RULE MAKING ACTIVITIES

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

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

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

Department of Agriculture and Markets

NOTICE OF ADOPTION

Definitions, Standards of Identity and/or Standards of Enrichment Relating to Food; Food Packaging and Labeling Requirements

I.D. No. AAM-08-14-00006-A
Filing No. 313
Filing Date: 2014-04-15
Effective Date: 2014-04-30

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

Action taken: Amendment of Parts 250, 252 and 259; sections 261.8, 262.1, 265.1, 266.1, 267.1, 271-4.7(b), 271-5.3(h), (j), 271-5.4(g), 277.1, 279.1 and 280.1; renumbering of sections 261.9 and 261.10 to 261.10 and 261.11; and addition of new section 261.9 and Part 281 to Title 1 NYCRR.

Statutory authority: Agriculture and Markets Law, sections 16, 18, 214-b and 215-a

Subject: Definitions, standards of identity and/or standards of enrichment relating to food; food packaging and labeling requirements.

Purpose: To update incorporations by reference with current Federal regulations.

Text or summary was published in the February 26, 2014 issue of the Register, I.D. No. AAM-08-14-00006-P.

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

Text of rule and any required statements and analyses may be obtained from: Stephen D. Stich, Dir., Div. of Food Safety and Inspection, NYS Department of Agriculture and Markets, 10B Airline Drive, Albany, New York 12235, (518) 457-4492, email: stephen.stich@agriculture.ny.gov

Assessment of Public Comment
The agency received no public comment.

Office of Children and Family Services

NOTICE OF ADOPTION

Child Care Market Rates

I.D. No. CFS-06-14-00005-A
Filing No. 316
Filing Date: 2014-04-15
Effective Date: 2014-04-30

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

Action taken: Amendment of section 415.9(j)(1); repeal of section 415.9(j)(3); and addition of new section 415.9(j)(3) to Title 18 NYCRR.

Statutory authority: Social Services Law, sections 20(3)(d) and 34(3)(f); and title 5-C

Subject: Child Care Market Rates.

Purpose: To revise the Child Care Market Rates.

Text or summary was published in the February 12, 2014 issue of the Register, I.D. No. CFS-06-14-00005-P.

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

Text of rule and any required statements and analyses may be obtained from: Public Information Office, NYS Office of Children and Family Services, 52 Washington Street, Rensselaer, NY 12144, (518) 473-7793, email: leslie.robinson@ocfs.ny.gov

Initial Review of Rule
As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2017, which is no later than the 3rd year after the year in which this rule is being adopted.

Assessment of Public Comment
The Office of Children and Family Services (OCFS) received comments from the New York City Administration for Children's Services (ACS). ACS stated that the proposed market rates represented a substantial increase in rates for their district, and without additional funding, would require substantial cuts in existing child care services. ACS also requested that additional funds be made available to districts proportionate to the proposed changes in the market rates. ACS further expressed concern that the higher market rates reflected the inclusion of contracted high quality providers in the survey, with the result that ACS would be required to pay the higher market rate for non-contracted care of any quality.

OCFS reviewed the ACS' comments and determined that local district child care allocations are sufficient to cover the costs of child care which the State mandates. New York State mandates that local districts pay for child care for those families that are on Temporary Assistance (TA) and participating in an approved activity, families that are transitioning off TA, and families that are eligible for TA but have chosen child care in lieu of TA. All other eligible families listed in Social Services Law and OCFS' regulations are not mandated and are eligible only to the extent that districts have funds available. Furthermore, additional funding has been included in the Enacted 2014-2015 Budget for child care subsidy funding, which will be allocated to local social services districts as part of the Child Care Block Grant.

ACS' concern that the inclusion of contracted high quality child care providers had raised the market rates, which then the district would be required to pay to non-contracted providers of potentially lesser quality, is not founded. The market rate survey randomly selects providers for inclusion; therefore higher quality programs are included in proportion to their occurrence in the local child care market, and the resulting market rates reflect the totality of the child care market including programs of all quality. Finally, the market rates are not required payment amounts; rather they are the maximum reimbursement rates districts may pay providers for subsidized child care. If a revised market rate that applies to a specific provider is an increase above the previous rate, that provider must demonstrate that they charge private pay families a higher rate or that their cost of providing care has increased before the district increases the reimbursement rate.

OCFS determined that no changes to the proposed regulations were required in response to ACS' comments.

OCFS also received three comments from organizations representing home-based child care providers (CSEA, UFT, VOICE). The commenters representing home-based child care providers stated that establishing the market rates at the 69th percentile presented a hardship to providers who already operate on very low margins, and would reduce the availability of quality child care for parents receiving child care subsidy. The commenters suggested that the State re-instate the 75th percentile.

OCFS reviewed the comments of the organizations representing home-based providers suggesting that the state re-instate the 75th percentile for calculating the market rates. While it is true that the Federal Administration for Children and Families recommends use of the 75th percentile as ensuring equal access to care, the Federal Administration for Children and Families does not mandate the use of the 75th percentile and most states do not set payment rates at that high a level. Even at the 69th percentile of the most recent market rate survey, New York's reimbursement rates exceed most other states, and provide equal access to care, despite the stagnation of federal funding. The reduction from the 75th to the 69th percentile reduces parental access slightly, but still allows both equal access to care, and parents receiving subsidies to be able to purchase child care from roughly 7 out of 10 providers. Furthermore, a parent receiving subsidy still has the option of selecting a provider from the 30% of providers that charge rates above the market rate, but the parent would have to pay the amount that exceeds the market rate. Finally, the market rates do not dictate what providers can or should charge, rather they indicate the maximum amount that local districts can reimburse for child care subsidy.

OCFS determined that no changes to the proposed regulations were required in response to the organizations representing home-based providers' comments.

Education Department

EMERGENCY RULE MAKING

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

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

Filing No. 309

Filing Date: 2014-04-11

Effective Date: 2014-04-11

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

Action taken: Amendment of sections 200.7, 200.15 and 200.22 of Title 8 NYCRR.

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

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

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

The proposed amendment was adopted as an emergency rule at the June 16-17, 2013 Regents meeting, effective June 30, 2013. A Notice of Emergency Adoption and Proposed Rule Making was published in the State Register on July 10, 2013. The proposed amendment was subsequently readopted by emergency action at the September 16-17, 2013 and November 17-18, 2013 Regents meetings, and at the January 13-14, 2014 Regents meeting, to keep the rule continuously in effect until it can be adopted as a permanent rule. During this time, the State Education Department has continued to work closely with the Justice Center and the other State Oversight Agencies on implementing the provisions of Chapter 501.

Since publication of a Notice of Proposed Rule Making in the State Register on July 10, 2013, the proposed amendment has been substantially revised as a result of further discussions with the Justice Center and other State oversight agencies, and the revised rule was adopted as an emergency rule at the February 10-11, 2014 Regents meeting, effective February 11, 2014. Because the Board of Regents meets at scheduled intervals the earliest the revised proposed amendment could be presented for regular (non-emergency) adoption, after publication of a Notice of Emergency Adoption and Revised Rule Making in the State Register on February 26, 2014 and expiration of the 30-day public comment period for revised rule makings prescribed in State Administrative Procedure Act (SAPA) section 202(4-a), is the April 28-29, 2014 Regents meeting. Furthermore, pursuant to SAPA section 203(1), the earliest effective date of the revised proposed amendment, if adopted at the April meeting, would be May 14, 2014, the date a Notice of Adoption would be published in the State Register. However, the February emergency rule will expire on April 11, 2014, 60 days after its filing with the Department of State on February 11, 2014. Therefore, emergency action to adopt the proposed rule is necessary now for the preservation of the general welfare to ensure that the revised proposed rule adopted by emergency action at the February 2014 Regents meeting remains continuously in effect until the effective date of its adoption as a permanent rule, and thereby ensure that students attending residential schools are protected against abuse, neglect and significant incidents that may jeopardize their health, safety and welfare.

It is anticipated that the proposed rule will be presented for permanent adoption at the April 28-29, 2014 Regents meeting, which is the first Regents meeting scheduled after publication of the proposed revised rule in the State Register on February 26, 2014 and expiration of the 30-day public comment period for revised rules established by the State Administrative Procedure Act.

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

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

Substance of emergency rule: The Board of Regents has adopted amendments to sections 200.7 and 200.15 of the Commissioner's Regulations as an emergency rule, effective April 12, 2014, relating to Chapter 501 of the Laws of 2012: "Protection of People with Special Needs Act." The following is a summary of the substance of the emergency amendments.

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

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

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. EDU-28-13-00009-EP, Issue of July 10, 2013. The emergency rule will expire June 9, 2014.

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

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

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

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

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

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

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

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

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

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

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

2. LEGISLATIVE OBJECTIVES:

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

3. NEEDS AND BENEFITS:

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

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

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

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

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

4. COSTS:

a. Costs to State government: None.

b. Costs to local governments: None.

c. Costs to regulated parties: None.

d. Costs to SED of implementation and continuing compliance: None.

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

5. LOCAL GOVERNMENT MANDATES:

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

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

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

6. PAPERWORK:

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

7. DUPLICATION:

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

8. ALTERNATIVES:

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

9. FEDERAL STANDARDS:

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

10. COMPLIANCE SCHEDULE:

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

Regulatory Flexibility Analysis

1. EFFECT OF RULE:

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

2. COMPLIANCE REQUIREMENTS:

The proposed amendment is necessary to conform the Commissioner's Regulations to recent changes in State statute (as amended by Chapter 501

of the Laws of 2012), and does not impose any additional compliance requirements on small businesses and local governments beyond those imposed by State statutes and regulations.

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

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

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

3. PROFESSIONAL SERVICES:

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

4. COMPLIANCE COSTS:

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

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

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

6. MINIMIZING ADVERSE IMPACT:

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

7. SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION:

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

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

Pursuant to State Administrative Procedure Act section 207(1)(b), the State Education Department proposes that the initial review of this rule shall occur in the fifth calendar year after the year in which the rule is adopted, instead of in the third calendar year. The justification for a five year review period is that the proposed amendment implements and conforms the Commissioner's Regulations to statutory requirements under Chapter 501 of the Laws of 2012, and therefore the substantive provisions of the proposed amendment cannot be repealed or modified unless there is a further statutory change. Accordingly, there is no need for a shorter review period. The Department invites public comment on the proposed five year review period for this rule. Comments should be sent to the agency contact listed in item 10. of the Notice of Proposed Rule Making published herewith, and must be received within 45 days of the State Register publication date of the Notice.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBERS OF RURAL AREAS:

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

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

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

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

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

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

The proposed amendment does not impose any additional professional services.

3. COSTS:

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

4. MINIMIZING ADVERSE IMPACT:

The proposed amendment is necessary to conform the Commissioner's Regulations to Chapter 501 of the Laws of 2012. The proposed amendment has been carefully drafted to meet State statutory requirements and does not impose any additional costs or compliance requirements on small businesses and local governments in rural areas beyond those imposed by federal law and regulations and State statutes. Since these requirements apply to all in-State residential schools, State-operated schools, State-

supported schools which have a residential component, special act school districts, approved out-of-State residential schools, and preschool programs and municipalities who contract for related services approved pursuant to section 4410 of the Education Law in the State, it is not possible to adopt different standards for such entities in rural areas.

5. RURAL AREA PARTICIPATION:

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

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

Pursuant to State Administrative Procedure Act section 207(1)(b), the State Education Department proposes that the initial review of this rule shall occur in the fifth calendar year after the year in which the rule is adopted, instead of in the third calendar year. The justification for a five year review period is that the proposed amendment implements and conforms the Commissioner's Regulations to statutory requirements under Chapter 501 of the Laws of 2012, and therefore the substantive provisions of the proposed amendment cannot be repealed or modified unless there is a further statutory change. Accordingly, there is no need for a shorter review period. The Department invites public comment on the proposed five year review period for this rule. Comments should be sent to the agency contact listed in item 10. of the Notice of Proposed Rule Making published herewith, and must be received within 45 days of the State Register publication date of the Notice.

Job Impact Statement

The proposed amendment is necessary to conform the Commissioner's Regulations to recent changes to the Education Law, Social Services Law and Executive Law, as amended by Chapter 501 of the New York State Laws of 2012 (''Protection of People with Special Needs Act''), and the regulations, guidelines and procedures established by the Justice Center, to ensure that students attending residential schools are protected against abuse, neglect and significant incidents that may jeopardize their health, safety and welfare.

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

Assessment of Public Comment

The agency received no public comment.

EMERGENCY RULE MAKING

Elementary and Secondary Education Act (ESEA) Flexibility and School and School District Accountability

I.D. No. EDU-04-14-00004-E

Filing No. 308

Filing Date: 2014-04-11

Effective Date: 2014-04-12

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

Action taken: Amendment of sections 100.4 and 100.18 of Title 8 NYCRR.

Statutory authority: Education Law, sections 101(not subdivided), 207(not subdivided), 208(not subdivided), 209(not subdivided), 210(not subdivided), 215(not subdivided), 305(1), (2), (20), 308(not subdivided), 309(not subdivided), 3204(3), 3713(1) and (2)

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

Specific reasons underlying the finding of necessity: On December 20, 2013, the United States Department of Education (USDE) granted the State Education Department a one-year waiver (for the 2013-2014 school year) from Elementary and Secondary Education Act (ESEA) §§ 1111(b)(1)(B) and 1111(b)(3)(C)(i) so that the Department may use, with respect to a student who is not yet enrolled in high school but who takes mathematics coursework and the corresponding Algebra I or Geometry Regents Examination in grade 7 or 8, the student's score on that assessment for federal accountability purposes for the grade in which the student is enrolled. However, the result on the Regents Examination in Algebra I (Common Core) or Geometry taken in grade 7 or 8 will not count towards the participation rate or the Performance Index in mathematics for the high school in which they later enroll.

The proposed amendment of section 100.18(b)(14) of the Commissioner's Regulations, which conforms existing regulations with the newly-granted waiver, was adopted as an emergency rule at the January 13-14, 2014 Regents meeting, effective January 14, 2014. A Notice of Emergency Adoption and Proposed Rule Making was published in the State Register on January 29, 2014.

At the February 2014 Regents meeting, the January emergency rule was repealed and the proposed amendment was revised and adopted as an emergency rule, effective February 11, 2014. A Notice of Emergency Adoption and Revised Rule Making was published in the State Register on February 26, 2014.

Because the Board of Regents meets at scheduled intervals the earliest the revised proposed amendment could be presented for regular (non-emergency) adoption, after publication of the Notice of Emergency Adoption and Revised Rule Making in the State Register on February 26, 2014 and expiration of the 30-day public comment period for revised rule makings prescribed in State Administrative Procedure Act (SAPA) section 202(4-a), is the April 28-29, 2014 Regents meeting. Furthermore, pursuant to SAPA section 203(1), the earliest effective date of the revised proposed amendment, if adopted at the April meeting, would be May 14, 2014, the date a Notice of Adoption would be published in the State Register. However, the February emergency rule will expire on April 12, 2014. Since the mathematics assessments for grades 7 and 8 are scheduled to be administered in April, a lapse in the rule may negatively impact administration of the mathematics assessments.

Emergency action is therefore necessary for the preservation of the general welfare to ensure that the emergency rule remains continuously in effect until the effective date of its adoption as a permanent rule.

It is anticipated that the proposed rule will be presented for permanent adoption at the April 28-29, 2014 Regents meeting, which is the first Regents meeting scheduled after publication of the proposed revised rule in the State Register on February 26, 2014 and expiration of the 30-day public comment period for revised rules established by the State Administrative Procedure Act.

Subject: Elementary and Secondary Education Act (ESEA) Flexibility and school and school district accountability.

Purpose: To provide flexibility to LEAs in the administration of Regents mathematics examinations (Common Core) to students in grades 7-8.

