

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.

Education Department

EMERGENCY RULE MAKING

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

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

Filing No. 856

Filing Date: 2013-08-26

Effective Date: 2013-08-26

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); L. 2013, ch. 57, section 24

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

Specific reasons underlying the finding of necessity: The proposed amendment is needed to implement section 24 of the Chapter 57 of the Laws of 2013 by establishing standards and procedures for municipalities, and the board of education of the city school district of the city of New York, that choose to perform fiscal audits of preschool special education programs and services pursuant to Education Law section 4410.

The proposed amendment was adopted as an emergency rule at the May 20, 2013 Regents meeting, effective May 28, 2013. A Notice of Emergency Adoption and Proposed Rule Making was published in the State Register on June 12, 2013.

Because the Board of Regents meets at fixed intervals, and does not

meet during the month of August, the earliest the proposed amendment can be presented for permanent adoption, after publication in the State Register and expiration of the 45-day public comment period provided for in State Administrative Procedure Act (SAPA) section 202(1) and (5), is the September 16-17, 2013 Regents meeting. Furthermore, pursuant to SAPA, the earliest effective date of the proposed amendment, if adopted at the September meeting, would be October 2, 2013, the date a Notice of Adoption would be published in the State Register. However, the May emergency rule will expire on August 25, 2013, 90 days from its filing with the Department of State on May 28, 2013. A lapse in the effective date of the rule may disrupt the process for the conduct of audits of preschool special education programs and services by municipalities and the Board of Education of the City School District of the City of New York pursuant to Education Law section 4410(11)(i) and (ii).

Emergency action is therefore necessary for the preservation of the general welfare to ensure that the emergency rule adopted at the May 20, 2013 Regents meeting remains continuously in effect until the effective date of its permanent adoption.

It is anticipated that the proposed amendment will be presented to the Board of Regents for adoption on a permanent basis at the September 16-17, 2013 Regents meeting, which is the first scheduled meeting after expiration of the 45-day public comment period mandated by SAPA.

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 of emergency rule: Subdivision (b) of section 200.18 of the Regulations of the Commissioner of Education is amended, effective August 26, 2013, as follows:

(b) Fiscal audits of approved preschool programs and services approved under section 4410 of the Education Law performed by the municipality and accepted by the commissioner.

(1) Each municipality, or, in addition, in the case of a city having a population of one million or more, the board of education of the city school district of such city, may perform fiscal audits of approved preschool programs and services for which it bears fiscal responsibility. Access to all records, property and personnel related to approved programs shall be provided during an audit. Access shall also apply to program costs allocated to approved programs. Such cost allocations to related programs are also subject to audit.

(2) Prior to conducting an audit of an approved preschool program, a municipality shall ascertain that neither the state nor any other municipality has performed a fiscal audit of the same services or programs within the current fiscal year for such program. If it is determined that no such audit has been performed, the municipality shall inquire with the department to determine which other municipalities, if any, bear financial responsibility for the services or programs to be audited and shall afford such other municipalities an opportunity to recommend issues to be examined through the audit. Municipalities completing such audits shall provide copies to the department, the provider of the services and programs and all other municipalities previously determined to bear financial responsibility for the audited services and programs. No other municipality may conduct an additional fiscal audit of the same services or programs during such current fiscal year for such program. Municipalities shall submit to the department for approval a detailed audit plan and audit program for the proposed audit; provided that for any audit commenced on or after May 28, 2013, municipalities shall submit to the department for approval a detailed audit plan and audit program which shall be consistent with guidelines on audit standards and procedures issued by the department on or after such date.

(3) Upon approval of the audit program and audit plan by the commissioner, the municipality may conduct audits in conformance with generally accepted auditing standards. *Commissioner approval of an audit program and audit plan shall be valid for a period of five years from the date of approval.* Municipalities need not submit an audit program and audit plan for each audit to be performed during the five year approval period once approval has been granted by the commissioner. However, modifications to the approved audit plan and audit program shall be submitted to the department for review and approval and new approval must be obtained once the five year approval period has concluded.

(4) Once the audit is completed, a draft of the audit report shall be submitted to the commissioner for review and/or resolution. *In order to be approved by the commissioner, the draft audit shall be consistent with guidelines on audit standards and procedures issued by the department.* Upon approval, the audit shall be considered a State audit for the purposes of establishing the tuition rate based on audit.

(5) . . .

(6) . . .

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-24-13-00005-EP, Issue of June 12, 2013. The emergency rule will expire October 24, 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 207 empowers the Board of Regents and the Commissioner to adopt rules and regulations to carry out laws of the State regarding education and the functions and duties conferred on the State Education Department by law.

Education Law section 4401(2) defines special education services or programs, including related services.

Education Law section 4403 outlines the responsibilities of the Department with respect to the provision of education programs and services to students with disabilities and authorizes the Commissioner of Education to promulgate such rules and regulations pertaining to the physical and educational needs of such students as the Commissioner deems to be in their best interest.

Education Law section 4410(1)(g) defines "municipality" for purposes of the section. Education Law section 4410(11)(i) and (ii) provides that a municipality or, in addition, the board of education in a city having a population of one million or more, may perform a fiscal audit of special education programs and services for which it bears fiscal responsibility. Section 4410(13) authorizes the Commissioner to promulgate regulations to implement the provisions of Education Law section 4410.

Section 24 of Chapter 57 of the Laws of 2013 amended subparagraphs (i) and (ii) of paragraph (c) of subdivision (11) of Education Law section 4410 to direct the Department to provide guidelines on standards and procedures to municipalities and the board of education in a city with a population of one million or more, that choose to perform fiscal audits of services or programs pursuant to that section; and directs the Commissioner to promulgate rules and regulations necessary to implement section 24 of Chapter 57 of the Laws of 2013.

2. LEGISLATIVE OBJECTIVES:

Consistent with the above statutory authority, the proposed amendment is necessary to implement section 24 of the Chapter 57 of the Laws of 2013 by establishing standards and procedures for municipalities, and the board of education of the city school district of the city of New York, to perform fiscal audits of Education Law section 4410 preschool special education programs and services.

3. NEEDS AND BENEFITS:

The proposed amendment is needed to implement section 24 of the Chapter 57 of the Laws of 2013 by establishing standards and procedures for municipalities, and the board of education of the city school district of the city of New York, to perform fiscal audits of Education Law section 4410 preschool special education programs and services.

4. COSTS:

(a) Costs to the State: none.

(b) Costs to local governments: none required. Pursuant to Education Law section 4410 (11)(c)(i), municipalities and the board of education in a city with a population of one million or more are not required to perform fiscal audits of the providers but may choose to do so voluntarily. If a municipality or the board choose to perform a fiscal audit, then prior to the enactment of Chapter 57 of the Laws of 2013, section 4410(11)(c)(i) required these voluntary audits to be performed in accordance with audit standards established by the commissioner. Section 24 of Chapter 57 of

the Laws of 2013 expands this provision by directing the Department to create guidelines on the standards and procedures for fiscal audits, and the proposed regulation incorporates this requirement within the existing audit standards established by the commissioner (which require an approved audit plan and audit program). Depending on the existing audit plans and audit programs, municipalities and the board of education of the city school district of the city of New York could potentially incur costs associated with developing an audit plan and program if they choose to perform a fiscal audit pursuant to Education Law section 4410 and their existing audit plan and program are not consistent with the guidelines provided by the Department as directed by section 24 of Chapter 57 of the Laws of 2013. These costs may be offset by funds that may be recovered by the municipality or board following an audit that identifies overpayments made to a provider as, pursuant to section 24 of Chapter 57 of the Laws of 2013, one hundred percent of these overpayments may be recovered.

(c) Costs to private regulated parties: none.

(d) Cost to regulating agency for implementation and continued administration of this rule: none. It is anticipated that the Department will utilize existing staff resources to develop the audit guidelines and review audit plans and programs submitted by the municipalities and board of education.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment implements section 24 of the Chapter 57 of the Laws of 2013 by requiring municipalities and the board of education of the city school district of the city of New York that choose to commence an audit on or after May 28, 2013, to submit to the Department for approval a detailed audit plan and audit program which shall be consistent with guidelines on audit standards and procedures issued by the Department on or after such date.

The proposed amendment also specifies that Commissioner approval of an audit program and audit plan shall be valid for a period of five years from the date of approval; that municipalities or the board need not submit an audit program and audit plan for each audit to be performed during the five year approval period once approval has been granted by the Commissioner; but that modifications to the approved audit plan and audit program shall be submitted to the Department for review and approval and new approval must be obtained once the five year approval period has concluded. The proposed amendment further provides that once the audit is completed, a draft of the audit report shall be submitted to the Commissioner for review and/or resolution; and that in order to be approved by the Commissioner, the draft audit shall be consistent with guidelines on audit standards and procedures issued by the Department.

6. PAPERWORK:

The proposed amendment implements section 24 of the Chapter 57 of the Laws of 2013 by requiring municipalities and the board of education of the city school district of the city of New York that choose to commence an audit on or after May 28, 2013, to submit to the Department for approval a detailed audit plan and audit program which shall be consistent with guidelines on audit standards and procedures issued by the Department on or after such date.

The proposed amendment also specifies that municipalities or the board need not submit an audit program and audit plan for each audit to be performed during the five year approval period once approval has been granted by the Commissioner; but that modifications to the approved audit plan and audit program shall be submitted to the Department for review and approval and new approval must be obtained once the five year approval period has concluded. The proposed amendment further provides that once the audit is completed, a draft of the audit report shall be submitted to the Commissioner for review and/or resolution; and that in order to be approved by the Commissioner, the draft audit shall be consistent with guidelines on audit standards and procedures issued by the Department.

7. DUPLICATION:

The proposed amendment does not duplicate any existing State or Federal requirements, and is necessary to implement section 24 of Chapter 57 of the Laws of 2013.

8. ALTERNATIVES:

The proposed amendment is needed to implement section 24 of the Chapter 57 of the Laws of 2013 by establishing standards and procedures for municipalities, and the board of education in a city with a population of one million or more, to perform fiscal audits of Education Law section 4410 preschool special education programs and services. There are no significant alternatives and none were considered.

9. FEDERAL STANDARDS:

There are no applicable Federal standards.

10. COMPLIANCE SCHEDULE:

The regulation does not require action on the part of a municipality or the board of education of the city school district of the city of New York unless it voluntarily chooses to commence an audit on or after May 28, 2013. It is anticipated that regulated parties will be able to achieve compliance with the proposed amendment by its effective date.

Regulatory Flexibility Analysis**Small Businesses:**

The proposed amendment is needed to implement section 24 of the Chapter 57 of the Laws of 2013 by establishing standards and procedures for municipalities, and the board of education in a city with a population of one million or more, that choose to perform fiscal audits of Education Law section 4410 preschool special education programs and services. 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 municipalities, defined in Education Law section 4410(1)(g) as a county outside of the city of New York or the city of New York in the case of a county contained within the city of New York, and the board of education of the city of New York, that choose to perform a fiscal audit of Education Law section 4410 preschool special education programs and services for which the municipality bears fiscal responsibility. Pursuant to Education Law section 4410(1)(g), the proposed amendment is applicable to all counties in the State that are located outside of the city of New York and the city of New York in the case of a county contained within the city of New York.

2. COMPLIANCE REQUIREMENTS:

The proposed amendment implements section 24 of the Chapter 57 of the Laws of 2013 by requiring municipalities and the board of education of the city of New York that choose to commence an audit on or after May 28, 2013, to submit to the Department for approval a detailed audit plan and audit program which shall be consistent with guidelines on audit standards and procedures issued by the Department on or after such date.

The proposed amendment also specifies that Commissioner approval of an audit program and audit plan shall be valid for a period of five years from the date of approval; that municipalities and the board need not submit an audit program and audit plan for each audit to be performed during the five year approval period once approval has been granted by the Commissioner; but that modifications to the approved audit plan and audit program shall be submitted to the Department for review and approval and new approval must be obtained once the five year approval period has concluded. The proposed amendment further provides that once the audit is completed, a draft of the audit report shall be submitted to the Commissioner for review and/or resolution; and that in order to be approved by the Commissioner, the draft audit shall be consistent with guidelines on audit standards and procedures issued by the Department.

3. PROFESSIONAL SERVICES:

The proposed amendment does not impose any additional professional services requirements. Existing statute (Education Law 4410) and regulation (Part 200.18) required municipalities and the board of education in the city of New York that choose to perform audits pursuant to Education Law section 4410 to do so in accordance with audit standards established by the commissioner.

4. COMPLIANCE COSTS:

None required. Pursuant to Education Law section 4410 (11)(c)(i), municipalities and the board of education in a city with a population of one million or more are not required to perform fiscal audits of the providers but may choose to do so voluntarily. If a municipality or the board choose to perform a fiscal audit, then prior to the enactment of Chapter 57 of the Laws of 2013, section 4410(11)(c)(i) required these voluntary audits to be performed in accordance with audit standards established by the commissioner. Section 24 of Chapter 57 of the Laws of 2013 expands this provision by directing the Department to create guidelines on the standards and procedures for fiscal audits and the proposed regulation incorporates this requirement within the existing audit standards established by the commissioner (which require an approved audit plan and audit program). Depending on the existing audit plans and audit programs, municipalities and the board of education of the city of New York could potentially incur costs associated with developing an audit plan and program if they choose to perform a fiscal audit pursuant to Education Law section 4410 and their existing audit plan and program are not consistent with the guidelines provided by the Department as directed by section 24 of Chapter 57 of the Laws of 2013. These costs may be offset by funds that may be recovered by the municipality or board following an audit that identifies overpayments made to a provider as, pursuant to section 24 of Chapter 57 of the Laws of 2013, one hundred percent of these overpayments may be recovered.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The proposed amendment does not impose any additional costs or new technological requirements on local governments. The proposed amend-

ment does not impose any adverse economic impact, reporting, record keeping or any other compliance requirements on local governments; municipalities and the board of education of the city of New York are not required to perform new functions pursuant to the proposed amendment.

6. MINIMIZING ADVERSE IMPACT:

The proposed amendment is needed to implement section 24 of the Chapter 57 of the Laws of 2013 by establishing standards and procedures for municipalities, and the board of education in a city with a population of one million or more, to perform fiscal audits of Education Law section 4410 preschool special education programs and services. Because the statute upon which the proposed amendment is based applies to all affected municipalities in the State, it is not possible to establish differing compliance or reporting requirements or timetables or to exempt them from the provisions of the proposed amendment.

