made for continuous 24 hour care and certain other cases. Under the proposed regulations, such referrals must also be made for recipients who may require continuous services for more than 16 hours.

Paperwork:

The regulations specify additional documentation requirements for the social and nursing assessments that districts currently complete or obtain for personal care services and CDPAP applicants and recipients. For persons who may be eligible for live-in 24 hour services, the social assessment must evaluate whether the recipient's home has adequate sleeping accommodations for the live-in aide. The nursing assessments for all personal care services and CDPAP cases, including those not involving continuous services, must include an evaluation whether adaptive or specialized equipment or supplies can meet the recipient's need for assistance and whether such equipment or supplies can be used safely and cost-effectively. The amendments to the CDPAP regulations also specify additional documentation requirements for the social and nursing assessments for cases involving continuous consumer directed personal assistance. These requirements mirror long-standing documentation requirements in the personal care services regulations.

Duplication:

The regulations do not duplicate any existing federal, state or local regulations.

Alternatives:

With respect to the regulation that caps authorizations for nutritional and environmental support functions to eight hours per week, no alternatives exist. The regulation must conform to State law that imposes this weekly cap. With respect to the regulation that establishes new requirements for continuous services, alternatives existed but were not now pursued. One such alternative may be the repeal of the regulatory authorization for continuous 24-hour services. The Department determined to promulgate further regulatory controls regarding the provision and management of continuous services, rather than repeal such services in their entirety.

Federal Standards:

This rule does not exceed any minimum federal standards.

Compliance Schedule:

The Department has issued instructions to social services districts advising them of the new State law that limits nutritional and environmental support functions to no more than eight hours per week for certain recipients. Districts should not now be authorizing more than eight hours per week of such assistance and should thus be able to comply with the regulations when they become effective. With regard to the remaining regulations, social services districts should be able to comply with the regulations when they become effective. For applicants, social services districts would apply the regulations when assessing applicants' eligibility for personal care services and the CDPAP. For current recipients, districts would apply the regulations upon reassessing these recipients' continued eligibility for services.

Regulatory Flexibility Analysis

Effect of Rule:

The regulation limiting authorizations of nutritional and environmental support functions to no more than eight hours per week primarily affects licensed home care services agencies and exempt agencies that provide only such Level I services. These entities are the primary employers of individuals providing Level I services. Most recipients of Level I personal care services are located in New York City. There are currently eight Level I only personal care service providers in New York City, none of which employ fewer than 100 persons.

Fiscal intermediaries that are enrolled as Medicaid providers and that facilitate payments for the nutritional and environmental support functions provided to consumer directed personal assistance program (CDPAP) participants may also experience slight reductions in service hours reimbursed. There are approximately 46 fiscal intermediaries that contract with social services districts. Fiscal intermediaries are typically non-profit entities such as independent living centers but may also include home care services agencies.

With respect to continuous care, a significant majority of existing 24-hour a day continuous care cases are located in New York City. There are currently 60 Level II personal care service providers in New York City, none of which employ fewer than 100 persons.

The regulations also affect social services districts. There are 62 counties in New York State, but only 58 social services districts. The City of New York comprises five counties but is one social services district.

Compliance Requirements:

Social services districts currently assess whether Medicaid recipients are eligible for personal care services and the CDPAP. When 24 hour continuous care is indicated, districts are currently required to refer such cases to the local professional director or designee for final determination. The regulations would require districts to refer additional continuous care cases to the local professional director or designee; namely, those cases in which continuous care for more than 16 hours a day is indicated would also be referred to the local professional director or designee. The local professional director or designee would be required to consult with the recipient's treating physician before approving continuous care for more than 16 hours per day.

In addition, the nursing assessments that districts currently complete or obtain for personal care services and CDPAP applicants and recipients would be required to include an evaluation of whether adaptive or specialized equipment or supplies would be appropriate and could be safely and cost-effectively provided. In cases involving the authorization of live-in 24 hour services, the social assessments that districts currently are required to complete would have to include an evaluation whether the recipient's home had sufficient sleeping accommodations for a live-in aide.

Professional Services:

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

Compliance Costs:

No capital costs will be imposed as a result of this rule, nor are there any annual costs of compliance.