Text of emergency rule: 1. Paragraph (2) of subdivision (e) of section 100.4 of the Regulations of the Commissioner of Education is amended, effective April 12, 2014, as follows:

(2) Beginning with the 1998-99 school year, the mathematics intermediate assessment shall be administered in grade eight. Beginning with the 2005-2006 school year, mathematics assessments shall be administered in grades seven and eight*, provided that, for the 2013-2014 school year, students who attend grade seven or eight may take a Regents examination in mathematics in lieu of or in addition to the grade 7 or 8 mathematics assessment, in accordance with section 100.18(b)(14) of this Part*.

2. Paragraph (14) of subdivision (b) of section 100.18 of the Regulations of the Commissioner of Education is amended, effective April 12, 2014, as follows:

(14) Performance levels shall mean:

(i) for elementary and middle grades:

(a) level 1 (well below proficient)

(1) not on track to be proficient: a score of level 1 on State assessments in English language arts and mathematics provided that using the student's three-year percentile growth targets as established by the commissioner, the student's growth percentile does not meet or exceed his or her growth percentile target; or the student does not have a growth percentile target; or a score of level 1 on a State alternate assessment*; or a score of 64 or less, or a comparable score as approved by the Board of Regents, on a Regents examination in mathematics for a student in grade 7 or grade 8*.

(2) on track to be proficient: a score of level 1 on State assessments in English language arts and mathematics, provided that using the student's three-year percentile growth targets as established by the commissioner, the student's growth percentile meets or exceeds his or her growth percentile target;

(3) for science: a score of level 1 on State assessments in science or other State assessments, or a score of level 1 on a State alternate assessment;

(b) level 2 (below proficient)

(1) not on track to be proficient: a score of level 2 on State assessments in English language arts and mathematics provided that using the student's three-year percentile growth targets as established by the commissioner, the student's growth percentile does not meet or exceed his or her growth percentile target; or the student does not have a growth percentile target; or a score of level 2 on a State alternate assessment;

(2) on track to be proficient: a score of level 2 on State assessments in English language arts and mathematics, provided that using the student's three-year percentile growth targets as established by the com-

missioner, the student's growth percentile meets or exceeds his or her growth percentile target;

(3) for science: a score of level 2 on State assessments in science or other State assessments, or a score of level 2 on a State alternate assessment;

(c) level 3 (proficient)

(1) a score of level 3 on State assessments in English language arts, mathematics and science or a score of level 3 on a State alternate assessment;

(2) a score of 65 or higher*, or a comparable score as approved by the Board of Regents,* on a Regents Examination in science *or mathematics* for students in grade *seven or* eight pursuant to subdivision 100.4(d) of this Part;

(d) level 4 (excels in standards): a score of level 4 on State assessments in English language arts, mathematics and science or a score of level 4 on a State alternate assessment;

(ii) for high school:

(a) level 1 (well below proficient)

(1) a score of 64 or less on the Regents comprehensive examination in English or a Regents mathematics examination;

(2) a failing score on a State-approved alternative examination for those Regents examinations;

(3) a score of level 1 on a State alternate assessment;

(4) a cohort member who has not been tested on the Regents comprehensive examination in English or a Regents mathematics examination or State-approved alternative examination for these Regents examinations;

(b) level 2 (below proficient)

(1) a score between 65 and 74 on the Regents comprehensive examination in English or between 65 and 79 on a Regents examination in mathematics;

(2) a score of level 2 on a State alternate assessment;

(c) level 3 (proficient)

(1) a score between 75 and 89 on the Regents comprehensive examination in English or between 80 and 89 on a Regents examination in mathematics; or [passes] a *passing score on a* State-approved alternative to those Regents examinations;

(2) a score of level 3 on a State alternate assessment;

(d) level 4 (excels in standards)

(1) a score of 90 or higher on the Regents comprehensive examination in English or a Regents mathematics examination;

(2) a score of level 4 on a State alternate assessment;

(iii) Notwithstanding the provisions of this section:

(a) For students who attend grade 7 or 8 and take a Regents examination in mathematics in the 2013-2014 school year, but do not take the Grade 7 or 8 Mathematics Assessment, participation and accountability determinations for the school in which the student attends grade 7 or 8 shall be based upon such student's performance on the Regents examination in mathematics. Participation and accountability determinations for the high school in which such student later enrolls shall be based upon such student's performance on mathematics assessments taken after the student first enters grade 9. For such students, a score of 65 or above, or a comparable score as approved by the Board of Regents, on a Regents Examination in mathematics taken in grade 9 or thereafter will be credited as level 3 for purposes of calculating the High School Performance Index.

(b) For students who attend grade 7 or 8 and who take both the Grade 7 or 8 Mathematics Assessment and a Regents Examination in mathematics during the 2013-2014 school year, participation and accountability determinations for the school such students attend in grade 7 or 8 shall be based upon the student's performance on the Grade 7 or 8 Mathematics Assessment.

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-04-14-00004-EP, Issue of January 29, 2014. The emergency rule will expire June 9, 2014.

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

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

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

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

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

Education Law section 210 authorizes Regents to register domestic and foreign institutions in terms of State standards, and fix the value of degrees, diplomas and certificates issued by institutions of other states or countries and presented for entrance to schools, colleges and professions in the State.

Education Law section 215 authorizes Commissioner to require schools and school districts to submit reports containing such information as Commissioner shall prescribe.

Education Law section 305(1) and (2) provide Commissioner, as chief executive officer of the State's education system, with general supervision over all schools and institutions subject to the Education Law, or any statute relating to education, and responsibility for executing all educational policies of the Regents. Section 305(20) provides Commissioner shall have such further powers and duties as charged by the Regents.

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

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

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

Education Law section 3713(1) and (2) authorize State and school districts to accept federal law making appropriations for educational purposes and authorize Commissioner to cooperate with federal agencies to implement such law.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment is consistent with the above statutory authority and is necessary to implement Regents policy relating to public school and district accountability.

3. NEEDS AND BENEFITS:

At its October 2013 meeting, the Board of Regents directed the State Education Department (SED or "the Department") to submit a request to the United States Department of Education (USDE) to waive provisions of the federal Elementary and Secondary Education Act (ESEA) [Sections 1111(b)(1)(B) and 1111(b)(3)(C)(i)] that require states to measure the achievement of standards in mathematics using the same assessments for all students.

On December 20, 2013, USDE granted SED a one-year waiver (for the 2013-2014 school year) from ESEA §§ 1111(b)(1)(B) and 1111(b)(3)(C)(i) so that the Department may use, with respect to a student who is not yet enrolled in high school but who takes mathematics coursework and the corresponding Algebra I or Geometry Regents Examination in grade 7 or 8, the student's score on that assessment for federal accountability purposes for the grade in which the student is enrolled. However, the result on the Regents Examination in Algebra I (Common Core) or Geometry taken in grade 7 or 8 will not count towards the participation rate or the Performance Index in mathematics for the high school in which they later enroll. The proposed amendment will conform existing regulations with the newly-granted waiver.

Currently, seventh and eighth grade students who are receiving instruction in Algebra I and who take the Regents Examination in Algebra I (Common Core) are also required to take the NYS Common Core Mathematics Test for the grade in which they are enrolled. The same requirement also applies to students who are receiving instruction in Geometry and who take the Regents Examination in Geometry.

Based on the waiver, the proposed amendment to 8 NYCRR §§ 100.4(e)(2) and 100.18(b)(14) will permit local educational agencies (LEAs) to administer only the Regents Examination in Algebra I (Common Core) to these students during the 2013-2014 school year, thus eliminating the need for "double-testing" in grades 7 and 8. This provision also applies to students in grades 7 and 8 who receive instruction in Geometry and who take the Regents Examination in Geometry. The waiver serves to relieve students, teachers, and schools from having to prepare students in seventh and eighth grade who are receiving instruction in Algebra I or Geometry for multiple end-of-year assessments.

The proposed amendment also reflects the way in which student results will be used for institutional accountability purposes under the waiver:

• If a district opts to have accelerated students take the NYS Grade 7 or 8 Common Core Mathematics Test in addition to one or both Regents Examinations in Algebra, the results from the NYS Grade 7 or 8 Common Core Mathematics Test will be used for institutional accountability purposes rather than the results from a Regents Examination in mathematics. Students who take the Regents Examination in Algebra I (Common Core) in grade 7 or 8 will be counted as participants when determining the participation rate in mathematics for the school they attend in grade 7 or 8. The result on the Regents Examination in Algebra I (Common Core) taken in grade 7 or 8 will not count towards the participation rate in mathematics for the high school in which they later enroll. The same rule would apply for any students who take the Regents Examination in Geometry in grade 7 or 8.

• Results for students who take only the Regents Examination in Algebra I (Common Core) in grade 7 or 8 will be incorporated into the Performance Index for the school in which the student is enrolled. Grade 7 or 8 students who accelerate and obtain, at a minimum, the score on the Regents Examination in Algebra I (Common Core) necessary to meet Regents Diploma requirements will, for the purposes of calculating a school's or a district's Performance Index, be counted at the "full credit" level. Grade 7 or 8 students who do not obtain scores on the Regents Examination in Algebra I (Common Core) necessary to meet Regents Diploma requirements will earn the school or district "no credit" for the student's performance. The same rule will apply to seventh and eighth grade students who take another Regents Examination in mathematics (e.g., Geometry).

• The waiver and proposed regulatory amendments pertain to institutional accountability requirements, not to the requirements that individual students must meet in order to graduate from high school. The waiver does not change (i.e., the waiver neither increases nor decreases) the requirements students must currently meet in order to obtain a diploma. However, for institutional accountability, high schools will only get credit in the Performance Index for Regents exams or their equivalents that are taken after a student first enters ninth grade, even if students have taken Regents exams in math or their equivalents in grade 7 or 8.

4. COSTS:

Cost to the State:

none.

Costs to local government:

none.

Cost to private regulated parties:

none.

Cost to regulating agency for implementation and continued administration of this rule:

none.

The proposed amendment provides flexibility to LEAs in the administration of Regents Mathematics examinations (Common Core) to students in grades 7and 8 and will not impose any additional costs on the State, local governments, private regulated parties or the State Education Department. The proposed amendment will reduce costs by permitting LEAs to administer only the Regents Examination in Algebra I (Common Core) to these students during the 2013-2014 school year, thus eliminating the need for ''double-testing" in grades 7and 8, and relieving students, teachers, and schools from having to prepare such students who are receiving instruction in Algebra I or Geometry for multiple end-of-year assessments.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment provides flexibility to LEAs in the administration of Regents Mathematics examinations (Common Core) to students in grades 7and 8, and will not impose any additional program, service, duty or responsibility upon local governments. The proposed amendment will reduce compliance requirements and costs by permitting LEAs to administer only the Regents Examination in Algebra I (Common Core) to these students during the 2013-2014 school year, thus eliminating the need for ''double-testing" in grades 7 and 8, and relieving students, teachers, and schools from having to prepare such students who are receiving instruction in Algebra I or Geometry for multiple end-of-year assessments.

6. PAPERWORK:

The proposed amendment does not impose any specific recordkeeping, reporting or other paperwork requirements.

7. DUPLICATION:

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

8. ALTERNATIVES:

The proposed amendment is necessary to conform the Commissioner's Regulations and otherwise implement a one-year waiver (for the 2013-2014 school year) granted by the USDE from Elementary and Secondary Education Act (ESEA) §§ 1111(b)(1)(B) and 1111(b)(3)(C)(i). There were no significant alternatives and none were considered.

9. FEDERAL STANDARDS:

The proposed amendment is necessary to conform the Commissioner's Regulations to, and otherwise implement, a one-year waiver (for the 2013-2014 school year) granted to the State Education Department by the USDE from Elementary and Secondary Education Act (ESEA) §§ 1111(b)(1)(B) and 1111(b)(3)(C)(i) so that SED may use, with respect to a student who is not yet enrolled in high school but who takes mathematics coursework and the corresponding Algebra I or Geometry Regents Examination in grade 7 or 8, the student's score on that assessment for federal accountability purposes for the grade in which the student is enrolled. The result on the Regents Examination in Algebra I (Common Core) or Geometry taken in grade 7 or 8 will not count towards the participation rate or the Performance Index in mathematics for the high school in which they later enroll.

10. COMPLIANCE SCHEDULE:

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

Regulatory Flexibility Analysis

Small businesses:

The proposed amendment relates to public school and school district accountability and is necessary to conform the Commissioner's Regulations to the one-year waiver (for the 2013-2014 school year) granted to the State Education Department (SED) by the United States Department of Education (USDE) from Elementary and Secondary Education Act (ESEA) §§ 1111(b)(1)(B) and 1111(b)(3)(C)(i) so that SED may use, with respect to a student who is not yet enrolled in high school but who takes mathematics coursework and the corresponding Algebra I or Geometry Regents Examination in grade 7 or 8, the student's score on that assessment for federal accountability purposes for the grade in which the student is enrolled. The State and local educational agencies (LEAs) are required to comply with the ESEA as a condition to their receipt of federal funds under Title I of the ESEA Act of 1965, as amended.

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

Local governments:

1. EFFECT OF RULE:

The rule applies to public schools, school districts and charter schools that receive funding as LEAs pursuant to the Elementary and Secondary Education Act of 1965, as amended.

2. COMPLIANCE REQUIREMENTS:

The proposed amendment provides flexibility to LEAs in the administration of Regents Mathematics examinations (Common Core) to students in grades 7and 8, and will not impose any additional compliance requirements upon local governments. The proposed amendment will reduce compliance requirements by permitting LEAs to administer only the Regents Examination in Algebra I (Common Core) to these students during the 2013-2014 school year, thus eliminating the need for "double-testing" in grades 7and 8, and relieving students, teachers, and schools from having to prepare such students who are receiving instruction in Algebra I or Geometry for multiple end-of-year assessments.

3. PROFESSIONAL SERVICES:

The proposed amendment imposes no additional professional service requirements.

4. COMPLIANCE COSTS:

The proposed amendment provides flexibility to LEAs in the administration of Regents Mathematics examinations (Common Core) to students in grades 7and 8 and will not impose any additional costs on local governments. The proposed amendment will reduce costs by permitting LEAs to administer only the Regents Examination in Algebra I (Common Core) to these students during the 2013-2014 school year, thus eliminating the need for "double-testing" in grades 7and 8, and relieving students, teachers, and schools from having to prepare such students who are receiving instruction in Algebra I or Geometry for multiple end-of-year assessments.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The rule imposes no technological requirements on school districts. Costs are discussed under the Compliance Costs section above.

6. MINIMIZING ADVERSE IMPACT:

The proposed amendment is necessary to conform the Commissioner's Regulations and to otherwise implement a one-year waiver (for the 2013-2014 school year) granted to SED by the USDE from Elementary and Secondary Education Act (ESEA) §§ 1111(b)(1)(B) and 1111(b)(3)(C)(i) so that SED may use, with respect to a student who is not yet enrolled in high school but who takes mathematics coursework and the corresponding Algebra I or Geometry Regents Examination in grade 7 or 8, the student's

score on that assessment for federal accountability purposes for the grade in which the student is enrolled. The result on the Regents Examination in Algebra I (Common Core) or Geometry taken in grade 7 or 8 will not count towards the participation rate or the Performance Index in mathematics for the high school in which they later enroll.

The proposed amendment will reduce compliance requirements and costs by permitting LEAs to administer only the Regents Examination in Algebra I (Common Core) to these students during the 2013-2014 school year, thus eliminating the need for "double-testing" in grades 7 and 8, and relieving students, teachers, and schools from having to prepare such students who are receiving instruction in Algebra I or Geometry for multiple end-of-year assessments.

7. LOCAL GOVERNMENT PARTICIPATION:

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

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

Pursuant to State Administrative Procedure Act section 207(1)(b), the State Education Department proposes that the initial review of this rule shall occur in the fifth calendar year after the year in which the rule is adopted, instead of in the third calendar year. The justification for a five year review period is that the proposed amendment is necessary to implement long-range Regents policy relating to public school and school district accountability. Accordingly, there is no need for a shorter review period. Specifically, the proposed amendment conforms the Commissioner's Regulations to, and otherwise implements, a one-year waiver (for the 2013-2014 school year) granted to SED by the USDE from Elementary and Secondary Education Act (ESEA) §§ 1111(b)(1)(B) and 1111(b)(3)(C)(i) so that SED may use, with respect to a student who is not yet enrolled in high school but who takes mathematics coursework and the corresponding Algebra I or Geometry Regents Examination in grade 7 or 8, the student's score on that assessment for federal accountability purposes for the grade in which the student is enrolled. The result on the Regents Examination in Algebra I (Common Core) or Geometry taken in grade 7 or 8 will not count towards the participation rate or the Performance Index in mathematics for the high school in which they later enroll.