7. LOCAL GOVERNMENT PARTICIPATION:

Meetings with representatives from the New York State Association of Counties and the New York City Board of Education were conducted to discuss the proposed regulation and a draft copy of the proposed regulation was provided to both entities on April 26, 2013.

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 needed to implement section 24 of Chapter 57 of the Laws of 2013 and therefore changes to the substantive provisions of the proposed amendment are dependent on further statutory changes. 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 municipalities, defined in Education Law section 4410(1)(g) as a county outside of the city of New York or the city of New York in the case of a county contained within the city of New York, and the board of education of the city school district of the city of New York, that choose to perform a fiscal audit of Education Law section 4410 preschool special education programs and services for which the municipality bears fiscal responsibility. This proposed amendment impacts all counties including the 44 rural counties with less than 200,000 inhabitants.

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

The proposed amendment implements section 24 of the Chapter 57 of the Laws of 2013 by requiring municipalities and the board of education of the city school district of the city of New York that choose to commence an audit on or after May 28, 2013, to submit to the Department for approval a detailed audit plan and audit program which shall be consistent with guidelines on audit standards and procedures issued by the Department on or after such date.

The proposed amendment also specifies that Commissioner approval of an audit program and audit plan shall be valid for a period of five years from the date of approval; that municipalities or the board need not submit an audit program and audit plan for each audit to be performed during the five year approval period once approval has been granted by the Commissioner; but that modifications to the approved audit plan and audit program shall be submitted to the Department for review and approval and new approval must be obtained once the five year approval period has concluded. The proposed amendment further provides that once the audit is completed, a draft of the audit report shall be submitted to the Commissioner for review and/or resolution; and that in order to be approved by the Commissioner, the draft audit shall be consistent with guidelines on audit standards and procedures issued by the Department.

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

3. COSTS:

None required. Pursuant to Education Law section 4410(11)(c)(i), municipalities and the board of education in a city with a population of one million or more are not required to perform fiscal audits of the providers but may choose to do so voluntarily. If a municipality or the board choose to perform a fiscal audit, then prior to the enactment of Chapter 57 of the Laws of 2013, section 4410(11)(c)(i) required these voluntary audits to be performed in accordance with audit standards established by the commissioner. Section 24 of Chapter 57 of the Laws of 2013 expands this provision by directing the Department to create guidelines on the standards and procedures for fiscal audits and the proposed regulation incorporates this requirement within the existing audit standards estab-

lished by the commissioner (which require an approved audit plan and audit program). Depending on the existing audit plans and audit programs, municipalities and the board of education of the city school district of the city of New York could potentially incur costs associated with developing an audit plan and program if they choose to perform a fiscal audit pursuant to Education Law section 4410 and their existing audit plan and program are not consistent with the guidelines provided by the Department as directed by section 24 of Chapter 57 of the Laws of 2013. These costs may be offset by funds that may be recovered by the municipality or board following an audit that identifies overpayments made to a provider as, pursuant to section 24 of Chapter 57 of the Laws of 2013, one hundred percent of these overpayments may be recovered.

4. MINIMIZING ADVERSE IMPACT:

The proposed amendment is needed to implement section 24 of the Chapter 57 of the Laws of 2013 by establishing standards and procedures for municipalities, and the board of education in a city with a population of one million or more, to perform fiscal audits of Education Law section 4410 preschool special education programs and services. The statute which the proposed amendment implements applies to all affected municipalities throughout the State, including those in rural areas. Therefore, it was not possible to establish different requirements for entities in rural areas, or to exempt them from the amendment's provisions.

5. RURAL AREA PARTICIPATION:

Meetings with representatives from the New York State Association of Counties, which includes counties located in rural areas, were conducted to discuss the proposed regulation and a draft copy of the proposed regulation was provided on April 26, 2013.

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

Pursuant to State Administrative Procedure Act section 207(1)(b), the State Education Department proposes that the initial review of this rule shall occur in the fifth calendar year after the year in which the rule is adopted, instead of in the third calendar year. The justification for a five year review period is that the proposed amendment merely implements, and conforms the Commissioner's Regulations to, statutory requirements under Chapter 102 of the Laws of 2012 and therefore the substantive provisions of the proposed amendment cannot be repealed or modified unless there is a further statutory change. Accordingly, there is no need for a shorter review period. The Department invites public comment on the proposed five year review period for this rule. Comments should be sent to the agency contact listed in item 10, of the Notice of Proposed Rule Making published herewith, and must be received within 45 days of the State Register publication date of the Notice.

Job Impact Statement

The proposed amendment applies to municipalities, defined in Education Law section 4410(1)(g) as a county outside of the city of New York or the city of New York in the case of a county contained within the city of New York, and the board of education of the city of New York, that choose to perform a fiscal audit of Education Law section 4410 preschool special education programs and services for which the municipality bears fiscal responsibility.

The proposed amendment is needed to implement section 24 of Chapter 57 of the Laws of 2013 by establishing standards and procedures for municipalities, and the board of education in a city with a population of one million or more, that choose to perform fiscal audits of Education Law section 4410 preschool special education programs and services, 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.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Administration of Meningococcal Disease Vaccinations by Pharmacists

I.D. No. EDU-37-13-00002-P

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

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

Statutory authority: Education Law, sections 207 (not subdivided), 6504 (not subdivided), 6507(2)(a), 6527(7)(c), 6802(22) and 6909(7)(c); L. 2013, ch. 274

Subject: Administration of meningococcal disease vaccinations by pharmacists.

Purpose: To implement chapter 274 of the Laws of 2013 to authorize qualified pharmacists to administer meningococcal disease vaccinations.

Text of proposed rule: Paragraph (2) of subdivision (b) of section 63.9 of the Regulations of the Commissioner of Education is amended, effective December 4, 2013, as follows:

(2) Authorized immunization agents. A certified pharmacist who meets the requirements of this section shall be authorized to administer to patients 18 years of age or older:

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

(ii) ...

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

Data, views or arguments may be submitted to: Office of the Professions, Office of the Deputy Commissioner, State Education Department, State Education Building 2M, 89 Washington Avenue, Albany, NY 12234, (518) 486-1765, email: opdepcom@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:

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

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

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

Paragraph (c) of subdivision (7) of section 6527 of the Education Law, as added by Chapter 274 of the Laws of 2013, authorizes physicians to prescribe and order a non-patient specific regimen to a licensed pharmacist for administering immunizations to prevent meningococcal disease.

Subdivision (22) of section 6802 of the Education Law, as amended by Chapter 274 of the Laws of 2013, adds immunizations to prevent meningococcal disease to the list of immunizations certified pharmacists may administer.

Paragraph (c) of subdivision (7) of section 6909 of the Education Law, as added by Chapter 274 of the Laws of 2013, authorizes nurse practitioners to prescribe and order a non-patient specific regimen to a licensed pharmacist for administering immunizations to prevent meningococcal disease.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment carries out the intent of the aforementioned statutes that the Department shall supervise the regulation of the practice of the professions for the benefit of the public. The proposed amendment will conform Regulations of the Commissioner of Education to Chapter 274 of the Laws of 2013 which authorizes certain qualified pharmacists to administer vaccinations to prevent meningococcal disease pursuant to patient-specific prescriptions or non-patient specific orders.

3. NEEDS AND BENEFITS:

The proposed amendment is necessary to conform the Regulations of the Commissioner of Education to Chapter 274 of the Laws of 2013. Authorizing qualified pharmacists to administer vaccinations to prevent meningococcal disease will expand the availability of such vaccinations.

The proposed amendment also includes a technical revision to clarify that immunizations performed by certified pharmacists may be administered only to adult patients who are 18 years of age or older, in accordance with Education Law section 6802(22).

4. COSTS:

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

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

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

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

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment relates solely to the administration of vaccinations to prevent influenza, pneumococcal disease, acute herpes zoster,

and meningococcal disease, and does not impose any program, service, duty, or responsibility upon local governments.

6. PAPERWORK:

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

7. DUPLICATION:

The proposed amendment does not duplicate other existing state or federal requirements, and is necessary to implement Chapter 274 of the Laws of 2013.

8. ALTERNATIVES:

The proposed amendment is necessary to conform the Regulations of the Commissioner of Education to Chapter 274 of the Laws of 2013. There are no significant alternatives to the proposed amendments, and none were considered.

9. FEDERAL STANDARDS:

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

10. COMPLIANCE SCHEDULE:

The proposed amendment is necessary to conform the Regulations of the Commissioner of Education to Chapter 274 of the Laws of 2013. The proposed amendment will become effective on October 29, 2013, which is also the effective date of Chapter 274. It is anticipated that licensees certified to administer immunizations will be able to comply with the proposed amendments by the effective date.

Regulatory Flexibility Analysis

The proposed amendment to the Regulations of the Commissioner of Education authorizes pharmacists who are certified to administer immunizations against influenza, pneumococcal disease and acute herpes zoster to also administer vaccinations to prevent meningococcal disease. The proposed amendment also includes a technical revision to clarify that immunizations performed by certified pharmacists may be administered only to adult patients who are 18 years of age or older, in accordance with Education Law section 6802(22). The amendment will not impose any new reporting, recordkeeping, or other compliance requirements, or have any adverse economic impact, on small businesses or local governments. Because it is evident from the nature of the proposed amendment that it will not adversely affect small businesses or local governments, no affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses and local governments is not required, and one has not been prepared.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed amendment will apply to the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square mile or less. Of the approximately 24,162 pharmacists registered by the State Education Department, approximately 2,914 pharmacists report that their permanent address of record is in a rural county.

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

The proposed amendment is necessary to conform the Commissioner's Regulations to Education Law sections 6527, 6802 and 6909, as amended by Chapter 274 of the Laws of 2013. These provisions allow pharmacists, certified to administer immunizations, to also be able to administer vaccinations to prevent meningococcal disease. The proposed amendment does not impose any additional reporting, recordkeeping or other compliance requirements, or professional services requirements, on entities in rural areas.

3. COSTS:

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

4. MINIMIZING ADVERSE IMPACT:

The proposed amendment is necessary to conform the Commissioner's Regulations with Education Law sections 6527, 6802 and 6909, as amended by Chapter 274 of the Laws of 2013. Following discussions, including obtaining input from practicing professionals, the State Board of Pharmacy has considered the terms of the proposed amendment to Regulations of the Commissioner of Education and has recommended the change. Additionally, the measures have been shared with educational institutions, professional associations, and practitioners representing the profession of pharmacy. The amendment is supported by representatives of these sectors. The proposals make no exception for individuals who live in rural areas. The Department has determined that such requirements should apply to all pharmacists, no matter their geographic location, to ensure a uniform standard of practice across the State. Because of the nature of the proposed rule, alternative approaches for rural areas were not considered.

5. RURAL AREA PARTICIPATION:

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

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

Pursuant to State Administrative Procedure Act section 207(1)(b), the State Education Department proposes that the initial review of this rule shall occur in the fifth calendar year after the year in which the rule is adopted, instead of in the third calendar year. The justification for a five year review period is that the proposed amendment is necessary to implement statutory requirements in Chapter 274 of the Laws of 2013 and therefore the substantive provisions of the proposed amendment cannot be repealed or modified unless there is a further statutory change. Accordingly, there is no need for a shorter review period. The Department invites public comment on the proposed five year review period for this rule. Comments should be sent to the agency contact listed in item 10. of the Notice of Proposed Rule Making published herewith, and must be received within 45 days of the State Register publication date of the Notice.

Job Impact Statement

The proposed amendment to the Regulations of the Commissioner of Education authorizes pharmacists who are certified to administer immunizations against influenza, pneumococcal disease and acute herpes zoster to also administer vaccinations to prevent meningococcal disease. The proposed amendment also includes a technical revision to clarify that immunizations performed by certified pharmacists may be administered only to adult patients who are 18 years of age or older, in accordance with Education Law section 6802(22). The amendment will not have a substantial adverse impact on jobs and employment opportunities. Because it is evident from the nature of the proposed amendment that it will not affect job and employment opportunities, no affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required, and one has not been prepared.

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

Definition of Date of Issuance of Certificates and Expiration of Certain Permanent Certificates from Expired Provisionals

I.D. No. EDU-37-13-00003-P

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

Proposed Action: Amendment of sections 80-1.2(b), 80-1.6 and 80-2.1(a)(2)(i) and (ii) of Title 8 NYCRR.

Statutory authority: Education Law, sections 207 (not subdivided), 305(1), 3001(2), 3006(1)(b) and 3009(1)

Subject: Definition of date of issuance of Certificates and Expiration of Certain Permanent Certificates from Expired Provisionals.

Purpose: To amend the definition of effective date of a certificate to allow persons to be employed in their certificate area on the date their certificate is issued, rather than the February 1 or September 1 following the issuance date of their certificates.

Text of proposed rule: 1. Subdivision (b) of section 80-1.2 of the Regulations of the Commissioner of Education is amended, effective December 4, 2013, to read as follows:

(b) Certificates, dates of issuance.

(1) . . .

(2) [Certificates] *For purposes of reissuances, renewals and other extensions of time validity provided in this Part, expiration dates for certificates issued pursuant to the provisions of this Part shall [date from] be calculated from either the first day of [either] February or September in the year of issuance, whichever date occurs first after the certificate is issued. However, all certificate holders shall be authorized to be employed in the public schools of this State in the area of his or her certificate title, on the date such certificate is issued.*

(3) . . .

(4) [The] *Except as otherwise provided in paragraph (6) of this subdivision, the commissioner shall issue initial and professional teachers' certificates valid for the classroom teaching service beginning with an effective date of September 1, 2004, except that the commissioner may continue to issue provisional and permanent teachers' certificates valid for classroom teaching service as specifically prescribed in this Part.*

[(5) The commissioner shall not issue temporary licenses for employment as teaching assistants with an effective date that begins after February 1, 2004.

6] (5) The commissioner shall issue level I teaching assistant certificates, level II teaching assistant certificates, and level III teaching assistant certificates, and pre-professional teaching assistant certificates beginning with an effective date of September 1, 2004.

(6) *The commissioner shall not issue permanent certificates in the classroom teaching service or in the school administrator and supervisor title to candidates with an expired provisional certificate in the classroom teaching service or school administrator and supervisor title to candidates applying for a permanent certificate on or after October 1, 2014.*

2. Section 80-1.6 of the Regulations of the Commissioner of Education is amended, effective December 4, 2013, to read as follows:

Section 80-1.6 Extensions of time validity of certificates.