Economic and Technological Feasibility:

There are no additional economic costs or technology requirements associated with this rule.

Minimizing Adverse Impact:

The regulations should not have an adverse economic impact on social services districts. Districts currently assess Medicaid recipients to determine whether they are eligible for personal care services or the CDPAP. The regulations modify these assessment procedures. Should districts incur administrative costs to comply with the regulation, they may seek State reimbursement for such costs.

Small businesses providing Level I personal care services and consumer directed environmental and nutritional support functions may experience slight reductions in service hours provided. This is a consequence of State law limiting these services to no more than eight hours per week.

Small businesses currently providing continuous 24-hour services may experience some reductions in service hours provided.

Small Business and Local Government Participation:

The Department solicited comments on the regulations from the New York City Human Resources Administration, which administers the personal care services program and CDPAP for New York City Medicaid recipients who are not enrolled in managed care. Most of the State’s personal care services and CDPAP recipients reside in New York City. Personal care services provided to New York City recipients comprises approximately 84 percent of Medicaid personal care services expenditures.

Small business and local governments also have the opportunity to provide input into the redesign of New York State’s Medicaid program. The Medicaid Redesign Team (MRT) was tasked by Governor Cuomo to find ways to reduce costs and increase quality and efficiency in the Medicaid program for the 2011-12 Fiscal Year. As part of its work, the MRT sought and continues to seek ideas from the public at large, as well as experts in health care delivery and insurance, the health care workforce, economics, business, consumer rights and other relevant areas. The MRT conducted regional public hearings across the State to solicit ideas from the public on ways to reduce costs and improve the quality of the Medicaid program. Additionally, a web page was established, providing a vehicle for all individuals and organizations to provide ideas, comments and recommendations.

Rural Area Flexibility Analysis

Types and Estimated Numbers of Rural Areas:

Rural areas are defined as counties with populations less than 200,000 and, for counties with populations greater than 200,000, include towns with population densities of 150 persons or less per square mile. In 2010, only 6% of all continuous care cases resided in the counties listed below. Currently there are 34 organizations which maintain contracts with local districts to provide consumer directed environmental and nutritional support functions, and 50 individual licensed home care services agencies which maintain contracts with local districts to provide Level I personal care services, within the following 43 counties having populations of less than 200,000:

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

Reporting, Recordkeeping and Other Compliance Requirements and Professional Services:

Social services districts would be required to refer additional cases to their local professional directors or designees. Currently, the personal care services and CDPAP regulations require that such referrals be made for recipients seeking continuous 24-hour services and in certain other cases. Under the regulations, such referrals must also be made for recipients who require continuous care for more than 16 hours. The regulations also specify additional documentation requirements for the social and nursing assessments that districts currently complete or obtain for personal care services and CDPAP applicants and recipients.

Costs:

There are no new capital or additional operating costs associated with the rule.

Minimizing Adverse Impact:

It is anticipated the rule will have minimal impact on rural areas as the Department has determined that the preponderance of Level I services in excess of eight hours per week occur in downstate urban areas. Additionally, in 2010, only 6% of all individuals receiving continuous care services resided in those counties listed above. To the extent that social services districts incur administrative costs to comply with the regulations’ requirements for referral of continuous care cases and social and nursing assess-

ment documentation requirements, they may seek State reimbursement of such expenses.

Rural Area Participation:

Individuals and organizations from rural areas have the opportunity to provide input into the redesign of New York State’s Medicaid program. The Medicaid Redesign Team (MRT) is tasked by Governor Cuomo to find ways to reduce costs and increase quality and efficiency in the Medicaid program for the 2011-12 Fiscal Year. As part of its work, the MRT sought and continues to seek ideas from the public at large, as well as experts in health care delivery and insurance, the health care workforce, economics, business, consumer rights and other relevant areas. The MRT conducted regional public hearings across the State to solicit ideas from the public on ways to reduce costs and improve the quality of the Medicaid program. Additionally, a web page was established, providing a vehicle for all individuals and organizations to provide ideas, comments and recommendations.

Job Impact Statement

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

Higher Education Services Corporation

NOTICE OF ADOPTION

New York Higher Education Loan Program (NYHELPS)

I.D. No. ESC-31-13-00006-A

Filing No. 909

Filing Date: 2013-09-17

Effective Date: 2013-10-02

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

Action taken: Amendment of Part 2213 of Title 8 NYCRR.