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 16. of the Notice of Emergency Adoption and 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 public schools, school districts and charter schools that receive funding as LEAs pursuant to the Elementary and Secondary Education Act (ESEA) of 1965, as amended, including those located in the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square mile or less.

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

The proposed amendment provides flexibility to LEAs in the administration of Regents Mathematics examinations (Common Core) to students in grades 7and 8, and will not impose any additional compliance requirements upon local governments. The proposed amendment will reduce compliance requirements by permitting LEAs to administer only the Regents Examination in Algebra I (Common Core) to these students during the 2013-2014 school year, thus eliminating the need for "double-testing" in grades 7 and 8, and relieving students, teachers, and schools from having to prepare such students who are receiving instruction in Algebra I or Geometry for multiple end-of-year assessments.

The proposed amendment imposes no additional professional service requirements.

3. COMPLIANCE COSTS:

The proposed amendment provides flexibility to LEAs in the administration of Regents Mathematics examinations (Common Core) to students in grades 7and 8 and will not impose any additional costs on local governments. The proposed amendment will reduce costs by permitting LEAs to administer only the Regents Examination in Algebra I (Common Core) to these students during the 2013-2014 school year, thus eliminating the need for "double-testing" in grades 7and 8, and relieving students, teachers, and schools from having to prepare such students who are receiving instruction in Algebra I or Geometry for multiple end-of-year assessments.

4. MINIMIZING ADVERSE IMPACT:

The proposed amendment is necessary to conform the Commissioner's Regulations to, and otherwise implement, a one-year waiver (for the 2013-2014 school year) granted to SED by the USDE from Elementary and Secondary Education Act (ESEA) §§ 1111(b)(1)(B) and 1111(b)(3)(C)(i) so that SED may use, with respect to a student who is not yet enrolled in high school but who takes mathematics coursework and the corresponding Algebra I or Geometry Regents Examination in grade 7 or 8, the student's score on that assessment for federal accountability purposes for the grade in which the student is enrolled. The result on the Regents Examination in Algebra I (Common Core) or Geometry taken in grade 7 or 8 will not count towards the participation rate or the Performance Index in mathematics for the high school in which they later enroll. The proposed amendment will reduce compliance requirements and costs by permitting LEAs to administer only the Regents Examination in Algebra I (Common Core) to these students during the 2013-2014 school year, thus eliminating the need for "double-testing" in grades 7and 8, and relieving students, teachers, and schools from having to prepare such students who are receiving instruction in Algebra I or Geometry for multiple end-of-year assessments The rule has been carefully drafted to meet specific federal and State requirements. Since these requirements apply to all local educational agencies in the State that receive ESEA funds, it is not possible to adopt different standards for school districts and charter schools in rural areas.

5. RURAL AREA PARTICIPATION:

The proposed amendment was submitted for review 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 long-range Regents policy relating to public school and school district accountability. Accordingly, there is no need for a shorter review period. Specifically, the proposed amendment conforms the Commissioner's Regulations to, and otherwise implements, a one-year waiver (for the 2013-2014 school year) granted to SED by the USDE from Elementary and Secondary Education Act (ESEA) §§ 1111(b)(1)(B) and 1111(b)(3)(C)(i) so that SED may use, with respect to a student who is not yet enrolled in high school but who takes mathematics coursework and the corresponding Algebra I or Geometry Regents Examination in grade 7 or 8, the student's score on that assessment for federal accountability purposes for the grade in which the student is enrolled. The result on the Regents Examination in Algebra I (Common Core) or Geometry taken in grade 7 or 8 will not count towards the participation rate or the Performance Index in mathematics for the high school in which they later enroll.

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 16. of the Notice of Emergency Adoption and Proposed Rule Making published herewith, and must be received within 45 days of the State Register publication date of the Notice.

Job Impact Statement

The proposed rule making relates to public school and school district accountability and is necessary to conform the Commissioner's Regulations to, and to otherwise implement, the one-year waiver (for the 2013-2014 school year) granted to the State Education Department by the United State Department of Education from Elementary and Secondary Education Act (ESEA) §§ 1111(b)(1)(B) and 1111(b)(3)(C)(i) so that SED may use, with respect to a student who is not yet enrolled in high school but who takes mathematics coursework and the corresponding Algebra I or Geometry Regents Examination in grade 7 or 8, the student's score on that assessment for federal accountability purposes for the grade in which the student is enrolled. The State and local educational agencies (LEAs) are required to comply with the ESEA as a condition to their receipt of federal funds under Title I of the ESEA Act of 1965, as amended.

The proposed rule applies to public schools, school districts and charter schools that receive funding as LEAs pursuant to the ESEA, and will not have an adverse impact on jobs or employment opportunities. Because it is evident from the nature of the proposed rule that it will have no impact, on jobs or employment opportunities, no further steps were needed to ascertain those facts and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

Assessment of Public Comment

The agency received no public comment.

Department of Financial Services

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

Enterprise Risk Management and Own Risk and Solvency Assessment

I.D. No. DFS-03-14-00014-ERP
Filing No. 310
Filing Date: 2014-04-11
Effective Date: 2014-04-11

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

Action Taken: Addition of Part 82 (Regulation 203) to Title 11 NYCRR.

Statutory authority: Financial Services Law, sections 202 and 302; Insurance Law, sections 110, 301, 309, 316, 1115, 1501, 1503, 1504(c), 1604, 1702, 1717; and arts. 15, 16 and 17

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

Specific reasons underlying the finding of necessity: Chapter 238 of the Laws of 2013 amended Insurance Law Articles 15, 16, and 17 to require an ultimate holding company and a domestic insurer with subsidiaries to adopt a formal enterprise risk management ("ERM") function and file an enterprise risk report with the Superintendent of Financial Services by April 30 of each year starting in 2014. Regulation 203 implements the foregoing amendments by setting forth specific requirements for an ERM function and enterprise risk report, among other things.

This regulation was previously published in the State Register on January 22, 2014 as a proposed regulation.

For the reasons stated above, emergency action is necessary for the general welfare.

Subject: Enterprise Risk Management and Own Risk and Solvency Assessment.

Purpose: To implement ch. 238 of the L. of 2013, setting requirements for an ERM function and enterprise risk report, among other things.

Substance of emergency/revised rule: Section 82.1 sets forth definitions.

Section 82.2 provides that, pursuant to Insurance Law §§ 1503(b), 1604(b), and 1717(b), an entity (meaning an ultimate holding company that directly or indirectly controls an insurer or a domestic insurer registered or required to register under Insurance Law Article 16 or 17) must adopt a formal enterprise risk management ("ERM") function. An entity must file annually with the Superintendent of Financial Services ("Superintendent") an electronic copy of the enterprise risk report and also must file one hard copy of the report due in 2014. A domestic insurer that is not a member of an Article 15, 16, or 17 system must adopt an ERM function and file an annual enterprise risk report if its premiums are equal to or greater than a certain amount. Section 82.2 also sets forth the minimum requirements for an ERM function and specifies the items that must be included in an enterprise risk report.

Section 82.3 requires a domestic insurer to conduct an own risk and solvency assessment ("ORSA"), and permits a domestic insurer to satisfy this requirement if the holding company system, Article 16 system, or Article 17 system of which the domestic insurer is a member conducts an ORSA. Section 82.3 also requires such a domestic insurer to submit to the Superintendent, starting in 2015, an electronic copy of an ORSA summary report and one hard copy of the report due in 2015. Section 82.3 also describes which domestic insurers are exempt from the requirements of this section.

Section 82.4 states that an entity or a domestic insurer submitting an enterprise risk report or ORSA summary report may request trade secret protection under the Public Officers Law.

Section 82.5 permits an entity or a domestic insurer to apply to the Superintendent for an exemption from the electronic filing requirement by submitting a written request to the Superintendent at least 30 days before the due date of the particular filing or submission that is the subject of the request.

This notice is intended to serve as both a notice of emergency adoption and a notice of revised rule making. The notice of proposed rule making was published in the *State Register* on January 22, 2014, I.D. No. DFS-03-14-00014-P. The emergency rule will expire July 9, 2014.

Emergency rule compared with proposed rule: Substantial revisions were made in sections 82.1, 82.2, 82.3, 82.4 and 82.5.

Text of rule and any required statements and analyses may be obtained from: Joana Lucashuk, New York State Department of Financial Services, One State Street, New York, NY 10004, (212) 480-2125, email: joana.lucashuk@dfs.ny.gov

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

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

Revised Regulatory Impact Statement

1. Statutory authority: Financial Services Law §§ 202 and 302 and Insurance Law §§ 110, 301, 309, 316, 1115, 1501, 1503, 1504(c), 1604, 1702, 1717 and Articles 15, 16, and 17.

Financial Services Law § 202 establishes the office of the Superintendent of Financial Services ("Superintendent"). Financial Services Law § 302 and Insurance Law § 301, in material part, authorize the Superintendent to effectuate any power accorded to the Superintendent by the Financial Services Law, Insurance Law, or any other law, and to prescribe regulations interpreting the Insurance Law.

Insurance Law § 110 permits the Superintendent to share with and receive documents from the National Association of Insurance Commissioners ("NAIC") and state, federal, and international regulatory and law enforcement authorities.

Insurance Law § 309 authorizes the Superintendent to examine the affairs of any insurer doing an insurance business in New York State.

Insurance Law § 316 permits the Superintendent to promulgate regulations to require an insurer or other person or entity to submit a filing or submission electronically.

Insurance Law § 1115 limits the amount of loss on any one risk to which an insurer may expose itself.

Insurance Law § 1501 sets forth definitions relating to holding companies, including the definition of "enterprise risk," while Insurance Law § 1503 requires a holding company that directly or indirectly controls an insurer to adopt a formal enterprise risk management ("ERM") function and to file an enterprise risk report with the Superintendent annually. Insurance Law § 1504(c) requires the Superintendent to keep confidential the contents of each report made pursuant to Insurance Law Article 15 and any information obtained in connection therewith.

Insurance Law §§ 1604 and 1702 define "enterprise risk." Insurance Law §§ 1604 and 1717 require an authorized domestic insurer or a parent corporation to register with the Superintendent, adopt a formal ERM function, and file an enterprise risk report with the Superintendent annually.

2. Legislative objectives: Insurance Law Article 15 sets forth standards for the regulation of holding company systems, while Insurance Law Articles 16 and 17 set forth standards for the regulation of domestic insurers that have subsidiaries. The Legislature enacted the three articles in 1969 as the result of an extensive study conducted by the Superintendent of Insurance. The study found that "[w]hen a non-insurance holding company system includes an insurance company within it, its potential for specific harm becomes greater since tempting reservoirs of liquid assets become accessible to persons without any appreciation of the security needs of the insurance enterprise, and the interests of the policyholders thus become vulnerable."

On July 31, 2013, Governor Andrew M. Cuomo signed into law Chapter 238 of the Laws of 2013, which amended Insurance Law Articles 15, 16, and 17 to require an Article 15 ultimate holding company, authorized domestic insurer subject to Insurance Law Article 16, and a parent corporation subject to Insurance Law Article 17, to adopt a formal ERM function and file an enterprise risk report with the Superintendent annually.

This rule accords with the public policy objectives that the Legislature sought to advance in Insurance Law Articles 15, 16, and 17 by setting forth specific requirements for an ERM function and enterprise risk report, and requiring certain domestic insurers to conduct an own risk and solvency assessment ("ORSA"), to minimize the potential for specific harm to an insurer and its policyholders.

3. Needs and benefits: By enacting Insurance Law Articles 15, 16, and 17, New York has recognized the need for group supervision in order to protect insurers and their policyholders. During the 2008 financial crisis, group supervision was tested when a holding company system that included insurers and financial service entities nearly collapsed because of risky investments made by one of its financial service entities. This experience has caused state regulators and the NAIC to reevaluate the current group supervision framework. In 2010, the NAIC amended its model Insurance Holding Company System Regulatory Act ("model Holding Company Act") and Insurance Holding Company System Model Regulation to require the ultimate controlling person to adopt a formal ERM function and file an enterprise risk report. The NAIC also adopted a new Risk Management & Own Risk and Solvency Assessment Model Act ("ORSA Model Act") and an accompanying ORSA guidance manual,

which requires a domestic insurer (or its holding company system) to complete a self-assessment of its risk management, stress tests, and capital adequacy annually. Chapter 238 of the Laws of 2013 incorporated the model Holding Company Act's requirement that an ultimate holding company or a domestic insurer with subsidiaries adopt a formal ERM function and file an enterprise risk report. It also is important that large domestic insurers that are not part of an Article, 15, 16, or 17 system ("stand-alone insurers") adopt a formal ERM function in order to manage their material risks and file an enterprise risk report so that the Department is aware of and can monitor these risks.

This rule sets forth specific requirements for an ERM function and enterprise risk report for holding companies, domestic insurers with subsidiaries, and certain stand-alone insurers. The rule also requires certain domestic insurers to conduct an ORSA and file an ORSA summary report to minimize the potential for specific harm to the insurer and its policyholders.

4. Costs: This rule imposes compliance costs on certain stand-alone insurers that this rule requires to adopt a formal ERM function and to file an annual enterprise risk report. The costs are difficult to estimate and will vary from insurer to insurer because of several factors, such as an insurer's organizational structure, its size, and whether it already has an ERM function in place.

In addition, Chapter 238 amended the Insurance Law to require an Article 15 ultimate holding company or a domestic insurer that has subsidiaries, to adopt a formal ERM function and file an enterprise risk report annually. With respect to such companies, this rule merely implements Chapter 238 by setting forth the minimum requirements for an ERM function and specifying the information that must be included in the enterprise risk report. Therefore, the rule itself should not impose compliance costs on these holding companies and domestic insurers.

Also, because this rule requires most domestic insurers to conduct an ORSA and file an ORSA summary report with the Superintendent annually, compliance costs may increase. Those costs are difficult to estimate and will vary depending upon numerous factors, such as the complexity of a domestic insurer's organizational structure.

The Department may incur costs for the implementation and continuation of this rule, because Department staff will need to review the enterprise risk reports and ORSA summary reports that insurers and holding companies will be submitting to the Superintendent annually. However, the Department anticipates that each ultimate holding company will file the report on behalf of the insurers in its holding company system, which should reduce the total number of reports filed with the Superintendent. Therefore, any additional costs incurred should be minimal and the Department should be able to absorb such costs in its ordinary budget.

This rule does not impose compliance costs on other state or local governments.

5. Local government mandates: This rule does not impose any program, service, duty, or responsibility upon a county, city, town, village, school district, fire district, or other special district.

6. Paperwork: This rule requires most domestic insurers or ultimate holding companies to file enterprise risk reports and ORSA summary reports with the Superintendent annually.

7. Duplication: This rule does not duplicate, overlap, or conflict with any existing state or federal rules or other legal requirements.

8. Alternatives: The Department considered requiring every stand-alone authorized insurer to have an ERM function and file an annual enterprise risk report with the Superintendent. However, after considering comments received from industry, the Department amended the rule so that the ERM function and enterprise risk reporting requirements apply only to larger stand-alone domestic insurers that have premiums that are equal to or greater than a certain amount. Requiring only larger stand-alone domestic insurers that have premiums that are equal to or greater than a certain amount to have an ERM function and file an enterprise risk report should minimize any adverse impact that the rule may have on smaller insurers that may be small businesses and will limit the impact of the rule to those insurers, namely domestic rather than foreign insurers, whose solvency the Department is primarily responsible for ensuring. In addition, the Superintendent always could request an enterprise risk report from an insurer, if necessary.