(a) Subject to the limitation provided in subdivision (e) of this section and excluding expired certificates in the classroom teaching service or expired provisional certificate in the title of school administrator and supervisor, the time validity of an expired provisional, initial or transitional certificate may be extended for a period not to exceed two years from the expiration date of such certificate, except as provided in subdivisions (b), (c) and (d) of this section, upon application by the holder of a teaching certificate:

- (1) . . .
- (2) . . .
- (3) . . .
- (4) . . .
- (5) . . .

(b) The time validity of expired certificates prescribed in this section, including an expired provisional certificate in the classroom teaching service or an expired provisional certificate in the title of school administrator and supervisor, held by individuals on active duty with the Armed Forces may be extended by the commissioner, upon application by the holder of such certificate, for the time of such active service and an additional 12 months from the end of such service.

(c) The commissioner may extend the time validity of an expired provisional, excluding an expired provisional certificate in the classroom teaching service or an expired provisional certificate in the title of school administrator and supervisor, initial or transitional certificate beyond the two-year extension provided for in subdivision (a) of this section, for a period not to exceed one additional year, if in the six-months preceding the end of the two-year extension, the candidate is faced with extreme hardship or other circumstances beyond the control of the individual and is unable to complete the requirements for the [permanent or] professional certificate in a timely manner.

(d) The commissioner may extend the time validity of an expired provisional, including an expired provisional certificate in the classroom teaching service or an expired provisional certificate in the title of school administrator and supervisor, or initial certificate beyond the extensions provided for in subdivisions (a) and (c) of this section, in increments of one additional year for a candidate who has applied for citizenship or permanent residency, and whose application for citizenship or permanent residency has not been acted upon by the U.S. Citizenship and Immigration Services (USCIS) until the USCIS acts upon such application. Such candidates must provide documentation satisfactory to the department that they meet these requirements, and that they have completed all academic, testing and experience requirements for permanent or professional certification.

(e) . . .

3. Subparagraphs (i) and (ii) of paragraph (2) of subdivision (a) of section 80-2.1 of the Regulations of the Commissioner of Education is amended, effective December 4, 2013, to read as follows:

(i) Candidates with an expired provisional certificate in the classroom teaching service who apply for permanent teachers' certificates in the classroom teaching service prior to October 1, 2014 shall be subject to the requirements of this Subpart, provided that they have been issued a provisional teacher's certificate in the title for which the permanent certificate is sought and have met all requirements for the permanent certificate on or before February 1, 2004 or while under a provisional certificate that was in effect after that date. All other candidates who apply for permanent teachers' certificates in the classroom teaching service shall be subject to the requirements of this Subpart, provided that they have been issued a provisional teacher's certificate in the title for which the permanent certificate is sought, the provisional certificate is not expired, and the candidate has met all requirements for the permanent certificate on or before February 1, 2004 or while under a provisional certificate that was in effect after that date. Candidates with an expired provisional certificate in the classroom teaching service who apply for permanent teachers' certificates in the classroom teaching service on or after October 1, 2014 or who do not meet these conditions shall be subject to the requirements of

Subpart 80-3 of this Part, unless otherwise specifically prescribed in this Part.

(ii) Candidates with an expired provisional certificate in the title school administrator and supervisor who apply for permanent certificates in the title school administrator and supervisor prior to October 1, 2014 shall be subject to the requirements of this Subpart, provided that they have been issued a provisional certificate in this title and either have met all requirements for the permanent certificate on or before September 1, 2007 or while under a provisional certificate that was in effect after that date. All other candidates who apply for permanent certificates in the title school administrator and supervisor shall be subject to the requirements of this Subpart, provided that they have been issued a provisional certificate in this title, the provisional certificate is not expired, and either the candidate has met all requirements for the permanent certificate on or before September 1, 2007 or while under a provisional certificate that was in effect after that date. Candidates with expired provisional certificates who apply for permanent certificates in the title school administrator and supervisor on or after October 1, 2014 or who do not meet these conditions shall be subject to the requirements of Subpart 80-3 of this Part, unless otherwise specifically prescribed in this Part.

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

Data, views or arguments may be submitted to: Peg Rivers, State Education Department, Office of Higher Education, Room 979, 89 Washington Ave., Albany, NY 12234, (518) 486-3633, email: privers@mail.nysed.gov

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

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

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

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

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

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

2. LEGISLATIVE OBJECTIVES:

The amendment carries out the legislative objectives of the above-referenced statutes by amending the definition of effective date of a certificate and the end date for the issuance of a permanent certificate in the classroom teaching service or school administrator and supervisor service.

3. NEEDS AND BENEFITS:

Effective dates

Section 80-1.2(b)(2) of the Commissioner's regulations currently provides that any certificates issued under Part 80 of the Commissioner's regulations shall date from the first day of either February or September in the year of issuance.

However, this language has caused confusion in the field because the Office of Teaching Initiatives has a longstanding policy that a certificate holder may begin employment in a public school under that certificate title on the actual date of issuance of the certificate.

In 2006, the Office of Teaching implemented the TEACH online system. All New York State public schools use this system for verification of certification for their staff. This system has made it easier for districts to determine if a certificate has been issued, however the effective date in this system is still set for September 1 or February 1, depending on when the certificate was issued. Because the system reflects a February or September effective date, some districts will not appoint staff until September 1 or February 1, even though their certificate is technically effective.

Example

Someone who satisfied the requirements for a teaching certificate on September 3, 2012 would be granted a certificate with an effective date of February 1, 2013. Technically, once an individual has met all the requirements and the certificate is issued, he/she is qualified to work in a New York State public school. In the example above, technically she is qualified to teach in a New York State public school on September 3, 2012

even though the effective date on the face of the certificate would be February 1, 2013. However, some school districts won't allow this person to be appointed until February because our regulation and TEACH system are not clear that the candidate can be employed on the date the certificate is issued. The proposed amendment would clarify that certificate holders are eligible for appointment on the date their certificate is issued.

Issuance of Permanent Classroom Teaching and School Administrator/Supervisor Certificates to holders Expired Provisional Classroom Teaching and School Administrator/Supervisor certificates

In 2000, the Board of Regents promulgated new regulations for the issuance of Initial and Professional classroom teaching certificates effective February 2, 2004. The changes in regulation allowed for the continued issuance of the permanent classroom teaching and school administrator/supervisor certificates to holders of expired classroom teaching and School Administrator/Supervisor certificates as long as the person met the certificate requirements for a permanent and/or SAS certificate during the life of their provisional certificate. We are proposing to end the issuance of the permanent certificate based on an expired provisional certificate for the classroom teaching and School Administrator/Supervisor certificates as of October 1, 2014.

Currently a person that was issued a provisional teaching certificate and completed the requirements for the permanent certificate during the life of the provisional, even though the provisional certificate has expired, can still apply and be issued a permanent certificate.

Example

A teacher was issued a provisional special education certificate, effective September 1, 1992. The provisional certificate was valid for five years so the teacher would have had to meet the requirements for the permanent by August 31, 1997. This teacher never applied for the permanent certificate until April 2013. This person may not have pursued teaching as a career and now wants to get back into teaching or may have been teaching somewhere other than a New York public school.

Currently, if this candidate met the requirements for a permanent certificate prior to the expiration of the provisional certificate (Master's degree and 2 years teaching experience), even though the provisional certificate has expired, can the candidate still apply and be issued a permanent certificate. The proposed amendment ends the issuance of the permanent certificate based on an expired provisional certificate for the classroom teaching and School Administrator/Supervisor certificates as of October 1, 2014.

The proposed amendment ends the issuance of the permanent certificate based on an expired provisional certificate for the classroom teaching and School Administrator/Supervisor certificate as of October 1, 2014. If the Board ends the issuance of these certificates, this person would not be eligible for the permanent certificate but would have to meet the requirements for the initial or professional certificate, which were added in 2004. The requirements for an initial or professional certificate are more rigorous than the requirements for the provisional/ permanent certificates. However, staff believes that with the implementation of the Regents Reform Agenda, (APPR and Common Core) these teachers and building level administrators should be required to have the skills and abilities of the required of the new teachers and building level administrators under the current regulations.

4. COSTS:

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

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

5. LOCAL GOVERNMENT MANDATES:

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

6. PAPERWORK:

There are no additional paperwork requirements beyond those currently imposed.

7. DUPLICATION:

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

8. ALTERNATIVES:

No alternatives were considered.

9. FEDERAL STANDARDS:

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

10. COMPLIANCE SCHEDULE:

It is anticipated that the proposed amendment will be adopted at November Regents meeting and will become effective on December 30, 2013.

Regulatory Flexibility Analysis

The purpose of the proposed amendment is to amend the definition of effective date of a certificate to allow persons to be employed in their certifi-

cate area on the date their certificate is issued, rather than the February 1 or September 1 following the issuance date of their certificate. The proposed amendment also establishes an expiration date of October 1, 2014 for the issuance of a permanent certificate in the classroom teaching service or school administrator and supervisory service for candidates with an expired provisional certificate. The proposed rule does not impose any reporting, recordkeeping or other compliance requirements, and will not have an adverse economic impact, on small businesses or local governments. Because it is evident from the nature of the amendment that it does not affect small businesses or local governments, no further steps were needed to ascertain that fact and one were taken. Accordingly, a regulatory flexibility analysis for small businesses and local governments is not required and one has not been prepared.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed amendment will affect those teachers that have not applied for a permanent certificate within the life of the provisional in the classroom teaching service and school administration and supervisory service before their certificate expired and will clarify the effective date of a certificates issued under Part 80 of the Commissioner's regulations in all parts of the State, including those located in the 44 rural counties with fewer than 200,000 inhabitants and the 71 towns and urban counties with a population density of 150 square miles or less.

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

Effective dates

Section 80-1.2(b)(2) of the Commissioner's regulations currently provides that any certificates issued under Part 80 of the Commissioner's regulations shall date from the first day of either February or September in the year of issuance.

However, this language has caused confusion in the field because the Office of Teaching Initiatives has a longstanding policy that a certificate holder may begin employment in a public school under that certificate title on the actual date of issuance of the certificate.

In 2006, the Office of Teaching implemented the TEACH online system. All New York State public schools use this system for verification of certification for their staff. This system has made it easier for districts to determine if a certificate has been issued, however the effective date in this system is still set for September 1 or February 1, depending on when the certificate was issued. Because the system reflects a February or September effective date, some districts will not appoint staff until September 1 or February 1, even though their certificate is technically effective.

Example

Someone who satisfied the requirements for a teaching certificate on September 3, 2012 would be granted a certificate with an effective date of February 1, 2013. Technically, once an individual has met all the requirements and the certificate is issued, he/she is qualified to work in a New York State public school. In the example above, technically she is qualified to teach in a New York State public school on September 3, 2012 even though the effective date on the face of the certificate would be February 1, 2013. However, some school districts won't allow this person to be appointed until February because our regulation and TEACH system are not clear that the candidate can be employed on the date the certificate is issued. The proposed amendment would clarify that certificate holders are eligible for appointment on the date their certificate is issued.

Issuance of Permanent Classroom Teaching and School Administrator/Supervisor Certificates to holders Expired Provisional Classroom Teaching and School Administrator/Supervisor certificates

In 2000, the Board of Regents promulgated new regulations for the issuance of Initial and Professional classroom teaching certificates effective February 2, 2004. The changes in regulation allowed for the continued issuance of the permanent classroom teaching and school administrator/supervisor certificates to holders of expired classroom teaching and School Administrator/Supervisor certificates as long as the person met the certificate requirements for a permanent and/or SAS certificate during the life of their provisional certificate. We are proposing to end the issuance of the permanent certificate based on an expired provisional certificate for the classroom teaching and School Administrator/Supervisor certificates as of October 1, 2014.

Currently a person that was issued a provisional teaching certificate and completed the requirements for the permanent certificate during the life of the provisional, even though the provisional certificate has expired, can still apply and be issued a permanent certificate.

Example

A teacher was issued a provisional special education certificate, effective September 1, 1992. The provisional certificate was valid for five years so the teacher would have had to meet the requirements for the permanent by August 31, 1997. This teacher never applied for the permanent certifi-

cate until April 2013. This person may not have pursued teaching as a career and now wants to get back into teaching or may have been teaching somewhere other than a New York public school.

Currently, if this candidate met the requirements for a permanent certificate prior to the expiration of the provisional certificate (Master's degree and 2 years teaching experience), even though the provisional certificate has expired, can the candidate still apply and be issued a permanent certificate. The proposed amendment ends the issuance of the permanent certificate based on an expired provisional certificate for the classroom teaching and School Administrator/Supervisor certificates as of October 1, 2014.

The proposed amendment ends the issuance of the permanent certificate based on an expired provisional certificate for the classroom teaching and School Administrator/Supervisor certificate as of October 1, 2014. If the Board ends the issuance of these certificates, this person would not be eligible for the permanent certificate but would have to meet the requirements for the initial or professional certificate, which were added in 2004. The requirements for an initial or professional certificate are more rigorous than the requirements for the provisional/ permanent certificates. However, staff believes that with the implementation of the Regents Reform Agenda, (APPR and Common Core) these teachers and building level administrators should be required to have the skills and abilities of the required of the new teachers and building level administrators under the current regulations.

3. COSTS:

There are no additional costs imposed beyond those imposed by statute.

4. MINIMIZING ADVERSE IMPACT:

The State Education Department does not believe that making this change for candidates who live or work in rural areas is warranted because uniform standards for certification are necessary across the State.

5. RURAL AREA PARTICIPATION:

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

Job Impact Statement

The purpose of the proposed amendment is to amend the definition of effective date of a certificate to allow persons to be employed in their certificate area on the date their certificate is issued, rather than the February 1 or September 1 following the issuance date of their certificates. The proposed amendment also establishes an expiration date of October 1, 2014 for the issuance of a permanent certificate in the classroom teaching service or school administrator and supervisory service for candidates with an expired provisional certificate. Because it is evident from the nature of the proposed rule that it will have no impact on the number of jobs or employment opportunities in New York State, no further steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Committees on Preschool Special Education (CPSE)

I.D. No. EDU-37-13-00004-P

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

Proposed Action: Amendment of sections 200.3 and 200.5 of Title 8 NYCRR.

Statutory authority: Education Law, sections 101(not subdivided), 207(not subdivided), 305(1), (2), (20), 4402(1)(b), 4403(3) and 4410(13); L. 2013, ch. 213

Subject: Committees on Preschool Special Education (CPSE).

