

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 Audit and Control

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Property Location Agreements

I.D. No. AAC-48-14-00001-P

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

Proposed Action: Amendment of section 129.1 of Title 2 NYCRR.

Statutory authority: Abandoned Property Law, section 1414

Subject: Property Location Agreements.

Purpose: To conform terminology and to reflect an amendment made to EPTL section 13-2.3.

Text of proposed rule: Part 129 of Title 2 NYCRR is amended as follows:
PART 129

[ACKNOWLEDGMENT REQUIREMENTS FOR FILING ABANDONED PROPERTY CLAIMS] *CLAIMS FOR ABANDONED PROPERTY INCLUDING THOSE INVOLVING AN ABANDONED PROPERTY LOCATION SERVICES AGREEMENT*

Section 129.1 General Provisions.

(a) The [comptroller] *Comptroller* shall not reveal any confidential information including the value of abandoned property to any claimant or [their] *the claimant's agent* unless such person provides proof of an interest in the abandoned property and the following:

(1) a claim form, or other supplemental claim form deemed necessary by the [comptroller] *Comptroller*, signed by the person making claim and duly acknowledged by the person in the manner prescribed for the acknowledgment of a conveyance of real property in accordance with the Real Property Law;

(2) [in the case of a] *where the claim is submitted by a [finder, the finder] person or entity acting pursuant to an abandoned property location services agreement, as that term is used in section 1416 of the Abandoned Property Law, the person or entity submitting the claim* must present to the [comptroller] *Comptroller* [a finder agreement executed in accordance with] an *abandoned property location services agreement, which complies with the requirements of section 1416 of the Abandoned Property Law, and which:*

(i) lists the claimant's current address;

(ii) except where there is a separate power of attorney or other agency designation, authorizes the [finder] *abandoned property location services provider to act on the claimant's behalf* to claim the property [on behalf of the claimant];

(iii) is signed by the claimant and such signature has been duly acknowledged by the claimant in the manner prescribed for the acknowledgment of a conveyance of real property in accordance with the Real Property Law; and

(iv) in the case of a claim *in excess of \$1000* on behalf of an estate representative appointed by a New York State surrogate's court, including a person certified under Article 13 of the Surrogate's Court Procedure Act, [of a New York decedent subject to section 13-2.3 of the Estates Powers and Trusts Law,] *proof that the abandoned property location services agreement has been duly filed with the [appropriate] surrogate's court that appointed such estate representative, as required by [that] section 13-2.3 of the Estates, Powers and Trusts Law.*

(b) Subdivision (a) of this section may be waived within the discretion of the [comptroller] *Comptroller* provided that the [comptroller] *Comptroller* determines that satisfactory proof has otherwise been submitted by the claimant *or his or her representative* establishing that the claimant is the owner of the abandoned property.

Text of proposed rule and any required statements and analyses may be obtained from: Jamie Elacqua, Department of Audit and Control, 110 State Street, Albany, New York 12236, (518) 473-4146, email: jelacqua@osc.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

1. Statutory Authority: The amendment is authorized under section 1414 of the Abandoned Property Law.

2. Legislative Objectives: This revision will accomplish two primary goals: (1) to conform terminology used in the regulation to terminology added to section 1416 of the Abandoned Property Law in 2012; and (2) to reflect amendments made to section 13-2.3 of the Estates, Powers and Trusts Law in 2014. Several non-substantive technical changes have also been made.

3. Needs and Benefits: Until 2012, section 1416 of the Abandoned Property Law referred to "restrictions on agreements by claimants with a person or entity to locate abandoned property". These agreements were historically and informally called "finder agreements" and the existing regulation used the term "finder agreement". When section 1416 was amended the term "agreement for abandoned property location services" was used and defined. In the interests of conformity, the regulation is being amended in order to maintain uniformity in terminology.

As to the revisions made in response to amendments to section 13-2.3 of the Estates, Powers and Trusts Law (EPTL), the Surrogate's Court Advisory Committee proposed legislation to amend EPTL section 13-2.3 to specifically exclude abandoned property location services agreements from the filing requirement when there is no estate proceeding opened in surrogate's court and to provide that no filing is required when an estate representative is appointed but the amount to be claimed from the Office of Unclaimed Funds does not exceed \$1,000. These amendments were enacted into law in September 2014.

In light of these amendments, the Department of Audit and Control and

its Office of Unclaimed Funds no longer require a court certified copy of the abandoned property location services agreement where letters have not been issued to an estate representative, or the amount of the claim does not exceed \$1,000. To reflect this change in statute, the Office of Unclaimed Funds is proposing to revise subdivision (a)(2)(iv) of section 129.1. Consistent with existing practices of the Office of Unclaimed Funds, the revision to subdivision (a)(2)(iv) also deletes the reference to New York decedents, since section 13-2.3 of the EPTL would appear to apply where a New York ancillary estate representative is appointed by a New York Surrogate's Court with respect to a non-New York decedent.