The Department also considered requiring all domestic insurers to conduct an ORSA and file an ORSA summary report with the Superintendent annually. However, the Department decided not to deviate from the ORSA Model Act in this respect. As a result, the rule exempts smaller domestic insurers from having to comply if the premium of the domestic insurer, and if the domestic insurer is a member of a holding company system, Article 16 system, or Article 17 system, the premium of its system, is no greater than a certain amount.

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

10. Compliance schedule: A holding company and an insurer must comply with the rule upon publication in the State Register.

Revised Regulatory Flexibility Analysis

1. Effect of rule: Insurance Law §§ 1503(b), 1604(b), and 1717(b) require an ultimate holding company and a domestic insurer with subsidiaries to adopt a formal enterprise risk management ("ERM") function and file an annual enterprise risk report. The rule expands upon the law by setting forth specific requirements for an ERM function and enterprise risk report. It also requires certain domestic insurers that are not part of an Insurance Law Article 15, 16, or 17 system ("stand-alone insurers") to adopt a formal ERM function and file an enterprise risk report, and requires certain domestic insurers to conduct an own risk and solvency assessment ("ORSA") and file an ORSA summary report. As such, it should not affect local governments.

In addition, this rule is in part directed at holding companies, which the Department does not believe fall within the definition of a "small business" as defined by State Administrative Procedure Act § 102(8), because in general they are not independently owned and do not have fewer than 100 employees.

Industry asserts that certain domestic insurers, in particular co-op insurers and mutual insurers, subject to the rule are small businesses. The Department believes that the exemptions set forth in the rule for certain stand-alone domestic insurers, with regard to ERM, and for certain domestic insurers, with regard to ORSA, will exclude any insurers that may be small businesses from being subject to those requirements. With respect to domestic insurers with subsidiaries, the requirement that they have a formal ERM function and file an annual enterprise risk report is required by law, not by the rule. The rule cannot vary a requirement imposed by law.

A domestic insurer with subsidiaries that may be a small business that is subject to the rule may incur additional costs as a result of this rule. The costs are difficult to estimate and will vary depending upon numerous factors, such as an insurer's organizational structure, its size, and whether it already has an ERM function in place. However, the Department in promulgating this rule has sought to accommodate any such small business by providing flexibility as to its ERM function in stating that an ERM function must be appropriate for the nature, scale, and complexity of the risk and must adhere to certain objectives, as relevant.

2. Compliance requirements: A local government will not have to undertake any reporting, recordkeeping, or other affirmative acts to comply with the rule since the rule does not apply to a local government. However, a domestic insurer with subsidiaries that may be a small business will need to file an enterprise risk report with the Superintendent of Financial Services ("Superintendent") annually pursuant to the Insurance Law.

3. Professional services: A local government will not need any professional services to comply with this rule since the rule does not apply to a local government. A domestic insurer with subsidiaries that may be a small business and must have an ERM function and file an annual enterprise risk report pursuant to the Insurance Law may need to retain legal and auditing services to comply with the rule.

4. Compliance costs: A local government will not incur any costs to comply with this rule since the rule does not apply to a local government. Any domestic insurer with subsidiaries that may be a small business and must have an ERM function and file an annual enterprise risk report pursuant to the Insurance Law may incur costs to comply with the rule. The costs are difficult to estimate and will vary depending upon an insurer's organizational structure, its size, and whether it already has an ERM function in place.

5. Economic and technological feasibility: There should not be any issues pertaining to the economic and technological feasibility of complying with the rule with regard to a local government since the rule does not apply to a local government. The rule requires a domestic insurer with subsidiaries that may be a small business to file annual enterprise risk reports with the Superintendent electronically. However, the rule permits such a domestic insurer to request an exemption from electronic filing based upon undue hardship, impracticability, or good cause.

6. Minimizing adverse impact: There will not be an adverse impact on a local government since the rule does not apply to a local government. However, there may be an adverse impact on a domestic insurer with subsidiaries that may be a small business and must have an ERM function and file an annual enterprise risk report pursuant to the Insurance Law.

The Department considered the approaches suggested in State Administrative Procedure Act ("SAPA") § 202-b(1) for minimizing adverse impacts. Originally, the proposed rule required all authorized stand-alone insurers to have an ERM function. However, the Department amended the rule so that only larger stand-alone domestic insurers that have premiums that are equal to or greater than a certain amount must have an ERM function. The Department also amended the rule to state that an ERM function is to be appropriate for the nature, scale, and complexity of the

risk and adhere to certain objectives, as relevant, thereby providing flexibility for any domestic insurer with subsidiaries that may be a small business.

7. Small business and local government participation. The Department complied with SAPA § 202-b(6) by publishing the proposed rule in the State Register on January 22, 2014, posting the proposed rule on the Department's website in January 2014, and meeting on March 11, 2014 with trade organizations and attorneys that represent insurers that may be small businesses.

Revised Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas: Holding companies and insurers affected by this rule operate in every county in this state, including rural areas as defined by State Administrative Procedure Act § 102(10).

2. Reporting, recordkeeping and other compliance requirements; and professional services: The rule imposes additional reporting, recordkeeping, and other compliance requirements by requiring certain domestic insurers that are not part of Insurance Law Article 15, 16, or 17 systems, including domestic insurers located in rural areas, to adopt a formal enterprise risk management ("ERM") function and file enterprise risk reports with the Superintendent of Financial Services ("Superintendent") annually.

With respect to an Article 15 holding company or a domestic insurer that has subsidiaries, this rule merely implements Chapter 238 of the Laws of 2013, which requires an Article 15 ultimate holding company or a domestic insurer that has subsidiaries to adopt a formal ERM function and file an enterprise risk report with the Superintendent annually, by setting forth the minimum requirements for an ERM function and specifying the information that should be included in an enterprise risk report.

In addition, this rule requires most domestic insurers, including insurers located in rural areas, to conduct an own risk and solvency assessment ("ORSA") and to file an ORSA summary report with the Superintendent annually.

An insurer or holding company in a rural area may need to retain professional services, such as lawyers or auditors, to comply with this rule.

3. Costs: The rule may result in additional costs to insurers, including insurers located in rural areas, because it requires certain domestic insurers that are not part of Article 15, 16, or 17 systems to adopt a formal ERM function and file an enterprise risk report with the Superintendent annually. This rule also requires most domestic insurers, including insurers located in rural areas, to conduct an ORSA and file an ORSA summary report with the Superintendent annually. Such costs are difficult to estimate because of several factors, such as the insurer's organizational structure, its size, and whether the insurer already has an ERM function in place.

However, any additional costs to insurers in rural areas should be the same as for insurers in non-rural areas.

With respect to an Article 15 holding company or a domestic insurer that has subsidiaries, this rule merely implements Chapter 238 of the Laws of 2013 by setting forth the proper components of an ERM function and specifying the information that must be included in an enterprise risk report. Therefore, the rule itself should not result in additional costs to holding companies or domestic insurers.

4. Minimizing adverse impact: This rule uniformly affects holding companies and insurers that are located in both rural and non-rural areas of New York State. The rule should not have an adverse impact on rural areas.

5. Rural area participation: Regulated parties in rural areas had an opportunity to participate in the rule making process when the proposed rule was published in the State Register on January 22, 2014. The Department also posted the proposed rule on its website prior to January 22, 2014. This rule contains certain changes as a result of the public comments that were received after the proposal was published. The Department did not receive any specific comments regarding the rural area impact of the rule.

Revised Job Impact Statement

This rule should not adversely impact jobs or employment opportunities in New York State. With regard to Insurance Law Article 15 holding companies and domestic insurers that have subsidiaries, the rule merely implements Chapter 238 of the Laws of 2013 by expanding upon the statutory requirements for adopting an enterprise risk management ("ERM") function and filing an enterprise risk report. These prudent requirements ensure the solvency and continued operation of insurers. For this reason, the rule also imposes ERM requirements on certain domestic insurers that are not part of an Article 15, 16, or 17 system and own risk and solvency assessment ("ORSA") requirements on most domestic insurers.

Assessment of Public Comment

The New York State Department of Financial Services ("Department") received comments from an organization that represents life insurers, an organization that represents United States insurers, an organization that represents mutual insurers, an organization that represents property/casualty insurers in New York, an organization that represents property/casualty insurers nationally, an organization that represents New York health care plans, a national organization representing the health insurance industry, a national federation of 37 independent, community-based and locally operated health insurers, an organization that represents property/casualty reinsurers, a property/casualty insurer, an insurer that writes property/casualty and life insurance, an insurance committee at a bar association, and an attorney, in response to its publication of the proposed rule in the New York State Register.

Many of the comments were requests to exclude "small" holding companies and domestic insurers from the enterprise risk management ("ERM") provisions of the rule. Other comments pertained to the lack of incorporation of the lead-state concept with regard to both ERM and the own risk and solvency assessment ("ORSA"), and confidentiality of enterprise risk reports and ORSA summary reports. The Department amended the rule to address some of these comments and provide greater flexibility for holding companies and domestic insurers. The Department has posted on its website a complete assessment of the public comments that the Department received regarding the proposed rule.

NOTICE OF EXPIRATION

The following notice has expired and cannot be reconsidered unless the Department of Financial Services publishes a new notice of proposed rule making in the NYS *Register*.

Brokers and Agents - Generally

I.D. No.	Proposed	Expiration Date
DFS-15-13-00010-P	April 10, 2013	April 10, 2014

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Life Insurance Reserves

I.D. No. DFS-17-14-00002-P

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

Proposed Action: Amendment of Parts 98 (Regulation 147) and 100 (Regulation 179) of Title 11 NYCRR.

Statutory authority: Financial Services Law, sections 202 and 302; and Insurance Law, sections 301, 1304, 1308, 4217, 4218, 4221, 4224, 4240 and 4517

Subject: Life insurance reserves.

Purpose: To modernize the current regulatory scheme with respect to term life insurance reserves.

Text of proposed rule: Section 98.3 is amended by re-lettering existing definitions for technical purposes and adding two new definitions: "alternative segment method" and "varying premium term life insurance".

Section 98.6(a) is amended by dividing paragraph (1) into two subparagraphs, and adding new paragraphs (7) through (12), which provide the reserve methodology to be followed for varying premium term life insurance policies issued on or after January 1, 2015.

Section 100.1 is amended by adding a new subdivision (c), which recognizes and permits the use of mortality improvement scale LT for varying premium term life insurance.

Section 100.2 is amended by changing the applicability section and clarifying that new section 100.11 applies only to varying premium term life insurance policies.

Section 100.3 is amended by re-lettering existing definitions for technical purposes and adding the new definitions: "mortality improvement scale LT" and "varying premium term life insurance".

Section 100.11 ("Severability") is re-numbered as section 100.12, and a new section 100.11 ("Varying Premium Term Life Insurance Mortality Improvement") is added to provide the mortality improvement factors and formulas for varying premium term life insurance and includes a numerical example for applying the mortality improvement factors and formulas.

Text of proposed rule and any required statements and analyses may be obtained from: Frederick Andersen, New York State Department of Financial Services, One Commerce Plaza, Albany, New York 12257, (518) 474-7929, email: frederick.andersen@dfs.ny.gov

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

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

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

Regulatory Impact Statement

1. Statutory authority: The Superintendent's authority to promulgate the Fifth Amendment to Insurance Regulation 147 (11 NYCRR 98) and

Third Amendment to Insurance Regulation 179 (11 NYCRR 100) derives from sections 202 and 302 of the Financial Services Law ("FSL") and sections 301, 1304, 1308, 4217, 4218, 4221, 4224, 4240, and 4517 of the Insurance Law.

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

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

Insurance Law section 1304 requires insurers to maintain reserves for life insurance policies and certificates according to prescribed tables of mortality and rates of interest.

Insurance Law section 1308 sets forth the parameters for reinsuring risks and policy liabilities, and the effect that reinsurance will have on an insurer's reserves.

Insurance Law section 4217 requires the Superintendent to annually value, or cause to be valued, the reserve liabilities ("reserves") for all outstanding policies and contracts of every life insurer doing business in New York. Insurance Law section 4217(a)(1) specifies that the Superintendent may certify the amount of any such reserves, specifying the mortality table or tables, rate or rates of interest and methods used in the calculation of reserves.

Insurance Law section 4217(c)(2)(A)(iii) permits, as a minimum standard of valuation for life insurance policies, any ordinary mortality table adopted by the National Association of Insurance Commissioners ("NAIC") after 1980 and approved by the Superintendent.

Insurance Law section 4217(c)(2)(A)(iv) authorizes the Superintendent to adopt any mortality table or modifications of any table for any specific class of risk.

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

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

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

Insurance Law section 4221(k)(9)(B)(vi) permits, for policies of ordinary insurance, the use of any ordinary mortality table adopted by the NAIC after 1980 and approved by the Superintendent, for use in determining the minimum nonforfeiture standard.

Insurance Law section 4224(a)(1) prohibits unfair discrimination between individuals of the same class and of equal expectation of life, in the amount or payment or return of premiums, or rates charged for life insurance policies.

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

Insurance Law section 4517(b)(2) provides, with respect to fraternal benefit societies, that reserves according to the commissioner's reserve valuation method for life insurance certificates that provide for a varying amount of benefits, or requiring the payment of varying premiums, shall be calculated by a method consistent with the principles of subsection (b). Section 4517(c)(2) requires fraternal benefit societies to comply with the minimum valuation standards of Section 4217 of the Insurance Law for life insurance certificates issued on or after January 1, 1980.

2. Legislative objectives: Maintaining solvency of insurers doing business in New York is a principal focus of the Insurance Law. One fundamental way the Insurance Law seeks to ensure solvency is by requiring all insurers and fraternal benefit societies authorized to do business in New York State to hold reserve funds in an amount sufficient to meet the obligations made to policyholders. The Insurance Law prescribes the mortality tables and interest rates to be used for calculating such reserves. At the same time, an insurer benefits when it has adequate capital to use for company expansion, product innovation, and other forms of business development.

3. Needs and benefits: The Superintendent has determined that term life insurance reserves are currently set high relative to actuarial experience due to such factors as: initial non-commission costs associated with the issuance of term life insurance constituting a higher percentage of the first years' premium compared with whole life insurance premiums; the expiration of term life insurance within 30 or fewer years, which is subject to a lesser degree of reinvestment risk as compared with longer-lasting guarantee products such as whole life insurance and universal life insurance; the impact of lapsation on term life insurance future claims; and improvement in mortality since the NAIC's last release of the CSO mortality table. To modernize the current regulatory scheme with respect to term life insurance reserves, the Superintendent is amending Insurance Regulations 147 and 179, as discussed in the Superintendent's letter to state Commissioners, dated March 27, 2014.

Insurance Regulation 147 is amended to replace the current one-year full preliminary term ("FPT") with a two-year FPT for term life insurance, in recognition that upfront expenses for acquiring and retaining such business represent a higher proportion of premium compared with other types of insurance business (e.g., whole life policies). A two-year FPT will result in a lower proportion of the first and second year premiums being held to pay claims that will not arise until well into the future, leading to a buildup in reserves after the second, rather than first, policy year.

Insurance Regulation 179 is amended consistent with mortality improvement. Because insureds are generally living longer, the amendment applies a 1.0 percent mortality improvement factor to the current mortality table (2001 CSO) for rates associated with calendars years 2008-2047, and applies a 0.5 percent mortality improvement factor for each year thereafter. These factors will apply during the initial level premium period. The Department anticipates that the NAIC will adopt a new mortality table next year, which may result in an additional update to Insurance Regulation 179.

The Department estimates that concurrent amendments to Insurance Regulations 147 and 179 will result in a 30-35 percent reduction in reserves for level term life insurance on a prospective basis.

4. Costs: Insurers and fraternal benefit societies that are authorized to do business in New York State that are impacted by these amendments may incur costs to modify existing computer software to incorporate the new methodologies for prospective business, as well as the testing and implementation of the changes to the software, if they choose to make these changes. However, insurers and fraternal benefit societies are not required to make the changes that are prescribed in the amendments, because not applying the changes will result in higher-than-minimum-required reserves and an insurer or fraternal benefit society may choose to hold reserves at an amount that is higher than the minimum level required.