Purpose: To conform Commissioner's Regulations to L. 2013, ch. 213, relating to the additional parent member on a CPSE.

Text of proposed rule: 1. Subparagraph (v) of paragraph (2) of subdivision (a) of section 200.3 of the Regulations of the Commissioner of Education is amended, effective December 4, 2013, as follows:

(v) an additional parent member of a child with a disability residing in the school district or a neighboring school district and whose child is enrolled in a preschool or elementary level education program, [provided that such parent is not a required member if the parent(s) of the child request that the additional parent member not participate] if specifically requested in writing by the parent of the student or by a member of the committee at least 72 hours prior to the meeting;

2. Subparagraphs (vi) and (v) of paragraph (2) of subdivision (c) of section 200.5 of the Regulations of the Commissioner of Education are amended, effective December 4, 2013, as follows:

(iv) for meetings of the committee on special education, inform the parent(s) of his or her right to request, in writing at least 72 hours before the meeting, the [presence] attendance of the school physician member and an additional parent member of the committee on special education at any meeting of such committee pursuant to section 4402(1)(b) of the Education Law and include a statement, prepared by the State Education Department, explaining the role of having the additional parent member attend the meeting;

(v) for meetings of the committee on preschool special education, inform the parent(s) of his or her right to [decline] request, in writing at least 72 hours before the meeting, the [participation] attendance of [the] an additional parent member at any meeting of such committee pursuant to section 4410(3)(a)(1)(v) of the Education Law and include a statement, prepared by the State Education Department, explaining the role of having the additional parent member attend the meeting;

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

Data, views or arguments may be submitted to: James P. DeLorenzo, Assistant Commissioner P-12, State Education Department, Office of Special Education, State Education Building, Room 309, 89 Washington Ave., Albany, NY 12234, (518) 402-3353, email: spedpubliccomment@mail.nysed.gov

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

Regulatory Impact Statement

STATUTORY AUTHORITY:

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

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

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

Education Law section 4402 establishes school district duties for the education of students with disabilities.

Education Law section 4403 establishes Department and school district responsibilities concerning education programs and services to students with disabilities. Section 4403(3) authorizes the Department to adopt rules and regulations as the Commissioner deems in their best interests.

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

Chapter 213 of the Laws of 2013 amended Education Law section 4410 in relation to the additional parent member of committees on preschool special education (CPSE).

LEGISLATIVE OBJECTIVES:

The proposed amendment is consistent with the authority conferred by the above statutes and is necessary to conform the Commissioner's Regulations to Chapter 213 of the New York State Laws of 2013, which became effective July 31, 2013.

NEEDS AND BENEFITS:

The proposed amendment is necessary to conform the Commissioner's Regulations to Chapter 213 of the New York State Laws of 2013. Chapter 213 amends Education Law section 4410 to provide that the additional parent member of a CPSE need not be in attendance at any CPSE meeting unless specifically requested by the parent or member of the CPSE in writing at least 72 hours prior to the meeting. The law further requires that parents receive proper written notice of their right to have an additional parent member attend any CPSE meeting along with a statement, prepared by the State Education Department, explaining the role of having the additional parent attend the meeting.

The proposed amendment also makes a technical amendment in section 200.5(c)(2)(iv) to replace the term "presence" with "attendance" to ensure consistency with the terminology used in Education Law section 4402(1)(b)(1)(b), relating to the meeting notice for meetings of the Committee on Special Education.

COSTS:

- a. Costs to State government: None.
- b. Costs to local governments: None.

c. Costs to regulated parties: None.

d. Costs to the State Education Department of implementation and continuing compliance: None.

The proposed amendment merely conforms the Commissioner's Regulations to Chapter 213 of the Laws of 2013 and makes a technical amendment. It does not impose any additional costs beyond those imposed by the statute.

LOCAL GOVERNMENT MANDATES:

The proposed amendment merely conforms the Commissioner's Regulations to Chapter 213 of the Laws of 2013 and makes a technical amendment. It does not impose any additional program, service, duty or responsibility upon local governments beyond those imposed by the statute.

Consistent with Chapter 213, section 200.3(a)(2)(v) is amended to repeal the provision that the additional parent member is a required member of the CPSE unless the parents of the student request that he/she not participate in the meeting; and add that the additional parent member of the CPSE would be a required member of the CPSE if requested by the parent or a member of the CPSE in writing at least 72 hours prior to the meeting. Section 200.5(c)(2)(v) is amended to provide that the meeting notice for CPSE meetings must inform parents of their right to request, in writing at least 72 hours prior to the meeting, the attendance of an additional parent member at any CPSE meeting and that the meeting notice must include a statement, prepared by the State Education Department (SED), explaining the role of having the additional parent attend the meeting.

PAPERWORK:

The proposed amendment merely conforms the Commissioner's Regulations to Chapter 213 of the Laws of 2013 and makes a technical amendment. It does not impose any additional paperwork requirements. While Chapter 213 of the Laws of 2013 added a requirement that school districts notify parents of their right to request the attendance of the additional parent member at any CPSE meeting and to include a statement prepared by SED explaining the role of the additional parent member, the proposed amendment implements the statute by adding these requirements to the State's existing mandatory meeting notice. Therefore, there would be no additional paperwork requirements imposed on districts since districts must currently use the meeting notice form prescribed by the Commissioner.

DUPLICATION:

The proposed amendment will not duplicate, overlap or conflict with any other State or federal statute or regulation, and is necessary to conform the Commissioner's Regulations to Chapter 213 of the Laws of 2013.

ALTERNATIVES:

The proposed amendment is necessary to conform the Commissioner's Regulations to Chapter 213 of the Laws of 2013. There are no significant alternatives and none were considered.

FEDERAL STANDARDS:

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

COMPLIANCE SCHEDULE:

It is anticipated that regulated parties will be able to achieve compliance with the proposed amendment because the amendment merely conforms the Commissioner's Regulations to Chapter 213 of the Laws of 2013, which became effective on July 31, 2013, and makes a technical amendment.

Regulatory Flexibility Analysis

Small Businesses:

The proposed amendment is necessary to conform the Commissioner's Regulations to Chapter 213 of the Laws of 2013 relating to the additional parent member of a committee on preschool special education (CPSE) and to make a technical amendment. 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 rule that it does not affect small businesses, no affirmative steps are needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses is not required and one has not been prepared.

Local Governments:

1. EFFECT OF RULE:

The proposed amendment applies to all public school districts, boards of cooperative educational services (BOCES), charter schools, State-operated and State-supported schools, special act school districts and approved private schools.

2. COMPLIANCE REQUIREMENTS:

The proposed amendment merely conforms the Commissioner's Regulations to Chapter 213 of the Laws of 2013, which became effective July 31, 2013, and makes a technical amendment. It does not impose any additional compliance requirements beyond those imposed by the statute.

Consistent with Chapter 213, section 200.3(a)(2)(v) is amended to repeal the provision that the additional parent member is a required member of the CPSE unless the parents of the student request that he/she not participate in the meeting; and add that the additional parent member of the CPSE would be a required member of the CPSE if requested by the parent or a member of the CPSE in writing at least 72 hours prior to the meeting. Section 200.5(c)(2)(v) is amended to provide that the meeting notice for CPSE meetings must inform parents of their right to request, in writing at least 72 hours prior to the meeting, the attendance of an additional parent member at any CPSE meeting and that the meeting notice must include a statement, prepared by the State Education Department (SED), explaining the role of having the additional parent attend the meeting.

The proposed amendment also makes a technical amendment in section 200.5(c)(2)(iv) to replace the term "presence" with "attendance" to ensure consistency with the terminology used in Education Law section 4402(1)(b)(1)(b), relating to the meeting notice for meetings of the Committee on Special Education.

3. PROFESSIONAL SERVICES:

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

4. COMPLIANCE COSTS:

The proposed amendment merely conforms the Commissioner's Regulations to Chapter 213 of the Laws of 2013 and makes a technical amendment. It does not impose any additional costs beyond those imposed by the statute.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

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

6. MINIMIZING ADVERSE IMPACT:

The proposed amendment merely conforms the Commissioner's Regulations to Chapter 213 of the Laws of 2013 and makes a technical amendment. The proposed amendment has been carefully drafted to meet State statutory requirements and does not impose any additional costs or compliance requirements on local governments beyond those imposed by the statute. While Chapter 213 of the Laws of 2013 added a requirement that school districts notify parents of their right to request the attendance of the additional parent member at any CPSE meeting and to include a statement prepared by SED explaining the role of the additional parent member, the proposed amendment implements the statute by adding these requirements to the State's existing mandatory meeting notice. Therefore, there would be no additional paperwork requirements imposed on districts since districts must currently use the meeting notice form prescribed by the Commissioner.

7. LOCAL GOVERNMENT PARTICIPATION:

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

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

Pursuant to State Administrative Procedure Act section 207(1)(b), the State Education Department proposes that the initial review of this rule shall occur in the fifth calendar year after the year in which the rule is adopted, instead of in the third calendar year. The justification for a five year review period is that the proposed amendment is necessary to implement statutory requirements in Chapter 213 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 ESTIMATED NUMBERS OF RURAL AREAS:

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

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

The proposed amendment merely conforms the Commissioner's Regulations to Chapter 213 of the New York State (NYS) Laws of 2013, which became effective July 31, 2013, and makes a technical amendment. It does not impose any additional reporting, record keeping or other compliance requirements, or professional service requirements, on entities in rural areas beyond those imposed by the statute.

Consistent with Chapter 213, section 200.3(a)(2)(v) is amended to repeal the provision that the additional parent member is a required member of the committee on preschool special education (CPSE) unless the parents of the student request that he/she not participate in the meeting; and add that the additional parent member of the CPSE would be a required member of the CPSE if requested by the parent or a member of the CPSE in writing at least 72 hours prior to the meeting. Section 200.5(c)(2)(v) is amended to provide that the meeting notice for CPSE meetings must inform parents of their right to request, in writing at least 72 hours prior to the meeting, the attendance of an additional parent member at any CPSE meeting and that the meeting notice must include a statement, prepared by the State Education Department (SED), explaining the role of having the additional parent attend the meeting.

The proposed amendment also makes a technical amendment in section 200.5(c)(2)(iv) to replace the term "presence" with "attendance" to ensure consistency with the terminology used in Education Law section 4402(1)(b)(1)(b), relating to the meeting notice for meetings of the Committee on Special Education.

The proposed amendment does not impose any additional professional service requirements on entities in rural areas.

3. COSTS:

The proposed amendment merely conforms the Commissioner's Regulations to Chapter 213 of the Laws of 2013 and makes a technical amendment. It does not impose any additional costs beyond those imposed by the statute.

4. MINIMIZING ADVERSE IMPACT:

The proposed amendment merely conforms the Commissioner's Regulations to Chapter 213 of the Laws of 2013 and makes a technical amendment. The proposed amendment has been carefully drafted to meet State statutory requirements and does not impose any additional costs or compliance requirements on these entities beyond those imposed by the statute. Since these requirements apply to all school districts in the State, it is not possible to adopt different standards for school districts in rural areas.

While Chapter 213 of the Laws of 2013 added a requirement that school districts notify parents of their right to request the attendance of the additional parent member at any CPSE meeting and to include a statement prepared by the SED explaining the role of the additional parent member, the proposed amendment implements the statute by adding these requirements to the State's existing mandatory meeting notice. Therefore, there would be no additional paperwork requirements imposed on districts since districts must currently use the meeting notice form prescribed by the Commissioner.

5. RURAL AREA PARTICIPATION:

The proposed amendment was submitted for discussion and comment to the Department's Rural Education Advisory Committee, which includes representatives of school districts in rural areas.

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

Pursuant to State Administrative Procedure Act section 207(1)(b), the State Education Department proposes that the initial review of this rule shall occur in the fifth calendar year after the year in which the rule is adopted, instead of in the third calendar year. The justification for a five year review period is that the proposed amendment is necessary to implement statutory requirements in Chapter 213 of the Laws of 2013 and therefore the substantive provisions of the proposed amendment cannot be repealed or modified unless there is a further statutory change. Accordingly, there is no need for a shorter review period. The Department invites public comment on the proposed five year review period for this rule. Comments should be sent to the agency contact listed in item 10. of the Notice of Proposed Rule Making published herewith, and must be received within 45 days of the State Register publication date of the Notice.

Job Impact Statement

The proposed amendment is necessary to conform the Commissioner's Regulations to Chapter 213 of the Laws of 2013 relating to the additional parent member of a committee on preschool special education and to make a technical amendment.

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

Department of Environmental Conservation

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Liquefied Natural Gas (LNG)

I.D. No. ENV-37-13-00005-P

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

Proposed Action: Addition of Part 570 to Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, art. 23, title 17, sections 23-1709(1) and 3-0301(2)(a) and (m)

Subject: Liquefied Natural Gas (LNG).

Purpose: To establish criteria for the siting of and to require DEC permits for LNG facilities per ECL article 23, title 17.

Public hearing(s) will be held at: 2:00 p.m., Oct. 30, 2013 at Department of Environmental Conservation, 625 Broadway, Rm. 129, Albany, NY.

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

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

Substance of proposed rule (Full text is posted at the following State website: www.dec.ny.gov/regulations/93069.html): This rulemaking is proposed by the New York State Department of Environmental Conservation (DEC) to adopt 6 NYCRR Part 570, the statewide regulations that implement safe siting, operating, and transportation requirements for Liquefied Natural Gas (LNG) facilities under Article 23, Title 17 of the Environmental Conservation Law (ECL).

Chapter 892 of the Laws of 1976 added a new ECL Article 23 Title 17, "Liquefied Natural and Petroleum Gas" (the LNG statute). This statute requires DEC to implement regulations with criteria for the safe siting, operation, and transportation of LNG and LNG facilities throughout New York State (the State). It is necessary and desirable to promulgate these new regulations to conform to the LNG statute, especially due to the recent interest from businesses and utilities in New York State who have proposed LNG projects in the State.

DEC's general authority to adopt any necessary, convenient, or desirable rules to carry out the environmental policy of the State is provided by ECL Article 3 Title 3 section 1(2), (a), (m); additionally, DEC's specific authority to adopt rules of procedure for adjudicatory proceedings is provided by the State Administrative Procedure Act section 301(3).