4. Costs:

a. Costs to the regulated parties: Subsequent to the amendment of the rule, estate representatives will no longer be required to provide court certified copies of the abandoned property location services agreement where letters have not been issued to an estate representative, or the amount of the claim does not exceed \$1,000. Therefore, the amendment will in such cases reduce costs of the regulated parties. However, estate representatives of New York estates who have entered into an abandoned property location services agreement will continue to be required to provide a court certified copy of the abandoned property location services agreement when the claim for abandoned funds is in excess of \$1,000. The fees for court certified copies are currently \$6.00 per page. Qualified heirs of a New York decedent making claim pursuant to a Surrogate's Court Procedure Act section 1310 affidavit will not have to provide any court certified copy of an abandoned property location services agreement.

b. Costs to the agency, state and local governments for the implementation and continuation of the rule: The revision of this rule should be cost neutral to the agency. The costs for state and local governments should also be cost neutral as generally state and local governments do not enter into abandoned property location services agreements.

c. Sources, methodology of cost analysis: The cost of court certified copies is set forth by statute in Surrogate's Court Procedure Act section 2402(12)(a).

5. Local Government Mandates: None.

6. Paperwork: No new paperwork is required. Claims for abandoned funds where the claimant is a New York estate representative who has entered into an abandoned property locations services agreement will continue to have to provide a court certified copy of the agreement when the claim for abandoned funds exceeds \$1,000. Claims for abandoned funds where the claimant is a qualified heir of a New York decedent pursuant to Surrogate's Court Procedure Act section 1310 and has entered into an abandoned property location services agreement will have to provide the agreement but will not have to supply a court certified copy.

7. Duplication: The rule does not duplicate, overlap or conflict with any other legal requirements of the state or federal governments.

8. Alternatives: No significant alternatives were considered.

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

10. Compliance Schedule: It is believed that compliance can be achieved immediately upon the rules adoption.

Regulatory Flexibility Analysis

1. Effect of Rule: Primarily, the small businesses affected by this rule will be abandoned property location services providers doing business with the Office of Unclaimed Funds on behalf of their clients. It is estimated that 282 small businesses will be affected. Local governments will not be effected.

2. Compliance Requirements: The proposed rule will not impose any new reporting, recordkeeping or other affirmative acts that a small business or local government will have to undertake to comply. The proposed rule makes conforming changes to reflect revisions of terminology used in section 1416 of the Abandoned Property Law. Additionally, the rule addresses the amendments to section 13-2.3 of the Estates, Powers and Trusts Law which eliminate the requirement that abandoned property location services agreements be filed with the surrogate's court when no estate representative has been appointed for a decedent's estate, or when the claim for abandoned funds does not exceed \$1,000 (regardless of whether or not an estate representative has been appointed for the estate).

3. Professional Services: No professional services need be retained by small businesses or local governments to comply with this rule.

4. Compliance Costs: There will be no new compliance costs.

5. Economic and Technological Feasibility: There are no economic costs or technological requirements necessary comply with this rule.

6. Minimizing Adverse Impact: The approaches suggested by the Legislature in SAPA § 202-b(1) were not considered. It does not appear that the rule will have an adverse economic impact on small businesses or local governments since the result of the rule is a less stringent requirement in relation to the filing of abandoned property location services agreements.

7. Small Business and Local Government Participation: In order to ensure that small businesses and local governments have an opportunity to

participate in the rule making process; a press release will be issued and posted on the Comptroller's website regarding this proposed rule.

Rural Area Flexibility Analysis

1. Types and Estimated Numbers of Rural Areas: This rule will affect all rural areas.

2. Reporting, Recordkeeping and Other Compliance Requirements and Professional Services: The proposed rule will not impose any new reporting, recordkeeping, professional services, or other affirmative acts to achieve compliance with this rule. Other than technical changes, the proposed rule makes clear that abandoned property location services agreements need not be filed with the surrogate's court pursuant to newly amended section 13-2.3 of the Estates Powers and Trusts Law when no estate representative has been appointed for a decedent's estate, or when the claim for abandoned funds for an estate does not exceed \$1,000 regardless of whether there has been an appointment of an estate representative.

3. Costs: No new capital costs will be incurred by persons or entities in rural areas.

4. Minimizing Adverse Impact: The approaches suggested by SAPA § 202-bb(2) were not considered. It does not appear that the rule will have an adverse impact on rural areas since the proposed rule results in a less stringent filing requirement than was previously required.

5. Rural Area Participation: In order ensure regulated parties in rural areas have an opportunity to participate in the rule making process a press release will be issued and posted on the Comptroller's website regarding this proposed rule.

Office of Children and Family Services

NOTICE OF ADOPTION

Exclusion from Monthly Gross Income for Purposes of Determining Child Care Assistance Eligibility

I.D. No. CFS-37-14-00002-A

Filing No. 956

Filing Date: 2014-11-17

Effective Date: 2014-12-03

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

Action taken: Amendment of section 404.5(b)(6)(xiii) of Title 18 NYCRR.

Statutory authority: Social Services Law, sections 20(3)(d), 34(3)(f) and 410-w(7)

Subject: Exclusion from monthly gross income for purposes of determining child care assistance eligibility.