Software modification, testing and implementation costs are estimated to be $10,000 or less. After an insurer has modified its computer systems to comply with these amendments, only minimal additional costs should be anticipated.

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

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

6. Paperwork: The amendments do not alter paperwork requirements.

7. Duplication: The amendments do not duplicate any existing laws or regulations.

8. Alternatives: One alternative considered by the Superintendent was to allow company-specific assumptions that were supported by credible experience. However, this amendment provides a more objective and uniform floor on reserves, ensuring that reduced reserves will be held at intended levels. Another alternative considered by the Superintendent was to specify a set percentage of term life insurance reserves resulting from the current standard. However, this method is not actuarially sound because it is not supported by a mortality table. The Department's Life Bureau reached out to a number of insurers that write term life policies, which included discussions with the affected insurers' trade association, The Life Insurance Council of New York, on a prior version of these amendments. The Department considered the comments, which focused primarily on tax concerns, that it received from the insurers and LICONY when it drafted these proposed amendments.

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

10. Compliance schedule: These amendments apply to policies issued on or after January 1, 2015 and will impact statements due May 15, 2015 and filed thereafter.

Regulatory Flexibility Analysis

1. Small businesses: The Department of Financial Services ("Department") finds that these amendments will not impose any adverse eco-

nomic 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 these rules are directed at all insurers and fraternal benefit societies that are authorized to do business in New York State, none of which comes within the definition of "small business" provided in State Administrative Procedure Act Section 102(8). The Department reviewed filed Reports on Examination and Annual Statements of authorized insurers and fraternal benefit societies and concludes that none of these entities comes within the definition of "small business," because there are none that are both independently owned and have fewer than one hundred employees.

2. Local governments: These amendments do not impose any impacts, including any adverse impacts, or reporting, recordkeeping, or other compliance requirements on any local governments.

Rural Area Flexibility Analysis

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

2. Reporting, recordkeeping and other compliance requirements; and professional services: There are new reserve calculation requirements for policies issued on or after January 1, 2015.

3. Costs: Insurers and fraternal benefit societies that are authorized to do business in New York State that are impacted by these amendments may incur costs to modify existing computer software to incorporate the new methodologies for prospective business, as well as the testing and implementation of the changes to the software, if they choose to make these changes. However, insurers and fraternal benefit societies are not required to make the changes that are prescribed in the proposed amendments, because not applying the changes will result in higher-than-minimum-required reserves and an insurer or fraternal benefit society may choose to hold reserves at an amount that is higher than the minimum level required.

Software modification, testing and implementation costs are estimated to be $10,000 or less. After an insurer has modified its computer systems to comply with these amendments, only minimal additional costs should be anticipated.

These amendments are expected to result in the need for a small amount of training for staff of the Department of Financial Services ("Department"). The cost of such training will be absorbed through the Department's normal budget. There are no costs to other government agencies or local governments.

4. Minimizing adverse impact: These amendments do not impose any adverse impact on rural areas.

5. Rural area participation: The Department's Life Bureau reached out to a number of insurers that would be affected by these amendments and to the insurers' trade association, the Life Insurance Council of New York ("LICONY"), by providing an earlier version of these amendments. The Department considered the comments, which focused primarily on tax concerns, that it received from the insurers and LICONY when it drafted these proposed amendments.

Job Impact Statement

The Department of Financial Services finds that these amendments should have no impact on jobs and employment opportunities. The amendments enable life insurers to lower their reserves for term life policies: Insurance Regulation 147 prescribes a revised reserve methodology for calculating varying premium term life insurance reserves and Insurance Regulation 179 adopts mortality improvement factors to be used with current mortality rates for calculating varying premium term life insurance reserves. Insurers should not need to hire additional employees or independent contractors to comply with these new standards.

New York State Gaming Commission

REGULATORY IMPACT STATEMENT, REGULATORY FLEXIBILITY ANALYSIS, RURAL AREA FLEXIBILITY ANALYSIS AND/OR JOB IMPACT STATMENT

Implementation of Rules Pertaining to Gaming Facility Request for Application and Gaming Facility License Application

I.D. No. SGC-15-14-00001-E

This regulatory impact statement, regulatory flexibility analysis, rural area flexibility analysis and/or job impact statement pertain(s) to a notice of Emergency rule making, I.D. No. SGC-15-14-00001-E, printed in the *State Register* on April 16, 2014.

Regulatory Impact Statement

1. STATUTORY AUTHORITY: Racing, Pari-Mutuel Wagering and Breeding Law ("Racing Law") section 104(19) to promulgate rules and regulations that it deems necessary to carry out its responsibilities. Racing Law section 1305(2) grants rule making authority to the Commission to implement, administer and enforce the provisions of Racing Law Article 13.

Racing Law section 1306(1) and section 1312(1) prescribe that the Gaming Facility Location Board, which is established by the Commission, shall issue a request for applications ("RFA") for applicants seeking a license to develop and operate gaming facilities in New York State. On March 31, 2014, the Gaming Facility Location Board issued the RFA.

Racing Law section 1307(2) prescribes that the Commission regulate, among other things, the method and form of the application; the methods, procedures and form for delivery of information concerning an applicant's family, habits, character, associates, criminal record, business activities, and financial affairs; and the procedures for the fingerprinting of an applicant.

2. LEGISLATIVE OBJECTIVES: This emergency rule making carries out the legislative objectives of the above-referenced statutes by implementing the requirements of Racing Law section 1307(2).

3. NEEDS AND BENEFITS: This emergency rule making is necessary to enable the Gaming Facility Location Board to carry out its statutory duty of issuing the RFA for applicants seeking a license to develop and operate a gaming facility in New York State.

4. COSTS:

(a) Costs to the regulated parties for the implementation of and continuing compliance with the rule: Those parties who choose to seek a gaming facility license will bear some costs. There is an application fee of $1 million that is prescribed by Racing Law section 1316(8) to defray the costs of processing the application and investigating the applicant. The extent of other costs incurred by applicants will depend upon the efforts that they put into completing and submitting the application.

(b) Costs to the regulating agency, the State, and local governments for the implementation of and continued administration of the rule: The rules will impose some costs on the Gaming Commission in reviewing gaming facility applications and in issuing licenses, but it is anticipated that the $1 million application fee paid by each applicant will offset such costs. The rules will not impose any additional costs on local governments.

(c) The information, including the source or sources of such information, and methodology upon which the cost analysis is based: The cost estimates are based on the Gaming Commission's experience regulating racing and gaming activities within the State.

5. PAPERWORK: The rules set forth the content of the application for a gaming facility license. The requirements apply only to those parties that choose to seek a gaming facility license.

6. LOCAL GOVERNMENT: The rules do not impose any mandatory program, service, duty, or responsibility upon local government because the licensing of gaming facilities is strictly a matter of State law.

7. DUPLICATION: The rules do not duplicate, overlap or conflict with any existing State or federal requirements.

8. ALTERNATIVES: The Commission is required to create these rules under Racing Law section 1307(2). Therefore, no alternatives were considered.

9. FEDERAL STANDARDS: There are no federal standards applicable to the licensing of gaming facilities in New York because such licensing is solely in accordance with New York State law.

10. COMPLIANCE SCHEDULE: The Commission anticipates that affected parties will be able to achieve compliance with the rules upon the adoption of the rules, which occurred on March 31, 2014.

Regulatory Flexibility Analysis

1. EFFECT OF THE RULE: The rules will not affect small businesses or local governments because the rules apply only to an applicant seeking a license to develop and operate a gaming facility in New York State. It is not expected that any small business or local government will apply for a gaming facility license. The rules prescribe the method and form of the application; the methods, procedures and form for delivery of information concerning an applicant's family, habits, character, associates, criminal record, business activities, and financial affairs; and the procedures for fingerprinting an applicant.

2. COMPLIANCE REQUIREMENTS: The rules will not impose any compliance requirements on small business or local governments. One condition of filing an application, however, is that an applicant submit a resolution passed by the local legislative body of the host municipality supporting the application.

3. PROFESSIONAL SERVICES: The rules will not require small businesses or local governments to obtain professional services.

4. COMPLIANCE COSTS: The rules will not impose any compliance costs on small businesses or local governments.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY: The rules will not impose any technological requirements on small businesses or local governments.

6. MINIMIZING ADVERSE IMPACT: The rules will not have an adverse economic impact on small businesses or local governments because the rules apply only to an applicant seeking a license to develop and operate a gaming facility in New York State.

7. SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION: The rules were adopted on an emergency basis and were applied to the Request for Applications issued on March 31, 2014 by the Gaming Facility Location Board established by the Commission. Therefore, the rules went into effect upon filing.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis is not attached because the rules do not impose any adverse impact or reporting, recordkeeping, or other compliance requirements on public or private entities in rural areas. The rules apply only to an applicant seeking a license to develop and operate a gaming facility in New York State.

Job Impact Statement

The rules will not adversely impact jobs and employment opportunities because the rules apply only to an applicant seeking a license to develop and operate a gaming facility in New York State. It is anticipated that the opening of up to four gaming facilities in upstate New York will create new job opportunities. The Commission has no reason to believe that these rules will have any adverse impact on any jobs or employment opportunities and a full Job Impact Statement is not necessary.

New York Gaming Facility Location Board

REGULATORY IMPACT STATEMENT, REGULATORY FLEXIBILITY ANALYSIS, RURAL AREA FLEXIBILITY ANALYSIS AND/OR JOB IMPACT STATMENT

Rules Pertaining to Gaming Facility Request for Application and Related Fees and Related Hearings

I.D. No. GFB-15-14-00010-E

This regulatory impact statement, regulatory flexibility analysis, rural area flexibility analysis and/or job impact statement pertain(s) to a notice of Emergency rule making, I.D. No. GFB-15-14-00010-E, printed in the *State Register* on April 16, 2014.

Regulatory Impact Statement

1. STATUTORY AUTHORITY: Racing, Pari-Mutuel Wagering and Breeding Law ("Racing Law") section 1306(1) and section 1312(1) prescribe that the Gaming Facility Location Board, which is established by the Commission, shall issue a request for applications ("RFA") for applicants seeking a license to develop and operate a gaming facility in New York State. On March 31, 2014, the Gaming Facility Location Board issued the RFA.

Racing Law section 1306(4) authorizes the Board to determine a gaming facility license fee to be paid by an applicant.

Racing Law section 1319 authorizes the Board to conduct hearings concerning the conduct of gaming and applicants for gaming facility licenses.

2. LEGISLATIVE OBJECTIVES: This emergency rule making carries out the legislative objectives of the above referenced statutes by implementing the requirements of Racing Law section 1306(4) and section 1319.

3. NEEDS AND BENEFITS: This emergency rule making is necessary to enable the Gaming Facility Location Board to carry out its statutory duty to prescribe the license fee for a gaming facility license issued by the Commission and prescribe public hearing procedures for the Board to follow in the event the Board conducts a public hearing concerning the conduct of gaming and applicants for gaming facility licenses.

4. COSTS:

(a) Costs to the regulated parties for the implementation of and continuing compliance with the rule: Those parties who choose to seek a gaming facility license will bear some costs, including the fee for the gaming facility license and the capital investment necessary to construct and operate a gaming facility.

(b) Costs to the regulating agency, the State, and local government: The rules will impose some costs on the Board to review gaming facility license applications and to conduct hearings, where necessary. The Board will rely on Gaming Commission staff to assist in these matters and the costs to the Gaming Commission are expected to be defrayed by the license fee and the $1 million application fee that each applicant will pay as required by Racing Law section 1316(8). The rules will not impose any additional costs on local government.

(c) The information, including the source or sources of such information, and methodology upon which the cost analysis is based: The cost estimates are based on the Gaming Commission's experience regulating racing and gaming activities within the State.

5. PAPERWORK: The rules are not expected to impose any significant paperwork requirements for gaming facility applicants and licensees.

6. LOCAL GOVERNMENT: The rules do not impose any mandatory program, service, duty, or responsibility upon local government because the licensing of gaming facilities is strictly a matter of State law.

7. DUPLICATION: The rules do not duplicate, overlap or conflict with any existing State or federal requirements.

8. ALTERNATIVES: The Board is required to create these rules under Racing Law section 1306(4) and section 1319. Therefore, no alternatives were considered.

9. FEDERAL STANDARDS: There are no federal standards applicable

to the licensing of gaming facilities in New York because such licensing is solely in accordance with New York State law.

10. COMPLIANCE SCHEDULE: The Board anticipates that affected parties will be able to achieve compliance with the rules upon the adoption of the rules, which occurred on March 31, 2014.

Regulatory Flexibility Analysis

1. EFFECT OF THE RULE: The rules will not affect small businesses or local governments because the rules prescribe the license fee for a gaming facility license issued by the New York State Gaming Commission and prescribe public hearing procedures that the Gaming Facility Location Board must follow in the event the Board conducts a public hearing concerning gaming and applicants for gaming facility licenses. It is not expected that any small business or local government will apply for a gaming facility license. To the extent that a small business or local government might participate in a Board hearing, each would be treated equally with any other participant in such hearing.

2. COMPLIANCE REQUIREMENTS: The rules will not impose any compliance requirements on small business or local governments.

3. PROFESSIONAL SERVICES: The rules will not require small businesses or local governments to obtain professional services.

4. COMPLIANCE COSTS: The rules will not impose any compliance costs on small businesses or local governments.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY: The rules will not impose any technological requirements on small businesses or local governments.

6. MINIMIZING ADVERSE IMPACT: The rules will not have an adverse economic impact on small businesses or local governments.

7. SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION: The rules were adopted on an emergency basis and were incorporated in the Request for Applications issued on March 31, 2014 by the Gaming Facility Location Board established by the Commission. Therefore, the rules went into effect upon filing.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis is not attached because the rules do not impose any adverse impact or reporting, recordkeeping, or other compliance requirements on public or private entities in rural areas. The rules apply uniformly throughout the State to any applicant seeking a license to develop and operate a gaming facility in New York State.

Job Impact Statement

The Board has no reason to believe that these rules will have any adverse impact on any jobs or employment opportunities. The rules prescribe the license fee for a gaming facility license issued by the Commission and prescribe public hearing procedures that the Gaming Facility Location Board must follow in the event the Board conducts a public hearing concerning the conduct of gaming and applicants for gaming facility licenses. It is anticipated that the opening of up to four gaming facilities in upstate New York will create new job opportunities. Therefore, the rules will not impact jobs and employment and a full Job Impact Statement is not necessary.

Department of Health

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Service Intensity Weights (SIWs) and Average Length-of-Stay (ALOS), Administrative Appeals and Out-of-State Providers

I.D. No. HLT-17-14-00014-EP

Filing No. 315

Filing Date: 2014-04-15

Effective Date: 2014-04-15

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

Proposed Action: Amendment of Subpart 86-1 of Title 10 NYCRR.

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

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

Specific reasons underlying the finding of necessity: The proposed amendments are to continue the utilization of the 2013 Service Intensity Weights (SIWs) and average length-of-stay (ALOS) beginning January 1, 2014, provide for an appeal mechanism for new teaching hospitals and revise the definition of downstate for out-of-state providers.

Public Health Law section 2807-c(35)(b) and section 2807-c(35)(c) provides the Commissioner of Health with authority to issue emergency regulations. These regulations are required in order to continue the utilization of the 2013 Service Intensity Weights (SIWs) and average length-of-stay (ALOS) beginning January 1, 2014 due to the delay the implementation of the acute inpatient hospital cost base year update. In addition, these regulations provide for an appeal mechanism for new teaching hospitals and to revise the downstate definition for out-of-state providers. Emergency adoption of the proposed amendment for the continuation of the 2013 SIWs and ALOS is necessary to meet the change in the effective date of the cost base year update which is currently for discharges on or after January 1, 2014. The effective date is being amended to no sooner than April 1, 2014 but no later than July 1, 2014. These proposed amendments also provide for additional reimbursement for new teaching hospitals as required in statute and also provide for additional reimbursement for out-of-state hospitals in cities comparable to New York State's downstate providers. The additional reimbursement for new teaching hospitals and out-of-state providers is effective for discharges on or after January 1, 2014.