Partly in response to a 1973 maintenance accident at an LNG facility on Staten Island, the Legislature enacted a statewide moratorium on the siting of new LNG facilities under Chapter 395 of the Laws of 1978. This moratorium was lifted on April 1, 1999 for all locations except municipalities with a population of one million or more (i.e., New York City). The moratorium has been repeatedly extended every two years by the State legislature. Most recently, in May 2013 the moratorium was extended to April 1, 2015.

In addition, ECL Section 23-1709 requires DEC to implement the provisions of Article 23 and provides DEC with the authority to adopt regulations establishing criteria for the siting of LNG facilities to protect public health and the environment of the State. To fulfill this requirement, DEC must promulgate regulations prior to any new LNG facilities being sited and operated, which can only occur in areas of the State not impacted by any moratorium.

The following outline highlights the organization of 6 NYCRR Part 570.

Section 570.1: INTRODUCTION

Section 570.1 contains a description of the general purpose, applicability, definitions, exemptions, severability, and enforcement throughout Part 570. The purpose of this section is to ensure the orderly and efficient administration of Article 23, Title 17 of the Environmental Conservation Law (ECL) at LNG facilities throughout the State. Consistent with Title 17, this proposal does not regulate compressed natural gas (CNG) or liquefied petroleum gas (LPG). These regulations do not require permits for vehicles or vessels that are fueled by LNG but does regulate dispensing facilities (fueling stations) that store LNG.

Section 570.2: PERMIT REQUIREMENTS and APPLICATION PROCEDURES

Section 570.2 applies to the permit requirements and application procedures for LNG facilities, including an explanation of the permit application process; contents of an application, criteria for siting; permit issuance, duration and renewal; public participation guidelines; modification of permit and change of ownership; permit suspension or revocation; and program fees. This section also outlines the required procedures to obtain a permit. Issuance of these permits is expected to attract corporations/industries interested in constructing and operating LNG facilities, which is expected to result in increased economic growth and job creation throughout the State.

Section 570.3: SITE INSPECTIONS and TRAINING of LOCAL FIRE DEPARTMENT PERSONNEL

Section 570.3 applies to site inspections and training of local fire department personnel. Applicants for permits shall offer emergency training for local fire department staff. Compliance with training and inspection requirements can either be determined by DEC's personnel or third parties who are qualified to monitor compliance.

Section 570.4: TRANSPORTATION of LNG

Section 570.4 explains the intrastate and interstate transportation requirements of LNG within the State. The regulations prohibit the intrastate transportation of LNG to supply a facility permitted under this Part unless the intrastate transportation route has been certified as set forth in subdivision 570.4(a). In reviewing the requirement within the ECL for certified routes (ECL 23-1713), the NYSDOT has determined that since certified routes are not established for other hazardous materials, it would be impracticable to establish certified routes for LNG from sources within the State. Consistent with ECL Article 23 Title 17, the proposed regulations do not require certification of routes from out-of-state sources of LNG.

Section 570.5: NON-CONFORMING FACILITIES

Section 570.5 applies to the requirement for pre-existing non-conforming facilities to comply with the rules and regulations of this Part and the procedures outlined in the LNG Statute. There are three facilities which fit this situation: National Grid's Holtsville and Greenpoint facilities, and Con-Edison's Astoria plant. These facilities operate pursuant to DEC Orders issued in 1979.

Section 570.6: PERMANENT CLOSURE of OUT-OF-SERVICE LNG STORAGE TANKS

Section 570.6 applies to the permanent closure of out-of-service LNG storage tanks, referring to engineering guidelines and procedures that must be complied with to ensure proper closure.

Section 570.7: FINANCIAL ASSURANCE

Section 570.7 states that financial assurance, the form and amount of which will be established by DEC, may be required to ensure proper closure of LNG facilities.

Section 570.8: REPORTING OF LNG SPILLS

Section 570.8 explains the requirements for reporting a spill of LNG at a permitted facility.

Section 570.9: MORATORIUM

Section 570.9 pertains to the existence of a moratorium on the siting of LNG facilities in cities with populations of one million or more. It emphasizes that the LNG regulations will not affect any moratorium. In May 2013, the moratorium for these municipalities was extended to April 1, 2015.

Section 570.10: REFERENCES

Section 570.10 provides a listing of reference materials that are cited in 6 NYCRR Part 570, including those that are incorporated by reference, and explains how they can be obtained for inspection and/or purchasing.

In summary, this rulemaking will incorporate the statutory requirements in Article 23, Title 17 of the ECL to adopt statewide regulations that implement safe siting, operating and transportation requirements for LNG facilities in the State. With the construction and operation of new LNG facilities, numerous employment opportunities will be created as this new, environmentally preferable, alternative fuel becomes available throughout the State.

Text of proposed rule and any required statements and analyses may be obtained from: Andrew English, NYS Department of Environmental Conservation, 625 Broadway, Albany, NY 12233-7020, (518) 402-9553, email: derweb@gw.dec.state.ny.us

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

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

Additional matter required by statute: Negative Declaration, Coastal Assessment Form, and Short Environmental Assessment Form have been completed for this proposed rule making.

Summary of Regulatory Impact Statement

The New York State Department of Environmental Conservation (DEC) is proposing to adopt 6 NYCRR Part 570 to implement a permit-

ting program for the siting and construction of Liquefied Natural Gas (LNG) facilities. These regulations will promulgate criteria for the siting of these facilities and the form and content of permit applications. As required by Environmental Conservation Law (ECL) Article 23, Title 17 (the LNG statute), environmental safety permits must be obtained from DEC before construction of an LNG facility in New York State (the State). This rulemaking will establish a program that addresses the renewed interest in locating LNG facilities (particularly heavy-duty truck fueling facilities) in the State, and allow the siting, construction, and operation of such facilities. Part 570 will also address the transportation of LNG and the statutory requirement that intrastate transportation only occur along approved routes.

1. Statutory Authority

The statutory authority for DEC to adopt Part 570, and guidance as to such regulations' contents, is found in ECL Sections 1-0101, 3-0301, 23-1703, 23-1705, 23-1707, 23-1709, 23-1711, 23-1713, 23-1715, 23-1717 and 23-1719. The full Regulatory Impact Statement summarizes each of these statutory sections. Key statutory provisions are outlined below.

ECL Section 1-0101 declares a policy of the State to conserve, improve and protect its natural resources and environment and to control water, land and air pollution in order to enhance the health, safety and welfare of the people and their overall economic and social well being. ECL Section 3-0301 empowers DEC to coordinate and develop programs to carry out the environmental policy of the State set forth in Section 1-0101. Among other things, section 3-0301 specifically empowers DEC to adopt such regulations as may be necessary to effectuate that environmental policy. A permitting program for LNG facilities will further the objectives of these sections by providing a means to appropriately site LNG facilities in locations that encourage the best usage of land and minimize the risk of potential environmental and safety impacts. Further, the proposed rules will address the transportation of LNG within the State.

Various sections of the LNG statute specify the requirements for implementation of the LNG program in the State. The LNG statute emphasizes the need to minimize the siting of LNG storage, transportation and conversion facilities in residential areas or in proximity to contiguous populations and to protect such areas from potential hazards associated with transportation of LNG.

The authorities granted to DEC by the cited ECL provisions also empower DEC to address the transportation of LNG. As required by the LNG statute, the proposed rules prohibit intrastate transportation of LNG until routes are approved. Part 570 dovetails with federal standards applicable to LNG storage and transportation, as detailed in the complete version of the RIS. Like the underlying LNG statute, the proposed rules do not impede interstate commerce. Thus, DEC has the statutory authority to adopt the proposed rules.

2. Legislative Objectives**a. Overview**

ECL 23-1709 requires DEC to adopt regulations for the safe siting and operation of LNG facilities. Use of LNG in heavy-duty trucks has environmental advantages over the use of diesel fuel because of reduced greenhouse gas and other emissions. Most other states permit LNG storage, conversion and transportation. As a result, LNG refueling stations may be operated in such other states. But New York has not permitted the construction of any LNG facilities since the LNG statute was adopted. There are three "grandfathered" peak shaving facilities in New York City and on Long Island operating under orders on consent with DEC in accordance with ECL 23-1719. Adoption of Part 570 will allow DEC to address the renewed interest in siting LNG facilities, and to consider applications for environmental safety permits for new facilities.

b. Specific Regulatory Provisions**Section 570.1: INTRODUCTION**

This section contains descriptions of the general purpose, applicability, definitions, exemptions, severability, and enforcement of Part 570. Part 570 incorporates by reference standards contained in the National Fire Protection Association (NFPA) Standards 52 and 59A. These regulations do not regulate compressed natural gas or liquefied petroleum gas, or require permits for vehicles or vessels fueled by LNG.

Section 570.2: PERMIT REQUIREMENTS and APPLICATION PROCEDURES

This section sets forth permit application procedures addressing: siting; permit duration and renewal; public participation guidelines; permit modification and change of facility ownership; permit suspension or revocation; and program fees. It requires that applicants offer emergency training for local fire department staff, if needed.

Section 570.3: SITE INSPECTIONS and TRAINING of LOCAL FIRE DEPARTMENT PERSONNEL

This section authorizes DEC (or qualified third parties) to inspect permitted facilities to determine compliance, and requires that applicants offer emergency training for local fire department staff, if needed.

Section 570.4: TRANSPORTATION of LNG

This section prohibits the intrastate transportation of LNG to supply permitted facilities unless the intrastate transportation route has been certified. Consistent with the LNG statute, the proposed regulations do not affect interstate LNG transport.

Section 570.5: NON-CONFORMING FACILITIES

This section addresses "grandfathered" LNG facilities. No permits are required for these three facilities, unless capacity is increased.

Section 570.6: PERMANENT CLOSURE of OUT-OF-SERVICE LNG STORAGE TANKS

This section requires that out-of-service LNG storage tanks be permanently closed pursuant to certain engineering guidelines and procedures.

Section 570.7: FINANCIAL ASSURANCE

This section states that financial assurance, the form and amount of which will be established by DEC, may be required to ensure proper closure of LNG facilities.

Section 570.8: REPORTING OF LNG SPILLS

This section explains the requirements for reporting LNG spills.

Section 570.9: MORATORIUM

This section states that Part 570 will not affect any statutory moratoria.

Section 570.10: REFERENCES

This section provides a listing of reference materials that are cited in 6 NYCRR Part 570, including those that are incorporated by reference, and explains how they can be obtained for inspection and/or purchase.

3. Needs and Benefits

Without Part 570, new LNG facilities cannot be constructed or operated in the State. A 1998 New York State Energy Research and Development Authority (NYSERDA) report found that New York was the only state in the nation with a moratorium on LNG facilities, which have been operated safely elsewhere. The report recommended the moratorium be lifted, which occurred on April 1, 1999, except for New York City. The report also recommended the repeal of the LNG statute.

A second NYSEDA LNG report (2011) analyzed the "state-of-the-art" of LNG activities in the US, and provided facility, job and cost projections in the event LNG regulations were promulgated. The report confirmed that the recent lower price of LNG compared with other fuels has increased its demand in the transportation sector, and that most states use NFPA Standards 52 and 59A, which are comprehensive standards for the construction and operation of LNG facilities. The report also documented the environmental benefits of LNG.

The 2011 study also estimated the type and number of LNG permits expected to be issued in the State if the regulations were promulgated. These include: (1) LNG import/export terminals (these would require federal approval); (2) peak shaving plants that produce/store/vaporize LNG; (3) regional LNG production facilities (relatively large quantities); (4) LNG production at natural gas wells; (5) LNG production at facilities with access to a natural gas pipeline; and (6) LNG fueling facilities without on-site production of LNG. Using various methods, the report estimates that between 10 and 25 facilities (best estimate 21) will be permitted in the first five years after Part 570 is promulgated.

In recent years, several companies have proposed LNG operations in the State. Commercial vehicle manufacturers have expressed interest in replacing diesel engines with those that run on LNG.

4. Costs

a. Costs to regulated community

In addition to any fees or costs associated with the State Environmental Quality Review Act process, applicants for LNG permits will have to submit application fees for each new permit, renewal, or transfer, based on the facility's LNG storage capacity. If the capacity is less than 1,100 gallons, the fee for a five-year permit is \$100; 1,100 gallons to 10,000 gallons: \$500; 10,001 to 70,000 gallons: \$1,000; greater than 70,000 gallons: \$2,500. The application fee is a one-time fee for the life of the permit for the original permit holder.

Applications must evaluate the capabilities of local fire response agencies. If DEC (with the assistance of the Office of Fire Prevention and Control (OFPC) of the State Division of Homeland Security and Emergency Services) concludes that additional training, equipment, or personnel are needed, the applicant must provide same. Costs for training will range from \$1,000 to \$5,000 per firefighter, depending on their numbers and experience levels. Subsequent annual refreshers will range from \$200 to \$500.

b. Costs to DEC, State, and Local Government

Promulgation of these regulations is required by the LNG statute. DEC expects the State to recoup its personal service and non-personal service costs through permit application fees. DEC will need to dedicate staff time to issue permits and inspect LNG facilities. ECL 23-1715 provides DEC with the ability to recover costs associated with permit revocation and enforcement proceedings.

Costs to other state agencies are to: 1) OFPC for the Fire Administrator's review of applications to determine capabilities of local fire departments; and 2) New York State Department of Public Service (NYS DPS) for

inspection of facilities covered by the Public Service Law. These responsibilities can be fulfilled with those agencies' current staff.

Costs to local governments will be paid for by applicants. Thus, there will be no, or de minimis, costs to local governments.

c. Basis of Cost Estimates

The cost estimates contained herein are from the 2011 NYSEDA LNG report and DEC staff's best professional judgments based on years of experience with many environmental regulatory programs. Both the 1998 and 2011 NYSEDA reports are incorporated herein by reference and available on DEC's website.

5. Local Government Mandates

No recordkeeping, reporting, or other requirements not created by the LNG statute will be imposed on local governments by this rulemaking.

6. Paperwork

No paperwork is proposed other than as is required by the LNG statute. Applicants must submit completed applications to DEC. There are reporting obligations for releases of LNG which result in, or may reasonably be expected to result in, a fire or an explosion. These obligations are consistent with the legislative intent and do not cause any undue costs or burdens.

7. Duplication

Three federal agencies, the Federal Energy Regulatory Commission (FERC), the Department of Transportation (USDOT), and the Coast Guard (USCG), have jurisdiction over LNG safety issues. Under the Natural Gas Act, FERC issues certificates authorizing the siting and construction of onshore and near-shore LNG import or export facilities, and has jurisdiction over LNG peak shaving facilities used in interstate commerce. FERC also issues certificates of public convenience and necessity for LNG facilities engaged in interstate natural gas transportation by pipeline. In addition, the NFPA standards have been adopted by numerous state and federal agencies.