Statutory authority: Education Law, sections 691(10) and 655(4)

Subject: New York Higher Education Loan Program (NYHELPS).

Purpose: To establish additional borrower benefits.

Text of final rule: Subdivision (d) of section 2213.4 is amended as follows:

(d) Each of the Corporation and any public benefit corporation described in section [2200-a.1(r)] 2213.1(ad) may participate in the Program as a lender and, in such case, all references in this subchapter to the lender shall be deemed applicable to the Corporation or such public benefit corporation, as applicable, in such capacity, except to the extent that the Corporation or such public benefit corporation would be required thereby to provide the information to or enter into a contractual arrangement with itself.

Paragraph (2) of subdivision (b) of section 2213.20 is amended as follows:

(2) Economic hardship forbearance. Subject to paragraph (5) of this subdivision, a borrower who is not in default on the repayment of a program loan(s) and who is unable to make payments because of a temporary change in [the borrower’s, and any cosigner’s,] financial circumstances may apply to the corporation for a forbearance due to economic hardship in accordance with criteria set forth in the program’s default avoidance and claim manual. Economic hardship forbearance shall not extend the original repayment terms of the previously disbursed program loans.

Subdivision (b) of section 2213.20 is amended to add a new paragraph (6) as follows:

(6) Disaster relief. In a federally declared major disaster, as defined by 42 U.S.C. section 5122(2), the corporation may grant certain relief for borrowers and cosigners within a federally declared disaster area, including the cessation of due diligence and collection activities for up to three months and suspension of required payments under certain repayment plans. Prior to granting any relief under this paragraph, the corporation shall perform an impact assessment and with respect to program loans that are otherwise eligible for purchase by a public benefit corporation shall be subject to approval by such public benefit corporation.

Subparagraph (i) of paragraph (2) of subdivision (g) of section 2213.20 is repealed, and subparagraphs (ii) and (iii) are renumbered subparagraphs (i) and (ii).

Section 2213.28 is amended as follows:

For purposes of this Part, the following manuals referred to throughout are hereby incorporated by reference *and are available at* www.hesc.ny.gov/NYHELPS_Regulations:

Subdivision (e) of section 2213.28 is amended as follows:

(e) from and including March 6, 2013, until superseded, the program's default avoidance and claim manual version number 5, dated March 6, 2013, and the program's underwriting manual version number 5, dated March 6, 2013[.]; *and*

Section 2213.28 is amended to add a new subdivision (f) as follows:

(f) *from and including October 2, 2013, until superseded, the program's default avoidance and claim manual version number 6, dated October 2, 2013.*

Final rule as compared with last published rule: Nonsubstantive changes were made in section 2213.28.

Text of rule and any required statements and analyses may be obtained from: Cheryl B. Fisher, NYS Higher Education Services Corporation, 99 Washington Avenue, Room 1315, Albany, New York 12255, (518) 474-5592, email: regcomments@hesc.ny.gov

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

This rule was proposed as a consensus rule as defined in section 102(11) of the State Administrative Procedure Act (SAPA). As such, an RIS, RFA and RAFA are not required. A Statement in Lieu of Job Impact Statement was attached to the proposed rule making. The change made to the proposed rule is a correction to the Corporation's web address where the rule, together with materials incorporated by reference, can be found. This change does not necessitate a revision to these documents and therefore a revised RIS, RFA, RAFA, and JIS are not required.

Assessment of Public Comment

The agency received no public comment.

Public Service Commission

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Petition for Submetering of Electricity

I.D. No. PSC-40-13-00004-P

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

Proposed Action: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by Park View Fifth Ave. Associates, LLC to submeter electricity at 1280 Fifth Avenue, New York, NY.

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

Subject: Petition for submetering of electricity.

Purpose: To consider the request of Park View Fifth Avenue Associates, LLC to submeter electricity at 1280 Fifth Avenue, New York, NY.

Substance of proposed rule: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by Park View Fifth Avenue Associates, LLC to submeter electricity at 1280 Fifth Avenue, New York, New York, located in the territory of Consolidated Edison Company of New York, Inc.

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: Kathleen H. Burgess, 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.