Subject: Service Intensity Weights (SIWs) and Average Length-of-Stay (ALOS), Administrative Appeals and Out-of-State Providers.

Purpose: To delay the rebasing of the acute hospital inpatient rates and implementation of the service intensity weights for 2014.

Text of emergency/proposed rule: Section 86-1.18 of 10 NYCRR is amended by adding a new subdivision (e), to read as follows:

(e) For the period beginning January 1, 2014 and ending, at the discretion of the commissioner, no sooner than April 1, 2014, but no later than July 1, 2014, the SIWs and statewide average LOS utilized for the 2013 calendar year will be utilized by the Department.

Subdivision (d) of section 86-1.32 of 10 NYCRR is amended by adding a new paragraph (3), to read as follows:

(3)(i) Direct medical education (DME) and indirect medical education (IME) costs, as defined in sections 86-1.15(f)(1) and (f)(2) of this Subpart, for hospitals where the teaching status has changed from non-teaching to teaching.

(ii) The effective date of the initial rate adjustment shall be the later of the first of the month following 60 days from the department's receipt of the written notification with documentation requesting a rate adjustment or July 1st of the program year.

Paragraph (1) of subdivision (a) of section 86-1.33 of 10 NYCRR is amended to read as follows:

(1)*(i)* The weighted average of inpatient rates, including a teaching adjustment where applicable, in effect for similar services for hospitals located in the downstate region of New York State shall apply with regard to services provided by out-of-state providers located in the New Jersey counties of Sussex, Passaic, Bergin, Hudson, Essex, Union, Middlesex and Monmouth, in the Pennsylvania county of Pike, and in the Connecticut counties of Fairfield and Litchfield. [; and]

(ii) For rates effective beginning January 1, 2014, the weighted average of inpatient rates, including a teaching adjustment where applicable, in effect for similar services for hospitals located in the downstate region of New York State shall also apply with regard to services provided by out-of-state providers located in cities where the city's population census is 500,000 or greater based on the U. S. Department of Commerce United States Census Bureau; and

This notice is intended: to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire July 13, 2014.

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

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

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

Regulatory Impact Statement

Statutory Authority:

The statutory authority for this regulation is contained in Section 2807-c(35)(c) of the Public Health Law (PHL) which authorizes the Commissioner to promulgate regulations, including emergency regulations, with regard to Medicaid reimbursement rates for Hospital services. Such rate regulations are set forth in Subpart 86-1 of Title 10 (Health) of the Official Compilation of Codes, Rules, and Regulations of the State of New York (NYCRR).

Legislative Objectives:

Currently, 2014 Service Intensity Weights (SIWs) and average length-of-stay (ALOS) were to be utilized effective on or after January 1, 2014. The 2014 SIWs and ALOS were to be implemented at the time the acute hospital inpatient rates were revised for a new cost base year. This amendment delays the implementation of the 2014 SIWs and ALOS and continues the 2013 SIWs and ALOS due to the delay of the implementation of a new cost base year. In addition, the amendment provides for an appeal mechanism for new teaching hospitals to receive reimbursement for a change in teaching status. Further, out-of-state hospitals in cities comparable to New York State's downstate providers will be considered downstate providers and receive the downstate reimbursement payment.

Needs and Benefits:

The amendment to 10 NYCRR 86-1.18 regulations are required in order to continue the utilization of the 2013 Service Intensity Weights (SIWs) and average length-of-stay (ALOS) beginning January 1, 2014 due to the delay, to up to July 1, 2014, of the implementation of the acute inpatient hospital cost base year update, as authorized by the recently enacted 2014-15 budget. The amendment to 10 NYCRR 86-1.32 provides for an appeal mechanism for adjusting hospital inpatient rates to reflect costs associated with new teaching hospital programs, as authorized by an amendment to Public Health Law § 2807-c(35)(b) enacted as part of the 2013-14 budget. The amendment to 10 NYCRR 86-1.33 makes certain out-of-state providers located in large urban areas eligible for inclusion in the downstate peer group for rate-setting purposes.

COSTS:

Costs to Private Regulated Parties:

There will be no additional costs to private regulated parties.

Costs to State Government:

The continuation of the 2013 SIWs and ALOS will not affect State Government costs. However, the reimbursement for new teaching hospitals and the change of the downstate designation for out-of-state providers will result in an increased payment. These costs are minimal as the number of providers impacted are limited.

Costs of Local Government:

Local districts' share of Medicaid costs is statutorily capped; therefore, there will be no additional costs to local governments as a result of this proposed regulation.

Costs to the Department of Health:

There will be no additional costs to the Department of Health as a result of this proposed regulation.

Local Government Mandates:

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

Paperwork:

No additional paperwork is required of providers.

Duplication:

This regulation does not duplicate any existing federal, state or local government regulation.

Alternatives:

No significant alternatives are available.

Federal Standards:

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

Compliance Schedule:

The proposed regulations requires the Department to use a more current cost base year for discharges on or after April 1, 2014 but no later than July 1, 2014.

Regulatory Flexibility Analysis

Effect of Rule:

Currently, 2014 Service Intensity Weights (SIWs) and average length-of-stay (ALOS) were to be utilized effective for discharges on or after January 1, 2014. The 2014 SIWs and ALOS were to be implemented at the time the acute hospital inpatient rates were revised for a new cost base year. This amendment delays the implementation of the 2014 SIWs and ALOS and continues the 2013 SIWs and ALOS due to the delay of the implementation of a new cost base year. In addition, the amendment provides for an appeal mechanism for new teaching hospitals to receive reimbursement for a change in teaching status. Further, out-of-state hospitals in cities comparable to New York State's downstate providers will be considered downstate providers and receive the downstate reimbursement payment.

Compliance Requirements:

No new reporting, recordkeeping or other compliance requirements are being imposed as a result of the proposed regulation.

Professional Services:

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

Compliance Costs:

No initial capital cost will be imposed as a result of this rule, nor is there an annual cost of compliance.

Economic and Technological Feasibility:

As the proposed rule affects only the amounts reimbursed for existing services, compliance by small businesses and local governments is not expected to have any economic or technological implications.

Minimizing Adverse Impact:

This regulation will not have any adverse impact on the providers as the delay will reduce the adverse impact of processing retroactive rates and provides for additional reimbursement for new teaching hospitals and out-of-state hospitals comparable to New York State's downstate providers.

Small Business and Local Government Participation:

The regulation provides for the delay in the 2014 SIWs and ALOS due to the delay of the implementation of update to the cost base for acute hospital inpatient rates. As this delay will be implemented statewide, this will result in small providers benefiting also from the delay.

Rural Area Flexibility Analysis

Effect on Rural Areas:

The proposed amendments to continue the utilization of the 2013 Service Intensity Weights (SIWs) and average length-of-stay (ALOS) due to the delay of the update of the cost base year for the acute hospital inpatient rates and the additional reimbursement for new teaching hospitals applies to all hospitals throughout the state, including those located in rural areas. Rural areas are defined as counties with a population less than 200,000 and counties with a population of 200,000 or greater that have towns with population densities of 150 persons or fewer per square mile. The following 43 counties have a population of less than 200,000 based upon the 2010 United States Decennial Census data (http://2010.census.gov).

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

The following eleven counties have certain townships with population densities of 150 persons or less per square mile:

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

Compliance Requirements:

No new reporting, recordkeeping, or other compliance requirements are being imposed as a result of the proposed regulation.

Professional Services:

No new additional professional services are required in order for providers in rural areas to comply with the proposed regulation.

Compliance Costs:

No initial capital costs will be imposed as a result of this rule, nor is there an annual cost of compliance.

Minimizing Adverse Impact:

The regulation provides for the continuation of the 2013 SIWs and ALOS due to the delay of the update of the cost base year which will assist hospitals with budgeting since there will be no retroactive effect on providers. In addition, reimbursement for new teaching hospitals will assist providers with the cost of the new teaching program.

Rural Area Participation:

The delay and the opportunity for additional reimbursement for new teaching hospitals applies to all New York State hospitals.

Job Impact Statement

A Job Impact Statement is not required pursuant to Section 201-a(2)(a) of the State Administrative Procedure Act. The proposed rule will not have a

substantial adverse impact on jobs or employment opportunities nor does it have adverse implications for job opportunities. The proposed amendments continue the utilization of the 2013 Service Intensity Weights (SIWs) and average length-of-stay (ALOS) due to the delay of the implementation of the updated cost base year in the acute hospital inpatient rates; provide for an appeal mechanism for new teaching hospitals; and expand the definition of the downstate region for out-of-state providers. The continuation of the 2013 SIWs and ALOS due to the delay will assist hospitals with budgeting as there will be no retroactive effect on providers. In addition, new teaching hospitals will be reimbursed for the additional teaching costs. Further, the revision to the definition of the downstate region will provide out-of-state hospitals, which are in cities which are comparable to New York State's downstate providers, with more appropriate reimbursement.

NOTICE OF ADOPTION

Expand Medicaid Coverage of Enteral Formula

I.D. No. HLT-52-13-00001-A
Filing No. 314
Filing Date: 2014-04-15
Effective Date: 2014-04-30

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

Action taken: Amendment of section 505.5 of Title 18 NYCRR.

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

Subject: Expand Medicaid Coverage of Enteral Formula.

Purpose: To expand Medicaid coverage of enteral formula for individuals with HIV infection, AIDS or HIV-related illness or other diseases.

Text or summary was published in the December 24, 2013 issue of the Register, I.D. No. HLT-52-13-00001-P.

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

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

Assessment of Public Comment

Comments were received from a company that produces nutrition products and from a council that represents manufacturers of parenteral and enteral nutrition formulas, supplies, and equipment. Their recommendations for changes to the proposed regulation were identical.

The commenters suggested that the regulation should specifically provide coverage for persons with certain medical conditions that involve intestinal malabsorption, or who have reduced appetite/anorexia or dental/mouth problems. The Department has concluded that the current regulation would cover the conditions cited by the commenters, assuming the coverage criteria set forth in the proposed regulation are met. This is consistent with the authorizing statute, Social Service Law § 365-a(2)(g), which requires the Department to establish standards for coverage of enteral formula therapy and nutritional supplements for "persons with a diagnosis of HIV infection, AIDS or HIV- related illness or other diseases or conditions" (emphasis added). A modification to the existing language solely to list specific diagnoses or conditions is unnecessary. No change was made to the regulation as a result of this comment.

The commenters recommended an expanded set of criteria in those instances where a beneficiary demonstrates acute weight loss. The proposed regulation would cover individuals with a body mass index (BMI) under 22 who also demonstrate an unintentional weight loss of 5 percent or more within the previous six-month period. The commenters recommended eliminating the requirement for a BMI under 22, and providing coverage for any individuals with a chronic medical diagnosis who have a 5 percent weight loss within a one-month period, a 7.5 percent weight loss within a three-month period, or a 10 percent weight loss within a six-month period. It is the Department's position that the proposed regulation is consistent with its intent to cover enteral nutritional formula for the most medically compromised and at-risk beneficiaries suffering acute weight loss, and that the nutritional needs of most Medicaid beneficiaries can be maintained without the use of enteral nutritional formulas through proper diet and/or nutritional modifications. No change was made to the regulation as a result of this comment.

The commenters recommended expanding coverage to patients with swallowing or chewing difficulty due to cancer of the mouth, throat, or esophagus, or due to injury or surgery involving the head and neck. However, the proposed regulation provides coverage for persons who have a permanent structural limitation that prevents the chewing of food and for whom the placement of a feeding tube is medically contraindicated. This is consistent with the Department's intent to limit coverage to individuals who will have a long-term reliance on enteral nutritional support as their sole means of nutrition. Individuals who do not have a permanent limitation preventing the chewing of food would typically be capable of eating solid foods, or other forms of solid food, such as liquefied, mashed, or pureed foods, to meet their nutritional needs. No change was made to the regulation as a result of this comment.

In addition, one commenter suggested that coverage under the proposed regulation should not be limited to underweight persons, citing a research paper on hospital malnutrition stating that overweight or obese adults who develop a severe acute illness may require nutritional intervention. However, any hospitalized Medicaid recipient is covered for nutritional support, if medically necessary, through the inpatient hospital benefit. No change was made to the regulation as a result of this comment.

Public Service Commission

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Con Edison's Report on Its 2013 Performance Under the Electric Service Reliability Performance Mechanism

I.D. No. PSC-17-14-00003-P

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

Proposed Action: The Commission is considering whether to adopt, modify or reject, in whole or in part, Con Edison's Report on its 2013 performance under the Electric Service Reliability Performance Mechanism in which it claims to have met all performance targets for 2013.

Statutory authority: Public Service Law, sections 65(1), 66(1) and (2)

Subject: Con Edison's Report on its 2013 performance under the Electric Service Reliability Performance Mechanism.

Purpose: Con Edison's Report on its 2013 performance under the Electric Service Reliability Performance Mechanism.

Substance of proposed rule: The Public Service Commission (Commission) is considering whether to adopt, modify or reject, in whole or in part, Consolidated Edison Company of New York, Inc.'s (Con Edison or Company) Report on its 2013 performance under the Electric Service Reliability Performance Mechanism (RPM) in which the Company claims that it met all performance targets for 2013. According to the Company, since it met all RPM performance targets for 2013, no revenue adjustment should be imposed on it.

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) 474-4535, 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.

(09-E-0428SP8)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

To Consider Certain Portions of Petitions for Rehearing, Reconsideration and/or Clarification

I.D. No. PSC-17-14-00004-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 granting, denying or modifying, in whole or in part, certain portions of petitions for rehearing, reconsideration and/or clarification filed in response to the Commission's February 25, 2014 Order in Cases 12-M-0476 et al.

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

Subject: To consider certain portions of petitions for rehearing, reconsideration and/or clarification.

Purpose: To consider certain portions of petitions for rehearing, reconsideration and/or clarification.

Substance of proposed rule: On February 25, 2014, the Public Service Commission (Commission) issued an Order Taking Actions to Improve the Residential and Small Non-Residential Retail Access Markets (Order) in Cases 12-M-0476, 98-M-1343, 06-M-0647 and 98-M-0667. On March 27, 2014, the Retail Energy Supply Association (RESA) filed a Petition for Rehearing, Reconsideration and Clarification and the National Energy Marketers Association (NEMA) filed a Petition for Clarification and/or Rehearing. These filings asserted errors of fact or law in, or raised concerns with the Order's resolution of the issues concerning utilities purchase of receivables (POR) programs for energy service companies (ESCO).

RESA asserted that "the Commission erred by directing use of an ESCO specific purchase of receivables discount rate" (pp. 12-16); and "the Commission unreasonably and unlawfully erred by imposing use of an ESCO specific discount rate and modifying the procedures governing termination" (pp. 16-23). NEMA asserted that "the concept of utility 'charge back' in purchase of receivables programs should be explained and should not permit the utility to receive a double payment for the same ESCO charges twice" (pp. 14).

The Commission is considering whether to grant, deny or modify, in whole or in part, the relief sought in the above referenced filings. The Commission may also address related matters.

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

Data, views or arguments may be submitted to: 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.

(12-M-0476SP7)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

To Consider Certain Portions of Petitions for Rehearing, Reconsideration and/or Clarification

I.D. No. PSC-17-14-00005-P

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

Proposed Action: The Commission is considering granting, denying or modifying, in whole or in part, certain portions of petitions for rehearing, reconsideration and/or clarification filed in response to the Commission's February 25, 2014 Order in Cases 12-M-0476 et al.

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

Subject: To consider certain portions of petitions for rehearing, reconsideration and/or clarification.

Purpose: To consider certain portions of petitions for rehearing, reconsideration and/or clarification.