Finally, the USCG has authority over the design, construction, manning, and operation of ships and barges that transport LNG, and marine transfer areas of import/export facilities. Currently, no import and/or export terminal facilities are operating in the State.

At the State level, NYSDOT, NYSDPS, and OFPC have regulatory jurisdiction over certain aspects of the production, storage, transportation, and use of LNG. In drafting Part 570, DEC worked with all affected state agencies to minimize the impact of any duplication, overlap or conflict on the regulated community.

8. Alternatives

No action: If Part 570 is not promulgated, DEC cannot issue permits for LNG facilities. Under a "no action" alternative, the economic, environmental, and energy benefits of these projects would be lost.

Legislative initiative: There have been attempts to amend the LNG statute, which could significantly change DEC's role in regulating LNG facilities. To date, none of these efforts have been successful. Thus, DEC continues to be responsible for developing Part 570.

Rulemaking initiative: Based on the preceding discussion, regulations should be promulgated to address the safe siting, construction and operation of LNG facilities.

9. Federal Standards

Federal standards applicable to this rulemaking are 49 CFR 193, USDOT Pipeline Safety regulation; and 33 CFR 127, USCG's Navigation and Navigable Waters regulation.

10. Compliance Schedule

The regulated community will be required to comply upon enactment of the proposed regulations.

Regulatory Flexibility Analysis

1. Effect of Rule

The LNG regulations will apply statewide except where new facilities are prohibited by law (currently in New York City). They provide opportunities for small businesses and local governments to construct and operate an LNG facility. The result will be to allow LNG to be stored and used across New York State (the State) at a time when economic conditions are creating significant demand for this alternative fuel. The primary anticipated uses of LNG are in the transportation sector (long-haul trucks) and as a source of heating fuel (space heating, steam production, and industrial uses). Construction and operation of new LNG facilities, without a permit provided by the proposed regulations, is prohibited under Environmental Conservation Law, Article 23, Title 17 (the LNG statute).

2. Compliance Requirements

The implementation of these regulations will not adversely affect small businesses or local governments since there are no substantive reporting or record keeping requirements for small businesses or local governments as a result of the proposed rulemaking. The reporting obligations contained in the regulations are derived from the LNG statute.

3. Professional Services

Professional services will be required by applicants to prepare applications for facility permits, design facility structures, ensure that all aspects of the facility are in compliance with applicable building, fire, and safety

requirements, maintain the facility, and eventually close the facility. Through outreach efforts, the New York State Department of Environmental Conservation (DEC) will make information available on DEC's web site, including answers to questions about the new regulations. Future public workshops (meetings) are anticipated to be scheduled as needed.

4. Compliance Costs

Small businesses and local governments should not incur any additional costs, either initial capital costs or annual compliance costs to comply with the proposed rulemaking beyond what are required for obtaining a permit to construct/operate and normal business costs. It is estimated that the cost to obtain a permit under these regulations would be approximately \$10,000 in addition to the cost to provide specialized training to local fire departments, if needed.

5. Economic and Technological Feasibility

The proposed rulemaking enacts into regulation State statutory requirements. It is expected to increase economic growth throughout the State. The proposed rulemaking causes no added economic burdens and requires no additional sophisticated environmental control technology, other than that which may be required by statute and for the facility to be in compliance with existing building and fire safety standards. Accordingly, implementation of these rules will be economically and technologically feasible for small businesses and local governments.

6. Minimizing Adverse Impact

It is DEC's belief that the proposed regulations will not cause a significant economic burden to the small business community or local governments. Promulgating regulations that will establish criteria for the siting and storage of LNG facilities will enhance the State's ability to attract the LNG industry and corporations to provide the public and business communities with an alternative (clean) fueling source. This will provide an economic growth opportunity for the State. In addition, LNG is a cleaner burning fuel, providing significant environmental benefits, and it is less expensive than other fuels for uses such as space heating and steam production.

The proposed rulemaking also does not place any additional burdens on the small business community or local governments or increase the universe of regulatory requirements applicable to the small business community or local governments beyond that which is required by State statute.

Safe production, storage, utilization and transportation of LNG throughout the State will very likely produce substantial economic, environmental, and energy benefits for the entire State with the implementation of statutory requirements of the LNG statute via the promulgation of 6 NYCRR Part 570.

7. Small Business and Local Government Participation

DEC will have a statewide outreach program to regulated communities and interested parties, including small businesses and local governments. An invitation only Stakeholders Meeting was held on Wednesday, February 27, 2013 at the DEC office in Albany, New York. Persons invited to this meeting represented a broad cross section of industry representatives, public/environmental advocacy groups, utilities, and government personnel. Comments received were considered as the rulemaking documents were revised. DEC also made a presentation regarding the draft regulations at the May 22, 2013 "LNG-CNG-NGV Technical Conference," sponsored by the New York State Department of Public Service. The conference was attended by a variety of business representatives from large and small companies.

Future outreach includes contacting fire emergency response personnel regarding their time associated with training for LNG facilities; and mailings to environmental groups, citizen advisory committees, environmental management councils, statewide organizations, regulated community and other interested parties, including small businesses and local governments. DEC will also hold public meetings and post relevant information on their website.

Subdivision 570.2(h), Public Participation, states: "Any hearings, comments, or participation by federal, State or local government bodies or members of the public, relative to any permit proceedings, will be conducted in accordance with procedures established in Parts 621 and 624 of this Title." This subdivision ensures that any hearings in connection with LNG permit applications will be conducted close to locations where proposed LNG facilities will be sited in the State.

Rural Area Flexibility Analysis

1. Types and Estimated Number of Rural Areas:

This rule will apply statewide to all 44 rural counties and 71 additional rural towns.

2. Reporting, Recordkeeping, Other Compliance Requirements, and Need for Professional Services:

Professional services will be required by applicants to prepare applications for facility permits, design facility structures, ensure that all aspects of the facility are in compliance with applicable building, fire, and safety requirements, maintain the facility, and eventually close the facility.

Reporting and recordkeeping requirements of the regulations are minimal including reporting spills at the facility and maintaining documents produced in the normal course of business.

3. Costs:

The applicant for a permit is required to offer an emergency response training program for appropriate municipal response personnel. As needed, this training will be held annually and the program must be approved by the New York State Fire Administrator within the Office of Fire Prevention and Control of the New York State Division of Homeland Security and Emergency Services. Costs of the initial training of firefighters will range from \$1,000 to \$5,000 per firefighter, depending on the number and the level of experience of the firefighters. Subsequent yearly refresher classes or training costs will range from \$200 to \$500, depending on the number of participants. These costs include a trainer, room, supplies, etc. Releases (i.e., vapor clouds) are addressed with fire fighting techniques. Shorter training courses use simulations to illustrate the behaviors of LNG and explain how to respond to such releases.

The 2011 New York State Energy Research and Development Authority LNG report (available on New York State Department of Environmental Conservation's (DEC) web site) estimates that the applicant's cost to complete the application process to apply for and receive a facility permit would be approximately \$10,000.

4. Minimizing Adverse Impact:

It is DEC's belief that the proposed regulations will not cause a significant economic burden, place any additional burdens on rural areas, or increase the universe of regulatory requirements applicable to such rural areas beyond those required by the State statute. In fact, safe transportation, storage and utilization of LNG throughout the State will most likely result in substantial economic, environmental, and energy benefits for the entire State.

5. Rural Area Participation:

DEC will provide a statewide outreach program to regulated communities and interested parties, including public and private interests in rural areas. An invitation only Stakeholders Meeting was held on Wednesday, February 27, 2013 at the DEC office in Albany, New York. Persons invited to this meeting represented a broad cross section of industry representatives, public/environmental advocacy groups, utilities, and government personnel. Comments received were considered as the rulemaking documents were revised.

DEC also made a presentation regarding the draft regulations at the May 22, 2013 "LNG-CNG-NGV Technical Conference," which was sponsored by the New York State Department of Public Service. The conference was attended by a variety of business representatives from large and small companies. Future outreach will include mailings to environmental groups, citizen advisory committees, environmental management councils, statewide organizations, regulated community and other interested parties, including those located in rural areas. DEC will also hold public meetings and post relevant information on its website.

Subdivision 570.2(h), Public Participation, states: "Any hearings, comments, or participation by federal, State or local government bodies or members of the public, relative to any permit proceedings, will be conducted in accordance with procedures established in Parts 621 and 624 of this Title." This subdivision ensures that any hearings in connection with LNG permit applications will be conducted close to locations where proposed LNG facilities will be sited in the State, including any sited in rural areas.

Job Impact Statement

In accordance with Section 201-a(2)(a) of the State Administrative Procedure Act, a Job Impact Statement has not been prepared for this rule as it is not expected to create a substantial adverse impact on jobs and employment opportunities in New York State (the State). To the contrary, 6 NYCRR Part 570 is expected to create, as set forth below, a positive impact on employment opportunities.

The New York State Department of Environmental Conservation (DEC) has determined that the proposed Liquefied Natural Gas (LNG) regulations will have a positive impact on jobs and employment opportunities throughout the State. There would be a creation of an essentially new industry with this rulemaking and it will not replace any existing petroleum or chemical facilities in the State. There are several types of LNG facilities that could be developed in connection with this new industry. These include: LNG import/export terminals (which would also require federal approvals); peak-shaving plants that produce/store/vaporize LNG; regional LNG production facilities (relatively large quantities); LNG production at natural gas wells; LNG production at facilities with access to a natural gas pipeline; and, most immediately, LNG fueling facilities without on-site production of LNG. Types of employees needed for the LNG industry include, but are not limited to, truckers (employed by either the LNG facility or an independent transportation company); fire and safety, and security personnel; and operators for various locations in the process at LNG facilities. In many cases, facilities can be expected to be operating 24 hours per day, 7 days per week.

An LNG study was conducted in 2011 by the New York State Energy Research and Development Authority, with DEC staff providing input on the scope of work and review of the resulting report. This study indicated that there would be several permanent jobs at each new LNG facility, as well as temporary jobs during the initial construction, installation and start up of these facilities. It also estimated that between 10 and 25 facilities (best estimate 21) will be permitted in the first 5 years after Part 570 is promulgated. For additional information, please refer to the report, "NYS Liquefied Natural Gas, 6 NYCRR Part 570, Promulgation Support Study," dated September 20, 2011, which is available on DEC's web site. After this report was issued, DEC received several inquiries from industry and utilities indicating their interest in LNG facilities.

The following outline provides information about each section of the draft regulations and its impact on potential employment opportunities in this new LNG industry.

Section 570.1 contains a description of the general purpose, applicability, definitions, exemptions, severability, and enforcement throughout Part 570. The purpose of this section is to ensure the orderly and efficient administration of Article 23, Title 17 of the Environmental Conservation Law (ECL) at LNG facilities throughout the State. Therefore, there is no direct negative effect on the generation of employment opportunities.

Section 570.2 applies to the permit requirements and application procedures for LNG facilities, including explanation of the permit application process; criteria for siting; permit issuance, duration and renewal; public participation guidelines; modification of permit and change of ownership; permit suspension or revocation; and program fees. This section also outlines the required procedures to obtain a permit for constructing and operating LNG facilities, which will result in increased economic growth and job creation throughout the State.

Section 570.3 applies to site inspections and training of local fire department personnel. Applicants for permits shall offer emergency training for local fire department staff required for local code enforcement. Compliance with training and inspection requirements can either be determined by DEC's personnel, or by third parties who are qualified to monitor compliance, thereby creating additional potential for employment. New York State Department of Public Service (NYS DPS) has inspection responsibilities for those LNG facilities under the jurisdiction of the Public Service Commission. It is expected that existing NYSDPS staff will handle the limited number of additional inspections that the LNG regulations will require for facilities under their jurisdiction.

Section 570.4 explains the intrastate and interstate transportation requirements of LNG within the State, and thus does not result in job creation, reduction, or elimination.

Section 570.5 applies to the requirement that non-conforming facilities comply with the rules and regulations of this Part and the procedures outlined in the LNG statute, ECL Article 23 Title 17. This section does not affect job creation, reduction, or elimination.

Section 570.6 applies to the permanent closure of out-of-service LNG storage tanks, referring to engineering guidelines and procedures that must be complied with to ensure proper closure. Closure activities performed at these LNG facilities will most likely result in increased temporary employment.

Section 570.7 pertains to financial assurance that may be required by DEC to ensure proper closure of LNG facilities, the form and amount of which will be established by DEC. This section does not affect job creation, reduction, or elimination.

Section 570.8 states the requirements for reporting a spill of LNG at a permitted facility. This section does not result in job creation, reduction, or elimination.

Section 570.9 recognizes the existence of a moratorium on the siting of LNG facilities in New York City and specifies that the LNG regulations will not affect any moratorium imposed. This section does not result in job creation, reduction, or elimination.

Section 570.10 provides a listing of reference materials that are cited in 6 NYCRR Part 570, including those that are incorporated by reference, and explains how they can be obtained for inspection or purchasing, which does not impact job creation, reduction, or elimination.

In consideration of the foregoing, DEC concludes that adoption of this regulatory proposal for new LNG facilities will not have substantial adverse impacts on jobs within the State. Rather, with the construction and operation of new LNG facilities, various employment opportunities will be created at different types of LNG facilities based on growth of this new alternative fuel and its availability throughout the State.

Department of Financial Services

EMERGENCY RULE MAKING

Unfair Claims Settlement Practices and Claim Cost Control Measures

I.D. No. DFS-37-13-00001-E

Filing No. 855

Filing Date: 2013-08-21

Effective Date: 2013-08-21

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

Action taken: Amendment of Part 216 (Regulation 64) of Title 11 NYCRR.

Statutory authority: Financial Services Law, sections 202 and 302; and Insurance Law, sections 301 and 2601

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

Specific reasons underlying the finding of necessity: Insurance Law § 2601 prohibits an insurer doing business in New York State from engaging in unfair claims settlement practices and sets forth a list of acts that, if committed without just cause and performed with such frequency as to indicate a general business practice, will constitute unfair claims settlement practices. Insurance Regulation 64 sets forth the standards insurers are expected to observe to settle claims properly.

On October 26, 2012, in anticipation of extensive power outages, loss of life and property, and ongoing harm to public health and safety expected to result from then-Hurricane Sandy, Governor Andrew M. Cuomo issued Executive Order 47, declaring a State of Disaster Emergency for all 62 counties within New York State. As anticipated, Storm Sandy struck New York State on October 29, 2012, causing extensive power outages, loss of life and property, and ongoing harm to public health and safety. In addition, a nor'easter struck New York just a week later, adding to the damage and dislocation. Many people still had not had basic services such as electric power restored before the second storm hit.

Insurers insuring property in areas that were hit the hardest by the storms, including Long Island and New York City, have a number of claims left to settle. As a result, some homeowners and small business owners have not been able to start to repair or replace their damaged property, or in some cases, complete their repairs. Moreover, there are insureds who have had their claims denied by their insurers and whose only remaining option is to file a civil suit against their insurers. Lawsuits such as these can often take years to resolve, and homeowners and small businesses can not afford to wait for the resolution of their claims in the courts.

Fair and prompt settlement of claims is critical for homeowners, a number of whom have been displaced from their homes or are living in unsafe conditions, and for small businesses, a number of which have yet to return to full operation and to recover their losses caused by the storm.

Given the nature and extent of the damage, an alternative avenue to mediate the claims would help protect the public and ensure its safety and welfare.

For the reasons stated above, the promulgation of this regulation on an emergency basis is necessary for the public health, public safety, and general welfare.

Subject: Unfair Claims Settlement Practices and Claim Cost Control Measures.

Purpose: To create a mediation program to facilitate the negotiation of certain insurance claims arising between 10/26/12 - 11/15/12.

Text of emergency rule: 216.13 Mediation.

(a) This section shall apply to any claim for loss or damage, other than claims made under flood policies issued under the national flood insurance program, occurring from October 26, 2012 through November 15, 2012, in the counties of Bronx, Kings, Nassau, New York, Orange, Queens, Richmond, Rockland, Suffolk or Westchester, including their adjacent waters, with respect to:

(1) loss of or damage to real property; or

(2) loss of or damage to personal property, other than damage to a motor vehicle.

(b)(1) Except as provided in paragraph (2) of this subdivision, an

insurer shall send the notice required by paragraph (3) of this subdivision to a claimant, or the claimant's authorized representative:

- (i) at the time the insurer denies a claim in whole or in part;
 - (ii) within 10 business days of the date that the insurer receives notification from a claimant that the claimant disputes a settlement offer made by the insurer, provided that the difference between the positions of the insurer and claimant is \$1,000 or more; or
 - (iii) within two business days when the insurer has not offered to settle within 45 days after it has received a properly executed proof of loss and all items, statements and forms that the insurer had requested from the claimant.
- (2) If, prior to the effective date of this section: the insurer denied a claim in whole or in part; or a claimant disputed a settlement offer, or more than 45 days elapsed after the insurer received a properly executed proof of loss and all items, statements and forms that the insurer had requested from the claimant, and in either case the claim still remains unresolved as of the effective date of this section, then the insurer shall provide the notice required by paragraph (3) of this subdivision within ten business days from the effective date of this section.

(3) The notice specified in paragraphs (1) and (2) of this subdivision shall inform the claimant of the claimant's right to request mediation and shall provide instructions on how the claimant may request mediation, including the name, address, phone number, and fax number of an organization designated by the superintendent to provide a mediator to mediate claims pursuant to this section. The notice shall also provide the insurer's address and phone number for requesting additional information.

(c) If the claimant submits a request for mediation to the insurer, the insurer shall forward the request to the designated organization within three business days of receiving the request.

(d) The insurer shall pay the designated organization's fee for the mediation to the designated organization within five days of the insurer receiving a bill from the designated organization.

(e)(1) The mediation shall be conducted in accordance with procedures established by the designated organization and approved by the superintendent.

(2) A mediation may be conducted by face-to-face meeting of the parties, videoconference, or telephone conference, as determined by the designated organization in consultation with the parties.

(3) A mediation may address any disputed issues for a claim to which this section applies, except that a mediation shall not address and the insurer shall not be required to attend a mediation for:

- (i) a dispute in property valuation that has been submitted to an appraisal process or a claim that is the subject of a civil action filed by the insured against the insurer, unless the insurer and the insured agree otherwise;
- (ii) any claim that the insurer has reason to believe is a fraudulent transaction or for which the insurer has knowledge that a fraudulent insurance transaction has taken place; or
- (iii) any type of dispute that the designated organization has excepted from its mediation process in accordance with the organization's procedures approved by the superintendent.

(f)(1) The insurer must participate in good faith in all mediations scheduled by the designated organization, which shall at a minimum include compliance with paragraphs (2), (3), and (4) of this subdivision.

(2) The insurer shall send a representative to the mediation who is knowledgeable with respect to the particular claim; and who has authority to make a binding claims decision on behalf of the insurer and to issue payment on behalf of the insurer. The insurer's representative must bring a copy of the policy and the entire claims file, including all relevant documentation and correspondence with the claimant.

(3) An insurer's representatives shall not continuously disrupt the process, become unduly argumentative or adversarial or otherwise inhibit the negotiations.

(4) An insurer that does not alter its original decision on the claim is not, on that basis alone, failing to act in good faith if it provides a reasonable explanation for its action.

(g) An insured's right to request mediation pursuant to this section shall not affect any other right the insured may have to redress the dispute, including remedies specified in the insurance policy, such as an insured's right to request an appraisal, the right to litigate the dispute in the courts if no agreement is reached, or any right provided by law.

(h)(1) No organization shall be designated by the superintendent unless it agrees that:

(i) the superintendent shall oversee the operational procedures of the designated organization with respect to administration of the mediation program, and shall have access to all systems, databases, and records related to the mediation program; and

(ii) the organization shall make reports to the superintendent in whatever form and as often as the superintendent prescribes.

(2) No organization shall be designated unless its procedures, approved by the superintendent, require that:

(i) the parties agree in writing prior to the mediation that statements made during the mediation are confidential and will not be admitted into evidence in any civil litigation concerning the claim, except with respect to any proceeding or investigation of insurance fraud;

(ii) a settlement agreement reached in a mediation shall be transcribed into a written agreement, on a form approved by the superintendent, that is signed by a representative of the insurer with the authority to do so and by the claimant; and

(iii) a settlement agreement prepared during a mediation shall include a provision affording the claimant a right to rescind the agreement within three business days from the date of the settlement, provided that the insured has not cashed or deposited any check or draft disbursed to the claimant for the disputed matters as a result of the agreement reached in the mediation.

(3) No organization shall be designated unless its procedures, approved by the superintendent, provide that:

(i) the mediator may terminate a mediation session if the mediator determines that either the insurer's representative or the claimant is not participating in the mediation in good faith, or if even after good faith efforts, a settlement can not be reached;

(ii) the designated organization may schedule additional mediation sessions if it believes the sessions may result in a settlement;

(iii) the designated organization may require the insurer to send a different representative to a rescheduled mediation session if the representative has not participated in good faith, the fee for which shall be paid by the insurer; and

(iv) the designated organization may reschedule a mediation session if the mediator determines that the claimant is not participating in good faith, but only if the claimant pays the organization's fee for the mediation.

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 November 18, 2013.

Text of rule and any required statements and analyses may be obtained from: Brenda Gibbs, NYS Department of Financial Services, One Commerce Plaza, Albany, NY 12257, (518) 408-3451, email: brenda.gibbs@dfs.ny.gov

Regulatory Impact Statement

1. Statutory Authority: Sections 202 and 302 of the Financial Services Law and Sections 301 and 2601 of the Insurance Law. Financial Services Law § 202 grants the Superintendent of Financial Services ("Superintendent") the rights, powers, and duties in connection with financial services and protection in this state, expressed or reasonably implied by the Financial Services Law or any other applicable law of this state. Insurance Law § 301 and Financial Services Law § 302 authorize the Superintendent to prescribe regulations interpreting the provisions of the Insurance Law and to effectuate any power granted to the Superintendent in the Insurance Law. Insurance Law § 2601 prohibits an insurer doing business in New York State from engaging in unfair claims settlement practices, sets forth certain acts that, if committed without just cause and performed with such frequency as to indicate a general business practice, constitute unfair claims settlement practices, and imposes penalties if an insurer engages in

these acts. Such practices include “not attempting in good faith to effectuate prompt, fair and equitable settlements of claims submitted in which liability has become reasonably clear” and “compelling policyholders to institute suits to recover amounts due under its policies by offering substantially less than the amounts ultimately recovered in suits brought by them.”

2. Legislative objectives: As noted in the Department’s statement in support for the bill that added the predecessor section to § 2601, Section 40-d, to the Insurance Law in 1970 (Chapter 296 of the Laws of 1970), an insurance company’s obligation to deal fairly with claimants and policyholders in the settlement of claims – indeed, its simple obligation to pay claims at all – was solely a matter of private contract law. That left the Department unable to aid consumers and relegated them solely to the courts. There was a wide variety in insurers’ claims practices. Insurance Law § 2601 reflects the Legislature’s concerns with insurance claims practices of insurers. In enacting that section, the Legislature authorized the Superintendent to monitor and regulate insurance claims practices.

3. Needs and benefits: On October 26, 2012, in anticipation of extensive power outages, loss of life and property, and ongoing harm to public health and safety expected to result from then-Hurricane Sandy, Governor Andrew M. Cuomo issued Executive Order 47, declaring a State of Disaster Emergency for all 62 counties within New York State. As anticipated, Storm Sandy struck New York State on October 29, 2012, causing extensive power outages, loss of life and property, and ongoing harm to public health and safety. In addition, a nor’easter struck New York just a week later, adding to the damage and displacement. Many people still had not had basic services such as electric power restored before the second storm hit.

Insurers insuring property in areas that were hit the hardest by the storms, including Long Island and New York City, have a number of claims left to settle. As a result, a number of homeowners and small business owners have not been able to start to repair or replace their damaged property, or in some cases, complete their repairs. Many small businesses have suffered losses of income that threaten their survival. Fair and prompt settlement of claims is critical for homeowners, many of whom who have been displaced from their homes or who are living in unsafe conditions, and for small businesses, to enable them to return to full operation and to recover their losses caused by the storm. Furthermore, many small businesses provide essential services to and a significant source of employment in the communities in which they are located.

Moreover, there are many insureds who have had their claims denied by their insurers and whose only remaining option is to file a civil suit against their insurers. Lawsuits such as these can often take years to resolve, and homeowners and small businesses can not afford to wait for the resolution of their claims in the courts.

Therefore, this rule creates a mediation program to facilitate the negotiation of certain insurance claims arising in the counties of New York, Bronx, Kings, Richmond, Queens, Nassau, Suffolk, Westchester, Rockland, and Orange, the areas that suffered the greatest storm damage, between October 26, 2012 and November 15, 2012. An insured may request mediation for a claim for loss or damage to personal or real property (1) that the insurer has denied, (2) for which the insured disputes the insurer’s settlement offer if the difference between what the insured seeks and the insurer offers is more than \$1,000, or (3) that has not been settled within 45 days after the insurer received all the information the insurer needs to decide the claim. The amendment does not provide for mediation of claims for damage to motor vehicles.

Participation in the mediation program by insureds is voluntary. Participation by insurers in the mediation program is mandatory, except that an insurer is not required to participate in a mediation for any claim involving a dispute in property valuation that has been submitted to an appraisal process or that has become the subject of civil litigation, unless the insurer and insured agree otherwise. An insurer also is not required to mediate any claim for which the insurer has reason to believe or knowledge that a fraudulent insurance transaction has taken place.

4. Costs: This rule does not impose compliance costs on state or local governments. The rule may increase costs for insurers, because they will need to pay the costs of mediation and provide representatives to send to the mediations. However, by providing an alternative to litigation, the insurers should also realize savings from mediations that result in settlements because the cost to mediate a claim is significantly less than the cost to defend against civil litigation brought by insureds. The actual cost effect of the rule is difficult to quantify because it is dependent upon unknown variables such as how many claims will be subject to litigation, how many insureds will select the mediation option, and how many claims that are mediated will be successfully resolved without the insured resorting to litigation. Nothing in this rule requires insurers to reach a settlement in the course of a mediation.

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

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

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

8. Alternatives: The Department considered making this rule applicable to the entire state. However, since the major concerns appeared to be localized, the applicability of the amendment is limited to those counties most impacted by the storm. In addition, the Department could have made the rule apply to all claims, even those that had been settled before the effective date of the rule. However, after meeting with industry trade groups and hearing their concerns, the Department modified the rule to make clear that, for claims that had already been made as of the rule’s effective date, only those that were denied or unresolved as of the rule’s effective date are covered by the rule. The Department also changed the rule so that it applies only to disputes where the parties’ positions are \$1,000 or more apart.

9. Federal standards: There are no minimum standards of the federal government for the same or similar subject areas. The rule is consistent with federal standards or requirements. The regulation does not apply to claims made under policies issued under the national flood insurance program.

10. Compliance schedule: Insurers will be required to comply with this rule upon the Superintendent’s filing the rule with the Secretary of State.

Regulatory Flexibility Analysis

1. Small businesses: The Department of Financial Services (“Department”) finds that this rule will not impose any adverse economic impact on small businesses and will not impose any reporting, recordkeeping, or other compliance requirements on small businesses. The basis for this finding is that this rule is directed at insurers authorized to do business in New York State, none of which fall within the definition of a “small business” as found in State Administrative Procedure Act § 102(8). The Department has monitored annual statements and reports on examination of authorized insurers subject to this rule, and believes that none of the insurers falls within the definition of “small business” because no insurer is both independently owned and has fewer than 100 employees.

2. Local governments: The rule does not impose any impact, including any adverse impact, or reporting, recordkeeping, or other compliance requirements on any local governments. The basis for this finding is that this rule is directed at authorized insurers, which are not local governments.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas: “Rural areas”, as used in State Administrative Procedure Act (“SAPA”) § 102(10), means counties within the state having less than 200,000 population, and the municipalities, individuals, institutions, communities, programs and such other entities or resources as are found therein. In counties of 200,000 or greater population, “rural areas” means towns with population densities of 150 persons or less per square mile, and the villages, individuals, institutions, communities, programs and such other entities or resources as are found therein. While insurers affected by this rule may be headquartered in rural areas, the rule itself only applies within the counties of New York, Bronx, Kings, Richmond, Queens, Nassau, Suffolk, Westchester, Rockland, and Orange. None of these counties is a rural area, and the Department of Financial Services (“Department”) does not believe that there are any towns within any of those counties that would be considered to be rural areas within the SAPA definition.