Substance of proposed rule: On February 25, 2014, the Public Service Commission (Commission) issued an Order Taking Actions to Improve the Residential and Small Non-Residential Retail Access Markets (Order) in Cases 12-M-0476, 98-M-1343, 06-M-0647 and 98-M-0667. On March 27, 2014, the Retail Energy Supply Association (RESA) filed a Petition for Rehearing, Reconsideration and Clarification; the National Energy Marketers Association (NEMA) filed a Petition for Clarification and/or Rehearing; and Constellation NewEnergy, Inc. (Constellation) filed a Petition for Rehearing, Reconsideration and Clarification in the above referenced proceedings. On March 31, 2014, Great Eastern Energy (GEE) filed Comments and a Request for Clarification regarding the above referenced Order. These filings asserted errors of fact or law in, or raised concerns with, the Order's resolution of the issues concerning energy service companies (ESCO) marketing practices, reporting requirements and the revised Uniform Business Practices (UBPs).

RESA asserted that "the adoption of the revised UBPs and the new marketing standards failed to comply with the requirements of SAPA [State Administrative Procedures Act]" (pp. 4-6); "the revised definition of energy marketing representative is unreasonable and arbitrary" (pp. 23-25); "the prohibition of the use of introductory, promotional or teaser rates is unreasonable, arbitrary and capricious" (pp. 25-27); "the TPV [third-party verification] verification calling process is unreasonable" (pp. 30-33); "the UBP should allow use of digital interactive voice response systems [for TPV]" (pp. 33-34); "the proposed TPV script is unreasonable and should be modified" (pp. 34-35); "the TPV requirement should not be required for access to customer data" (p. 35); "the DTD [door-to-door] and telemarketing standard is unreasonable" (pp. 35-36); "the DTD standard should not include certain categories of marketing efforts" (pp. 36-37); and "the Commission needs to clarify the use of the term 'customer' in the Order and UBP" (pp. 39-40).

NEMA asserted that "network marketing practices are not encompassed within the Commission definition of door-to-door and telephonic solicitations" (pp.16-17); "ESCOs should not be responsible for the marketing and sales activities of non-exclusive third parties" (pp. 14-15); "ESCOs should be permitted to perform either internal or independent TPVs for door-to-door and telephonic enrollments" (pp. 15-16); "additional explanation of the historical ESCO pricing data filing requirement is needed with respect to what constitutes a 'historical price,' the timing of quarterly reporting, and how to define 'geographic areas' '' (pp. 12-13); "renewal notice requirements should follow a reasonable timeframe and not be applicable to any month-to-month contracts, whether currently in existence or entered into in the future" (p. 13).

Constellation asserted that "the Commission should confirm that the requirement for providing to the Secretary information on marketing entities is specifically meant to address only door-to-door entities that ESCOs utilize to market electricity" (pp. 5-6); "the Commission should clarify that the Order's requirement that ESCOs must honor rates posted on the PTC [Power to Choose] website does not apply to non-residential customers" (pp. 4-5); "the Commission should strike the Retail Market Order's provisions regarding historical ESCO pricing as they relate to non-residential contracts" (pp. 3-4).

GEE asserted that the procedures concerning contract renewals should allow for notifications via email as well as postal mail; and that the required notice when a fixed rate contract renews at a fixed rate should be allowed within a 30 day window, rather than the 10 day window specified in the Order.

The Commission is considering whether to grant, deny or modify, in whole or in part, the relief sought in the above referenced filings. The Commission may also address related matters.

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

Data, views or arguments may be submitted to: 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.

(12-M-0476SP6)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

To Consider Certain Portions of Petitions for Rehearing, Reconsideration and/or Clarification

I.D. No. PSC-17-14-00006-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 granting, denying or modifying, in whole or in part, certain portions of petitions for rehearing, reconsideration and/or clarification filed in response to the Commission's February 25, 2014 Order in Cases 12-M-0476 et al.

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

Subject: To consider certain portions of petitions for rehearing, reconsideration and/or clarification.

Purpose: To consider certain portions of petitions for rehearing, reconsideration and/or clarification.

Substance of proposed rule: On February 25, 2014, the Public Service Commission (Commission) issued an Order Taking Actions to Improve the Residential and Small Non-Residential Retail Access Markets (Order) in Cases 12-M-0476, 98-M-1343, 06-M-0647 and 98-M-0667. On March 27, 2014, the Retail Energy Supply Association (RESA) filed a Petition for Rehearing, Reconsideration and Clarification and the National Energy Marketers Association (NEMA) filed a Petition for Clarification and/or Rehearing. These filings asserted errors of fact or law in, or raised concerns with, the Order's resolution of issues concerning energy service company (ESCO) service of customers who participate in the Home Energy Assistance Program or utility run low-income assistance programs.

RESA asserted that "the Order unreasonably fails to provide ESCOs with the ability to comply with the new LIC [low income customer] standard" (pp. 27-28); "the Order unreasonably and unlawfully impairs existing LIC contracts" (pp. 28-29); and "the Order unreasonably precludes ESCOs from providing fixed price service to an LIC" (pp. 29-30). NEMA asserted that "the explanation of permissible ESCO offerings to low income customers should be clarified. ESCOs need prior notice of consumer low income program status to properly form compliant offers and to manage costs of customer acquisition" (pp. 8-10).

The Commission is considering whether to grant, deny or modify, in whole or in part, the relief sought in the above referenced filings. The Commission may also address related matters.

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

Data, views or arguments may be submitted to: 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.

(12-M-0476SP5)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

To Consider Petitions for Rehearing, Reconsideration and/or Clarification

I.D. No. PSC-17-14-00007-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 granting, denying or modifying, in whole or in part, petitions for rehearing, reconsideration and/or clarification filed in response to the Commission's February 25, 2014 Order in Cases 12-M-0476 et al.

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

Subject: To consider petitions for rehearing, reconsideration and/or clarification.

Purpose: To consider petitions for rehearing, reconsideration and/or clarification.

Substance of proposed rule: On February 25, 2014, the Public Service Commission (Commission) issued an Order Taking Actions to Improve the Residential and Small Non-Residential Retail Access Markets (Order) in Cases 12-M-0476, 98-M-1343, 06-M-0647 and 98-M-0667. On March 27, 2014, the Retail Energy Supply Association filed a Petition for Rehearing, Reconsideration and Clarification; the National Energy Marketers Association filed a Petition for Clarification and/or Rehearing; and Constellation NewEnergy, Inc. filed a Petition for Rehearing, Reconsideration and Clarification in the above referenced proceedings. On March 31, 2014, Great Eastern Energy filed Comments and a Request for Clarification regarding the above referenced Order. These filings asserted errors of fact or law in, or raise concerns with, the resolution of a number of issues in the Commission's Order. Further, the filings requested modification to the resolution of certain issues contained in the Order. The Commission is considering whether to grant, deny or modify, in whole or in part, the relief sought in the above referenced filings. The Commission may also address related matters.

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

Data, views or arguments may be submitted to: 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.

(12-M-0476SP3)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

To Consider Certain Portions of Petitions for Rehearing, Reconsideration and/or Clarification

I.D. No. PSC-17-14-00008-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 granting, denying or modifying, in whole or in part, certain portions of petitions for rehearing, reconsideration and/or clarification filed in response to the Commission's February 25, 2014 Order in Cases 12-M-0476 et al.

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

Subject: To consider certain portions of petitions for rehearing, reconsideration and/or clarification.

Purpose: To consider certain portions of petitions for rehearing, reconsideration and/or clarification.

Substance of proposed rule: On February 25, 2014, the Public Service Commission (Commission) issued an Order Taking Actions to Improve the Residential and Small Non-Residential Retail Access Markets (Order) in Cases 12-M-0476, 98-M-1343, 06-M-0647 and 98-M-0667. On March 27, 2014, the Retail Energy Supply Association (RESA) filed a Petition for Rehearing, Reconsideration and Clarification; the National Energy Marketers Association (NEMA) filed a Petition for Clarification and/or Rehearing; and Constellation NewEnergy, Inc. (Constellation) filed a Petition for Rehearing, Reconsideration and Clarification in the above referenced proceedings. On March 31, 2014, Great Eastern Energy (GEE) filed Comments and a Request for Clarification regarding the above referenced Order. These filings asserted errors of fact or law in, or raised concerns with, the Order's resolution of issues concerning the definition of "small non-residential customer," the use of the term "customer," and the use and meaning of the term "value-added."

RESA asserted that "the Commission needs to clarify the use of the term 'customer' in the Order and UBP [Uniform Business Practices]"(pp. 39-40). NEMA asserted that "the intended connotation of 'value-added' throughout the Order should be clearly explained, defined and consistently applied, as appropriate" (p. 11). In their filings, RESA (pp. 6-12), NEMA (pp. 6-8), Constellation (p. 6) and GEE (p. 2) each asserted that the definition of "small non-residential customer" is too broad and needs to be revised.

The Commission is considering whether to grant, deny or modify, in whole or in part, the relief sought in the above referenced filings. The Commission may also address related matters.

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

Albany, New York 12223-1350, (518) 486-2659, email: Deborah.Swatling@dps.ny.gov

Data, views or arguments may be submitted to: 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.

(12-M-0476SP4)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Water Rates and Charges

I.D. No. PSC-17-14-00009-P

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

Proposed Action: The Public Service Commission is considering a petition by the Village of Rye Brook, requesting approval to have costs for infrastructure maintenance and access to be included in the rates charged to all customer classes within the Village of Rye Brook.

Statutory authority: Public Service Law, sections 4(1), 5(1)(f), 89-c(1) and (10)

Subject: Water rates and charges.

Purpose: To have costs for infrastructure maintenance and access to be included in the rates charged to all customer classes.

Substance of proposed rule: The Commission is considering whether to approve, modify or reject, in whole or in part, a petition by the Village of Rye Brook, requesting approval per the Laws of New York, Chapter 433, requiring the Commission to issue an order to United Water Westchester, Inc. to have costs for infrastructure maintenance and access to be included in the rates charged to all customer classes and apportioned among all customers located within the Village of Rye Brook. Although this rate change will have a revenue neutral impact on the utility's annual revenues, it will result in an increase to all customers within the municipality of the Village of Rye Brook.

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.

(14-W-0130SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Petition for Submetering of Electricity

I.D. No. PSC-17-14-00010-P

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

Proposed Action: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by Alexander's of Rego Residential LLC to submeter electricity at 61-35 Junction Boulevard, Rego Park, New York.

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

Subject: Petition for submetering of electricity.

Purpose: To consider the request of Alexander's of Rego Residential LLC to submeter electricity at 61-35 Junction Boulevard, Rego Park.

Substance of proposed rule: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by Alexander's of Rego Residential LLC to submeter electricity at 61-35 Junction Boulevard, Rego Park, New York, located in the territory of Consolidated Edison Company of New York, Inc.

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

Data, views or arguments may be submitted to: Kathleen H. Burgess, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: secretary@dps.ny.gov

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

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.

(14-E-0098SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Whether to Permit the Use of the Sensus AccuWAVE for Use in Residential Gas Meter Applications

I.D. No. PSC-17-14-00011-P

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

Proposed Action: The Public Service Commission is considering whether to approve, deny or modify, in whole or in part, a petition filed by National Grid, for the approval to use the Sensus accuWAVE R275TC diaphragm meter.

Statutory authority: Public Service Law, section 67(1)

Subject: Whether to permit the use of the Sensus accuWAVE for use in residential gas meter applications.

Purpose: To permit gas utilities in New York State to use the Sensus accuWAVE R275TC gas meter.

Substance of proposed rule: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by National Grid, to use the Sensus accuWAVE R275TC diaphragm meter in residential natural gas meter applications.

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.

(14-G-0125SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Upgrading the Gas Transportation Billing System

I.D. No. PSC-17-14-00012-P

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

Proposed Action: The Commission is considering a filing by Rochester Gas and Electric Corporation (RG&E) proposing to implement an upgraded gas transportation billing system contained in PSC No. 16—Gas to become effective November 1, 2014.

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

Subject: Upgrading the gas transportation billing system.

Purpose: To upgrade the SmarTRAC System to a new Retail Access Natural Gas Tracking System.

Substance of proposed rule: The Commission is considering whether to approve, modify or reject, in whole or in part, a proposal filed by Rochester Gas and Electric Corporation (RG&E) to make revisions to its gas tariff schedule, P.S.C. No. 16 – Gas. RG&E proposes tariff changes to reflect an upgrade to a new Retail Access Natural Gas Tracking System to replace the current SmarTRAC system. The filing has a proposed effective date of November 1, 2014.

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.

(14-G-0131SP2)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Upgrading the Gas Transportation Billing System

I.D. No. PSC-17-14-00013-P

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

Proposed Action: The Commission is considering a filing by New York State Electric & Gas Corporation (NYSEG) proposing to implement an upgraded gas transportation billing system contained in P.S.C. No. 88—Gas to become effective November 1, 2014.

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

Subject: Upgrading the gas transportation billing system.

Purpose: To upgrade the SmarTRAC System to a new Retail Access Natural Gas Tracking System.

Substance of proposed rule: The Commission is considering whether to approve, modify or reject, in whole or in part, a proposal filed by New York State Electric & Gas Corporation (NYSEG) to make revisions to its gas tariff schedule, P.S.C. No. 88 – Gas. NYSEG proposes tariff changes to reflect an upgrade to a new Retail Access Natural Gas Tracking System to replace the current SmarTRAC system. The filing has a proposed effective date of November 1, 2014.

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.

(14-G-0131SP1)

Workers' Compensation Board

EMERGENCY
RULE MAKING

Methodology for Determining Annual Assessments

I.D. No. WCB-17-14-00001-E
Filing No. 312
Filing Date: 2014-04-15
Effective Date: 2014-04-15

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

Action taken: Addition of Part 500 to Title 12 NYCRR.

Statutory authority: Workers' Compensation Law, sections 117 and 151

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

Specific reasons underlying the finding of necessity: This amendment is adopted as an emergency measure because time is of the essence. The Board is required, as specified in the statute cited below to establish an assessment rate by November 1, 2013 and assess that rate by January 1, 2014. Specifically, Section 151(2) WCL states:

"on the first day of November two thousand thirteen, and annually thereafter, the chair shall establish an assessment rate for all affected employers in the state of New York in an amount expected to be sufficient to produce assessment receipts at least sufficient to fund all estimated annual expense pursuant to subdivision one of this section except those expenses for which an assessment is authorized for self- insurance pursuant to subdivision five of section fifty of this chapter. Such rate shall be assessed effective the first of January of the succeeding year and shall be based on a single methodology determined by the chair."

The assessment rate funds statutorily required programs such as the Board's administrative expenses (151 WCL), the liabilities of the Special Disability Fund (15-8 WCL), the Fund for Reopened Cases (25-a WCL) and the Special Fund for Disability Benefits (214 WCL).

Accordingly, emergency adoption of this rule is necessary.

Subject: Methodology for determining annual assessments.

Purpose: Annual assessments to fund administrative costs and special fund payments provided for in the Workers' Compensation Law (WCL).

Substance of emergency rule: The proposed regulation adds new Sections 500.00-500.12 to comply with Chapter 57 of the Laws of 2013 which requires the Board to streamline the manner in which it collects its administrative and special fund assessments to one that will be consistent among the various categories of payers and will be based upon active coverage.

Section 500-2 states that the assessment rate will be established by November 1st annually and apply to policies effective on or before January 1st of the next calendar year.

Section 500-3 establishes that the rate will apply to standard premium and defines the expenses to be covered by the assessment rate.

Section 500-4 states that the rate established by November 1st of each year for the succeeding calendar year shall be applied to a base of standard premium as defined below.

Standard premium is defined as follows:

(a) Carriers and State Insurance Fund – For employers securing workers' compensation coverage via a policy issued either by an authorized carrier or the State Insurance Fund, standard premium shall mean the full annual value of premiums booked for each policy written or renewed during a specific reporting period as determined on forms prescribed by the Chair.

(b) Private and Public Self-Insured Employers – Standard written premium for self-insured employers shall be determined by applying payroll by classification codes to applicable loss cost rates. Loss cost rates for self-insured employers shall be furnished by the Chair based, in whole or in part at the discretion of the Chair, upon comparable rates applicable to carrier policies which may be adjusted for administrative expenses. To the extent there are no corresponding class codes for one or more classifications of payroll, the Chair shall establish an equivalent rate.