2. Reporting, recordkeeping and other compliance requirements, and professional services: The rule would not impose any additional reporting or recordkeeping requirements. However, the rule would impose other compliance requirements on insurers that may be headquartered in rural areas by requiring insurers to participate in mediation sessions when an insured with a claim subject to the rule requests mediation of his or her claim.

It is unlikely that professional services would be needed in rural areas to comply with this rule.

3. Costs: The rule may result in additional costs to insurers headquartered in rural areas, because they will need to pay the costs of mediation and provide representatives to send to the mediations. However, by providing an alternative to litigation, the insurers may also realize savings from mediations that result in settlements because the cost to mediate a claim is significantly less than the cost to defend against civil litigation brought by insureds. The actual cost effect of the rule is difficult to quantify because it is dependent upon unknown variables such as how many claims will be subject to litigation, how many insureds will select the mediation option, and how many claims that are mediated will be successfully resolved without the insured resorting to litigation. Nothing in this rule requires insurers to reach a settlement in the course of a mediation.

4. Minimizing adverse impact: The Department considered the approaches suggested in SAPA § 202-bb(2) for minimizing adverse economic impacts. Because the public health, safety, or general welfare has been endangered, establishment of differing compliance or reporting

requirements or timetables based upon whether or not the damage occurred in a rural area is not appropriate. However, the rule applies only in the counties of New York, Bronx, Kings, Richmond, Queens, Nassau, Suffolk, Westchester, Rockland, and Orange, the areas that suffered the greatest storm damage, and thus the impact of the rule on rural areas is minimized, since none of those counties are rural areas.

5. Rural area participation: Public and private interests in rural areas have had a continual opportunity to participate in the rule making process since the first publication of the emergency measure in the State Register on March 13, 2013, which was published again in the State Register on June 12, 2013. The emergency measure also has been posted on the Department's website continually since March 13, 2013.

Job Impact Statement

The Department of Financial Services does not believe that this rule will have any adverse impact on jobs or employment opportunities, including self-employment opportunities. This rule provides insureds with open or denied claims for loss or damage to personal and real property, except damage to automobiles, arising in New York, Bronx, Kings, Richmond, Queens, Nassau, Suffolk, Westchester, Rockland, and Orange counties between October 26, 2012 and November 15, 2012, with an option to participate in a mediation program to facilitate the negotiation of their claims with their insurers.

Justice Center for the Protection of People with Special Needs

NOTICE OF ADOPTION

Incident Review Committee Requirement

I.D. No. JCP-27-13-00010-A

Filing No. 858

Filing Date: 2013-08-27

Effective Date: 2013-09-11

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

Action taken: Addition of Part 704 to Title 14 NYCRR.

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

Subject: Incident Review Committee Requirement.

Purpose: To identify appropriate methods for compliance and factors warranting exemption from incident review committee requirement.

Text of final rule: A new Part 704 is added to Title 14, NYCRR, to read as follows:

§ 704.1 Background and Intent

(a) *The Protection of People with Special Needs Act (the "Act"), enacted as Chapter 501 of the Laws of 2012, seeks to create durable, consistent safeguards for vulnerable persons to protect against abuse, neglect and other conduct that may jeopardize their health, safety and welfare.*

(b) *To accomplish this goal, the Act provides that each state oversight agency as defined in the Act establish procedures and requirements relating to incident management programs, including establishment of incident review committees, and authorizes the state oversight agency to grant an exemption from this requirement when appropriate, based on the size of the facility or provider agency or other relevant factors.*

(c) *This regulation identifies appropriate methods that may be used to attain compliance with the incident review committee requirement and further defines relevant factors to consider in determining whether it is appropriate to grant an exemption from the incident review committee requirement.*

§ 704.2 Applicability

This regulation applies to state oversight agencies as defined in subdivision (4-a) of section 488 of the Social Services Law, and facilities and provider agencies, as defined in subdivision (4) of section 488 of the Social Services Law.

§ 704.3 Legal Authority

(a) *Section 490 of the Social Services Law mandates that each state oversight agency as defined in the Act promulgate regulations that contain procedures and requirements consistent with guidelines and standards developed by the Justice Center, relating to incident management programs, including establishment of an incident review committee, and*

permits authorization of an exemption from the incident review committee requirement when appropriate.

§ 704.4 Definitions

Whenever used in this Part:

(a) *"State oversight agency" shall have the same meaning as expressed in subdivision (4-a) of section 488 of the Social Services Law.*

(b) *"Facility" or "provider agency" shall have the same meaning as expressed in subdivision (4) of section 488 of the Social Services Law.*

(c) *"Vulnerable person" shall have the same meaning as expressed in subdivision (15) of section 488 of the Social Services Law.*

§ 704.5 Appropriate Methods to Attain Compliance with Incident Review Committee Requirement

(a) *A state oversight agency may allow a facility or provider agency's incident review committee to be shared with another facility or provider agency or performed by another facility or provider agency on its behalf if a facility or provider agency is co-located within another organization or agency, or is part of a larger organization or agency, or has a larger "parent" or "umbrella" organization or agency. A state oversight agency may also allow compliance with the incident review committee requirement in circumstances where a facility or provider agency is able to combine with one or more others to form a shared committee, or where an appropriate sponsor is able to form an incident review committee for the facility or provider agency.*

(b) *A state oversight agency may allow additional time for a facility or provider agency to comply with the incident review committee requirement, if the facility or provider agency shows that good faith efforts have been made to fulfill the incident review committee membership requirement.*

§ 704.6 Authorization to Establish Exemption from Incident Review Committee Requirement and Relevant Factors

(a) *Each state oversight agency is authorized to establish in its discretion an exemption from the incident review committee requirement and grant an exemption from the requirement pursuant to paragraph (f) of subdivision (1) of section 490 of the Social Services Law when appropriate.*

(b) *State oversight agencies that authorize an exemption to the incident review committee requirement may consider the following in determining whether to grant a facility or provider agency an exemption including, but not limited to:*

(1) *Size of the facility or provider agency, nature of the program, size of the program, and whether the program is a seasonal program or is operational year round; and, if the program is a seasonal program, the length of the season;*

(2) *Existence of a larger parent facility or agency, or a parent facility or agency with a year round presence that can form an incident review committee.*

(c) *In order to authorize an exemption from the incident review committee requirement, risk of harm to the vulnerable person must be considered, and a determination must be made that compliance with the requirement would result in undue hardship to the facility or provider agency.*

§ 704.7 Procedure for Authorizing Exemption from Incident Review Committee Requirement and Renewal of Request

(a) *Each state oversight agency shall be authorized to establish an application procedure for a facility or provider agency to follow when seeking an exemption from the incident review committee requirement and if such procedure is established, the facility or provider agency shall be required to provide sufficient documentation and information to demonstrate that the exemption should be granted.*

(b) *Each state oversight agency shall be authorized to establish an internal procedure for granting an exemption to the incident review committee requirement without requiring an application, where the exemption is based upon a particular classification or type of facility or provider and the state oversight agency determines upon its own review that such an exemption is appropriate.*

(c) *If an exemption to the incident review committee requirement is established, the state oversight agency shall determine the length of time that an approved exemption shall remain in effect, the circumstances for revocation of approval, and the procedure for renewal, if required.*

§ 704.8 Alternative Requirements

(a) *A state oversight agency authorizing an exemption from the incident review committee requirement shall establish a process to ensure appropriate review and evaluation of any reportable incidents that occur in the exempt facility or provider agency and responses to such incidents.*

Final rule as compared with last published rule: Nonsubstantive changes were made in section 704.5(a).

Text of rule and any required statements and analyses may be obtained from: Adrienne Lawston, Justice Center for the Protection of People with Special Needs, 161 Delaware Ave., Delmar, New York 12054, (518) 549-0243, email: Adrienne.Lawston@justicecenter.ny.gov

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

Non-substantive changes in the text of the proposed rule do not necessitate modification of the Regulatory Impact Statement, Regulatory Flexibility

Analysis, Rural Area Flexibility Analysis and Job Impact Statement as published in the State Register on July 3, 2013. Accordingly, a revised Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement are not required.

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.

Public Service Commission

NOTICE OF ADOPTION

Approving the Submetering of Electricity at 90-14 161st Street, Jamaica

I.D. No. PSC-03-13-00002-A

Filing Date: 2013-08-21

Effective Date: 2013-08-21

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

Action taken: On 8/15/13, the PSC adopted an order approving the petition of Jamaica 161 Realty, LLC to submeter electricity at 90-14 161st Street, Jamaica, New York located in the Territory of Consolidated Edison Company of New York, Inc.

Statutory authority: Public Service Law, sections 2, 4(1), 30, 32-48, 52, 53, 65(1), 66(1), (2), (3), (4), (12) and (14)

Subject: Approving the submetering of electricity at 90-14 161st Street, Jamaica.

Purpose: To approve the submetering of electricity at 90-14 161st Street, Jamaica.

Substance of final rule: The Commission, on August 15, 2013, adopted an order approving the petition of Jamaica 161 Realty, LLC to submeter electricity at 90-14 161st Street, Jamaica, located in the territory of Consolidated Edison Company of New York, Inc, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(12-E-0560SA1)

NOTICE OF ADOPTION

Approving the Consolidation of Budgets Related to Evaluation of EEPS Programs

I.D. No. PSC-18-13-00008-A

Filing Date: 2013-08-21

Effective Date: 2013-08-21

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

Action taken: On 8/15/13, the PSC adopted an order combining the budgets for three interrelated Energy Efficiency Portfolio Standard (EEPS).

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

Subject: Approving the consolidation of budgets related to evaluation of EEPS programs.

Purpose: To approve the consolidation of budgets related to evaluation of EEPS programs.

Substance of final rule: The Commission, on August 15, 2013, adopted an order approving the consolidation of three program budgets related to the evaluation and verification of Energy Efficiency Portfolio Standard programs, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(07-M-0548SA75)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Relocation of Call Center by National Grid

I.D. No. PSC-37-13-00006-P

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

Proposed Action: The Commission is considering a notice of intent by KeySpan Gas East Corporation d/b/a National Grid to relocate a call center to another area of New York State.

Statutory authority: Public Service Law, sections 5 and 65(13)

Subject: Relocation of call center by National Grid.

Purpose: To consider notice by National Grid of call center relocation.

Substance of proposed rule: The Commission is considering a notice of intent to relocate a call center by Key Span Gas East Corporation d/b/a National Grid (Grid). Grid will no longer be providing electric transmission and distribution services to Long Island electric customers beginning in 2014. This necessitates the separation of Grid's gas from electric customer functions on Long Island. Grid has developed a comprehensive customer service plan to maintain service quality levels and mitigate the cost impacts to customers resulting from the transition. For its gas customers, Grid proposes the transition from the Melville call center to an existing Grid customer call center in Brooklyn, NY. The existing Grid/LIPA call center in Melville for Long Island Power Authority electric customers will be maintained. The Commission may accept, reject, or modify Grid's petition in whole or in part.

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.

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

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

(13-G-0371SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Dissolution of Garrow Water Works Company, Inc.

I.D. No. PSC-37-13-00007-P

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

Proposed Action: The Commission is considering whether to approve or reject in whole or in part, a request by Garrow Water Works Company, Inc. seeking approval for dissolution of Garrow Water-Works.

Statutory authority: Public Service Law, section 108

Subject: Dissolution of Garrow Water Works Company, Inc.

Purpose: To allow for the dissolution of Garrow Water Works Company, Inc.

Substance of proposed rule: On June 20, 2013, Garrow Water Works Company, Inc. (the company), and the Town of Schuyler Falls, filed a joint petition requesting Public Service Commission approve the transfer of all the water supply assets serving the Fillion Subdivision to the Town of Schuyler Falls at a sale price of \$287,000.00. The company provides unmetered water service to 46 residential customers in the Fildowns Country Homes Subdivision located in the Town of Schuyler Falls, Clinton County. The Commission may approve or reject, in whole or in part, or modify the petition.

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

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

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

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

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

(13-W-0270SP2)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Establish a Temporary Surcharge to Recover Costs

I.D. No. PSC-37-13-00008-P

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

Proposed Action: The Commission is considering whether to approve or reject in whole or in part, a petition filed by Rainbow Water Company Inc., and Sunrise Ridge Water Company, to establish a temporary surcharge to recover costs incurred due to a well collapse.

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

Subject: Establish a temporary surcharge to recover costs.

Purpose: To allow Rainbow Water Company Inc., and Sunrise Ridge Water Company to establish a temporary surcharge to recover costs.

Substance of proposed rule: On August 20, 2013, Rainbow Water Company Inc., and Sunrise Ridge Water Company filed a petition requesting the Public Service Commission's approval to surcharge their customers \$29.38 per quarter for 8 quarters to recover costs incurred (\$30,119.95) due to a collapsed well that needed to be repaired. In order to pay contractors who performed the work, the Companies' owners loaned the funds to the Companies. Proposed recovery includes interest from August 20, 2013 at the rate of 8%. The Companies provide metered water service to 144 residential customers in the Towns of Carmel and Yorktown in Putnam and Westchester Counties. The Commission may approve or reject, in whole or in part, or modify the petition.

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

Data, views or arguments may be submitted to: Kathleen Burgess, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-4535, email: secretary@dps.ny.gov

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

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

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

(13-W-0374SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Revisions to Its Balanced Billing Plan

I.D. No. PSC-37-13-00009-P

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

Proposed Action: The Commission is considering a tariff filing by KeySpan Gas East Corporation d/b/a Brooklyn Union of L.I. to make revisions to its Balanced Billing Plan in P.S.C. No. 1 — Gas, to become effective on 12/6/13.

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

Subject: Revisions to its Balanced Billing Plan.

Purpose: Converting its Customer Accounting System (CAS) to Customer Service System (CSS).

Substance of proposed rule: The Public Service Commission is considering whether to approve, modify or reject, in whole or in part, a tariff filing by KeySpan Gas East Corporation d/b/a Brooklyn Union of L.I. to convert its Balanced Billing Plan from the current Customer Accounting System (CAS) to a Customer Service System (CSS) in P.S.C. No. 1 — Gas. The amendments have an effective date of December 6, 2013. The Commission may apply its decision here to other utilities.

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

Data, views or arguments may be submitted to: 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.

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

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

(13-G-0383SP1)