Estimated statewide premiums shall be determined by combining the standard premium for all employers.

Section 500-5 establishes that the assessment rate shall be a percentage of standard premiums and calculated as follows:

Total estimated annual expenses as defined in 500.3, Divided By, Total estimated statewide premiums as defined in 500.4

The estimated statewide premiums may, where appropriate, reflect projected changes in overall premium levels that may result from loss cost rate changes approved by the Department of Financial Services.

Section 500-6 establishes that rate adjustments will be addressed as follows:

(a) If the rate established for any given year results in the collection of assessments which exceed the amounts described herein, the assessment rate for the next calendar year shall be reduced accordingly. However, the assessment rate for each calendar year shall ensure that the clearing account described in section 500.7 maintains a balance of at least ten percent of the annual projected assessments.

(b) If it appears that the rate established for any given year will not produce assessment revenue sufficient to meet all estimated annual expenses as described herein, the Board may make adjustments to the existing published rate prior to the beginning of the next calendar year. Any such mid-year rate adjustments must be published at least 45 days prior to becoming effective and will apply to policies with effective dates between the effective date of the adjusted rate through December 31 of that calendar year or until the Board issues a new rate, whichever is later.

Section 500-7 establishes that all assessment monies received shall first be deposited into a clearing account established for the purpose of receiving assessments. Assessment revenue will be applied pursuant to WCL § 151-8 in accordance with each then applicable financing agreement prior to application for any other purpose. Once any and all amounts required by applicable financing agreements have been met for the year, assessments will then be applied from the clearing account, at the discretion of the Chair, to the administrative and special fund expenses described herein.

Section 500-8 establishes that assessment should be remitted as follows:

(a) The assessment rate established by the Board shall apply to all employers required to secure compensation for their employees.

(b) Until such time as the Board can establish a direct employer payment process, the remittance to the Board of all required assessments shall be as follows:

1. For those employers obtaining coverage: (a) through a policy with the State Insurance Fund; (b) through a policy with an authorized carrier; (c) through a county self-insurance plan under Article V of the WCL; or (d) through a private or public group self-insurer; such assessment amounts shall be collected from the employer and remitted to the Board by the State Insurance Fund, carrier, county plan, or self-insured group. The State Insurance Fund, carrier, county plan, or self-insured group shall complete the reports identified in section 500.9 herein, apply the applicable assessment rate as established by the Board and timely remit both the report and the corresponding payment to the Board on the schedule set forth in paragraph (c) below.

2. For those private or public employers that self-insure individually, said employers shall pay assessment amounts directly to the Board. Such employers shall complete the report identified in section 500.9 herein, apply the applicable assessment rate as established by the Board and, timely remit both the report and the corresponding payment to the Board on the schedule set forth in paragraph (c) below.

(c) Both the report identified in section 500.9 below and the required assessment payment shall be remitted to the Board in accordance with the following schedule:

Assessments related to the quarter ending March 31 postmarked on or before April 30.

Assessments related to the quarter ending June 30 postmarked on or before July 31.

Assessments related to the quarter ending September 30 postmarked on or before October 31.

Assessment related to the quarter ending December 31 postmarked on or before January 31.

(d) If the above cited due dates fall on a weekend or holiday the remittances shall be due the next following business day.

(e) In addition at any time prior to March 31, June 30, September 30, or December 31, the Board may identify any employer that has refused or neglected to pay assessments pursuant to WCL § 50(3-a)(7)(b). In such instance the Board shall calculate a charge to be imposed on such employer in addition to the assessment required herein. Such charge shall be a percentage of the standard premium as defined herein and shall range from between 10 and 30 percent based upon: 1) the length of time the employer has been delinquent in its WCL § 50(3-a)(7)(b) assessment obligations; 2) the amount of the WCL § 50(3-a)(7)(b) assessment delinquency; and 3) the amount of the insolvent group self-insurance trust's obligations that remain unmet at the time of the calculation of the surcharge, the Board shall inform the employer's current provider of coverage of the neglect or delinquency. The employer's current provider of coverage shall collect and remit such additional surcharge in the manner provided for above. All monies recovered from the payment of such charge shall be credited to: 1) the employer's unmet obligations under the WCL; and 2) the group self-insurance Trusts' unmet obligations under the WCL.

Section 500-9 describes the required reports:

(a) The assessment payment remitted quarterly shall be accompanied by reports prescribed by the Chair. Depending upon whether the remitter is a carrier, the State Insurance Fund, private or public self-insured employer, or private or public group self-insured employer, these reports may contain but not be limited to: written premium; total payroll; payroll by classification; adjustments from prior periods; etc. Annual reports prescribed by the Chair may also be required.

(b) All such prescribed reports will require an attestation by an authorized representative that all information is true, correct and complete. A payer that knowingly makes a material misrepresentation of information related to assessments shall be guilty of a Class E Felony.

(c) To the extent that a payer is also required to report the information requested by this section, or substantially similar values, to other governmental entities including but not limited to state and federal agencies, then the information reported by the payer to the Board shall be consistent with the payer's reporting to other entities. To the extent that the payer's reporting to the Board is materially inconsistent with the payer's reports to other governmental entities, then the payer shall disclose such inconsistency in the reports submitted to the Board and supply an explanation for such inconsistency.

Section 500-10 establishes that, in the event of a carrier, the State Insurance Fund, a private or public self-insured employer, or a private or public group self-insured employer's failure to remit assessment payments and reports in accordance with the requirements contained herein the Board may undertake any or all of the following collection activities with respect to the assessments:

(a) Refer the matter to the Office of the Attorney General for commencement of a collection action; assessment.

(b) Withhold any and all payments to the carrier, the State Insurance Fund, private or public self-insured employer or private or public group self-insured employer including but not limited to special fund reimbursements, until such time as all assessments have been paid in full;

(c) The failure of a private or public self-insured employer or private or public group self-insured employer to timely remit assessments and required reports shall constitute good cause for the Board to revoke said self-insurers self-insured status.

In the event that a carrier, the State Insurance Fund, a private or public self-insured employer, or a private or public group self-insured employer has underpaid an assessment as the result of inaccurate reporting, such payer shall pay all overdue assessments in full within 30 days of notification by the Board and may be subject to interest at a rate of 9% annually on the unpaid amount. Further, in the event that it is determined that the payer knew or should have known that the reported information was inaccurate an additional penalty of up to 20% of the unpaid amount may be imposed by the Board against such carrier, the State Insurance Fund, private or public self-insured employers.

Section 500-11 establishes that on an annual basis in conjunction with the November 1 publication of the assessment rate, the Board will prepare a report which supports the assessment rate established for policies effective in the succeeding calendar year. Such report shall also be prepared in the event an assessment rate modification is required pursuant to Section 500.6. Such report will include a summary of the projections or estimates made in the development of the assessment rate including the expenses covered by the rate and underlying assessment base.

Section 500.12 establishes that the Chair may conduct periodic audits on employers, self-insurers, carriers and the State Insurance Fund concerning any information or payment related to assessments.

This notice is intended to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires July 13, 2014.

Text of rule and any required statements and analyses may be obtained from: Heather MacMaster, Workers' Compensation Board, 328 State Street, Office of General Counsel, Schenectady, NY 12305-2318, (518) 486-9564, email: regulations@wcb.ny.gov

Regulatory Impact Statement

1. Statutory authority:

Workers' Compensation Law Section 117(1) authorizes the Chair to make reasonable regulations consistent with the provisions of the Workers' Compensation Law and the Labor Law. Chapter 57 of the Laws of 2013 amends several sections of the WCL including section 151 which is repealed and a new section added.

Section 151 WCL directs the Board to promulgate an assessment rate by November 1, 2013 and assess that rate by January 1, 2014. Specifically, Section 151 (2) WCL states:

"on the first day of November two thousand thirteen, and annually thereafter, the chair shall establish an assessment rate for all affected employers in the state of New York in an amount expected to be sufficient to produce assessment receipts at least sufficient to fund all estimated annual expense pursuant to subdivision one of this section except those ex-

penses for which an assessment is authorized for self- insurance pursuant to subdivision five of section fifty of this chapter. Such rate shall be assessed effective the first of January of the succeeding year and shall be based on a single methodology determined by the chair." The assessment rate funds statutorily required programs such as the Board's administrative expenses (151 WCL), the liabilities of the Special Disability Fund (15-8 WCL), the Fund for Reopened Cases (25-a WCL) and the Special Fund for Disability Benefits (214 WCL).

2. Legislative objectives:

The legislation enacted sweeping reforms to the manner in which the WCB collects its assessments.

The WCB currently issues bills for the liabilities associated with each of the assessments noted above which, in total, are approximately $1.2 billion for 2013. The new process will eliminate the need for the WCB to issue bills for these assessments and instead move towards a "pass through" assessment whereby employers ultimately remit their share of the assessment directly to the WCB. As written, the legislation envisions an employer based assessment process. Ultimately, it is expected that the assessments will be collected directly from employers. However, it is not feasible to go directly from a carrier based to employer based assessment, particularly given the aggressive timeframes imposed by the legislation which mandate a new process by January 1, 2014.

A transitional period is anticipated in the legislation as evidenced by the language which states that until such time as the WCB establishes a direct employer payment process, assessments shall be remitted to the WCB by carriers, the SIF, county plans and groups. Individual private and public self-insurers shall continue to pay assessments directly. Finally, the legislation also allows the WCB to enter into an agreement with the Dormitory Authority and issue up to $900 million in bonds to address unmet self-insured obligations. The debt service costs of any such bonds issued would be included in the annual rate. The debt service for these bonds as well as the WAMO bonds would take priority over the administrative expenses, special funds and interdepartmental funds.

3. Needs and benefits:

The new legislation and supporting regulations will address many issues with the current process. Specifically:

- Currently, a disconnect exists between the amounts that carriers collect from their policy holders and the amounts that the WCB bills those carriers. The new rule will result in the WCB no longer issuing assessment bills and instead promulgating a rate that will fund the required programs. Carriers will collect the amount driven by the rate from their policyholders and remit that amount to the Board. Eventually, the employers will remit to the Board directly.
- The base factors currently used to calculate the various payers proportionate share of assessments are not currently audited and/or verified. The new process will include mechanisms to audit the data including verification of amounts included on other State mandated forms like the NYS-45 required by the Departments of Tax and Finance and Labor.
- The current process of assessments being based on paid indemnity for certain payers requires the accrual and funding of significant long term liabilities. This requires carriers, SIF and self-insured's to hold aside monies to pay assessment liabilities that they will not have to actually remit until several years later.
- The current process is administratively onerous and lacks transparency for both the WCB and the various payers. The new process will result in more verification and audit of the data submitted.
- Each carrier, SIF, private and public self-insurer is receiving as many as 23 invoices from the WCB annually. Also, the data collection used to apportion the different assessments is manual and paper-based. The system used to calculate and bill the assessments is a custom module to the financial system used by the WCB that is difficult to maintain, particularly when upgrades and/or legislative changes are necessary. The WCB will no longer issue invoices and eventually a system will be implemented to allow payers to view and pay their assessments electronically.

4. Costs:

This proposal will not impose any new costs on the regulated parties, the Board, the State or local governments since all of these entities are currently required to pay assessments. The total projected need for 2014 of $893 million is significantly less than the average amounts billed for assessments for the past three years of more than $1 billion. The Fund for Reopened Cases was closed to new cases and for the short term will not be included in the assessment rate because the fund balance will support the claims. Additionally, roughly $7.4 million was billed on average related to the administration of the Disability Benefits program; these amounts will be rolled into the workers' compensation assessment rate. Although many of the payers of the DB assessment will still be paying WCB assessments (as they also write workers' compensation or have an active self-insurance program) they will no longer be paying a separate assessment related to DB. This adjustment adds to the administrative efficiency of the new method as it is not cost beneficial to have a separate rate and/or assessment for less than 1% of the overall amounts collected in a given year. Collectively, it is estimated that the municipal self-insurers will pay $90 million less in assessments for 2014. However, the impact on the specific payers will be determined based on actual payroll.

For policies effective for calendar year 2014, the rate will be established as a percentage of standard premiums as follows: Total Estimated Annual Expenses Divided by Total Estimated Statewide Premiums. The estimated annual expenses to be covered by the rate total $893 million. Statewide standard premiums are projected to be $6.4 billion. Accordingly, the assessment rate for 2014 will be set at 13.8%.

5. Local government mandates:

Since local governments have always been required to pay WCB assessments, this law does not impose any new requirements on these entities.

6. Paperwork:

This proposed rule modifies the reporting requirements for municipalities, but does not impose additional reporting requirements. Eventually, it is the Board's intent to streamline the reporting process and allow entities to report and pay their assessments electronically, but this is not an enhancement we could offer at the outset given the abbreviated timeframes for implementation.

7. Duplication:

The proposed rule does not duplicate or conflict with any state or federal requirements.

8. Alternatives:

The legislation directed the Board to promulgate an assessment rate and rules and regulations to establish the process by which carriers, self-insured's, SIF and the political subdivisions would pay the assessments to the Board. Because of the short timeframes to implement a new assessment process, and the ultimate goal of transitioning to an employer based payment stream, the only practical basis on which to calculate the assessment in the short term is premium. Premium information is readily available for the vast majority (more than 80%) of employers that obtain a policy from a carrier or the SIF. A standard premium equivalent can be determined for the self-insured employers (both private and municipal) thus providing a similar basis for all employers, regardless of what type of coverage they maintain.

9. Federal standards:

There are no federal standards applicable to this proposed rule.

10. Compliance schedule:

It is expected that the affected parties will be able to comply with this change immediately.

Regulatory Flexibility Analysis

1. Effect of rule:

Pursuant to Section 50 WCL, most businesses and local governments are required to carry workers' compensation coverage for their employees. They may obtain a policy from the State Insurance Fund, apply to, and become self-insured or obtain a policy from an insurance carrier licensed to write workers' compensation in New York. All entities that carry workers compensation are required to pay assessments to the Workers Compensation Board. There are approximately 1,900 payers in New York currently paying assessments including the carriers, SIF, private and public self-insurers. Most small businesses and local governments are currently paying WCB assessments. Depending on how they secure their workers compensation will determine the impact of the apportionment methodology and new rate on their assessment amounts. However, virtually all categories of payers will see a net decrease in their assessments in 2014 whether they are carrier covered or self- insured.

2. Compliance requirements:

There is minimal impact on local governments and small businesses to comply with this rule.

3. Professional services:

It is believed that no professional services will be needed to comply with this rule.

4. Compliance costs:

This proposal will not impose any compliance costs on small business or local governments.

5. Economic and technological feasibility:

No implementation or technology costs are anticipated for small businesses and local governments for compliance with the proposed rule. Therefore, it will be economically and technologically feasible for small businesses and local governments affected by the proposed rule to comply with the rule.

6. Minimizing adverse impact:

Because the net result of the change in the assessment methodology, the proposed rule would be beneficial to local governments and small businesses. This rule provides only a benefit to small businesses and local governments.

7. Small business and local government participation:

The Board received input from various stakeholder groups which provide coverage for many small businesses and local governments. A decrease in assessments was recognized as a major benefit to these groups.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:

This rule applies to all carriers, the State Insurance Fund, self-insured employers and political subdivisions in all areas of the state.

2. Reporting, recordkeeping and other compliance requirements:

This rule applies to all carriers, the State Insurance Fund, self-insured employers and political subdivisions in all areas of the state. Impact on reporting and compliance for all entities is minimal.

3. Costs:

This proposal will not impose any compliance costs on rural areas.

4. Minimizing adverse impact:

This proposed rule is designed to minimize adverse impact for small businesses and local government that already exist in the current regulations. This rule provides only a benefit to small businesses and local governments.

5. Rural area participation:

The Board consulted with carriers and some municipalities on the rule making process.

Job Impact Statement

The proposed regulation will not have an adverse impact on jobs. The regulation merely changes the apportionment and methodology for entities to calculate and pay their required assessments to the Workers' Compensation Board. These regulations ultimately benefit the participants to the workers' compensation system by streamlining the assessment process and reducing their liability in 2014.