Purpose: To implement exclusion from monthly gross income for purposes of determining child care assistance eligibility.

Text or summary was published in the September 17, 2014 issue of the Register, I.D. No. CFS-37-14-00002-P.

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

Text of rule and any required statements and analyses may be obtained from: Public Information Office, Office of Children and Family Services, 52 Washington Street, Rensselaer, NY 12144, (518) 473-7793

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 New York State Office of Children and Family Services (OCFS) received two comments in response to the notice of proposed, consensus, rulemaking filed with respect to Section 404.5 of Title 18 of the Official Compilation of Codes, Rules and Regulations of the State of New York. Both of the comments received by OCFS were from its Advisory Board, and both of the comments received by OCFS supported the adoption of the proposed rule. In light of these comments, OCFS did not make any changes to the proposed rule.

NOTICE OF ADOPTION

Criminal History Review

I.D. No. CFS-37-14-00004-A
Filing No. 958
Filing Date: 2014-11-17
Effective Date: 2014-12-03

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

Action taken: Amendment of section 413.4(e) of Title 18 NYCRR.
Statutory authority: Social Services Law, sections 20(3)(d), 34(3)(f) and 390-b(3)(a)(i)
Subject: Criminal history review.
Purpose: To correct a Social Services Law citation found under 18 NYCRR section 413.4(e).

Text or summary was published in the September 17, 2014 issue of the Register, I.D. No. CFS-37-14-00004-P.

Final rule as compared with last published rule: No changes.
Text of rule and any required statements and analyses may be obtained from: Public Information Office, Office of Children and Family Services, 52 Washington Street, Rensselaer, New York 12144, (518) 473-7793

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 agency received no public comment.

Department of Civil Service

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-52-13-00008-A
Filing No. 939
Filing Date: 2014-11-13
Effective Date: 2014-12-03

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

Action taken: Amendment of Appendix 2 of Title 4 NYCRR.
Statutory authority: Civil Service Law, section 6(1)
Subject: Jurisdictional Classification.
Purpose: To classify positions in the non-competitive class.
Text or summary was published in the December 24, 2013 issue of the Register, I.D. No. CVS-52-13-00008-P.

Final rule as compared with last published rule: No changes.
Text of rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: jennifer.paul@cs.ny.gov

Assessment of Public Comment
 The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-08-14-00007-A
Filing No. 943
Filing Date: 2014-11-13
Effective Date: 2014-12-03

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

Action taken: Amendment of Appendix 1 of Title 4 NYCRR.
Statutory authority: Civil Service Law, section 6(1)
Subject: Jurisdictional Classification.
Purpose: To classify a position in the exempt class.
Text or summary was published in the February 26, 2014 issue of the Register, I.D. No. CVS-08-14-00007-P.
Final rule as compared with last published rule: No changes.

Text of rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: jennifer.paul@cs.ny.gov

Assessment of Public Comment
 The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-12-14-00001-A
Filing No. 944
Filing Date: 2014-11-13
Effective Date: 2014-12-03

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

Action taken: Amendment of Appendix 1 of Title 4 NYCRR.
Statutory authority: Civil Service Law, section 6(1)
Subject: Jurisdictional Classification.
Purpose: To classify a position in the exempt class.

Text or summary was published in the March 26, 2014 issue of the Register, I.D. No. CVS-12-14-00001-P.
Final rule as compared with last published rule: No changes.

Text of rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: jennifer.paul@cs.ny.gov

Assessment of Public Comment
 The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-12-14-00002-A
Filing No. 941
Filing Date: 2014-11-13
Effective Date: 2014-12-03

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

Action taken: Amendment of Appendix 2 of Title 4 NYCRR.
Statutory authority: Civil Service Law, section 6(1)
Subject: Jurisdictional Classification.

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

Text or summary was published in the March 26, 2014 issue of the Register, I.D. No. CVS-12-14-00002-P.

Final rule as compared with last published rule: No changes.
Text of rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: jennifer.paul@cs.ny.gov

Assessment of Public Comment
 The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification**I.D. No.** CVS-12-14-00003-A**Filing No.** 942**Filing Date:** 2014-11-13**Effective Date:** 2014-12-03

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

Action taken: Amendment of Appendix 2 of Title 4 NYCRR.**Statutory authority:** Civil Service Law, section 6(1)**Subject:** Jurisdictional Classification.**Purpose:** To classify positions in the non-competitive class.**Text of final rule:** Text of proposed rule should have read:

Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Executive Department under the subheading "Office of General Services," by adding thereto the positions of Building Construction Program Manager 2 (Scheduling) (3), Building Construction Program Manager 3 (Scheduling) (1), *o*Director Division Construction Supervision (1) and *o*Director Division Design (1).

Final rule as compared with last published rule: Nonsubstantive changes were made in Appendix 2.

Text of rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: jennifer.paul@cs.ny.gov

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

Changes made to the last published rule do not necessitate revision to the previously published RIS, RFA, RAFA, and JIS.

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification**I.D. No.** CVS-12-14-00004-A**Filing No.** 938**Filing Date:** 2014-11-13**Effective Date:** 2014-12-03

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

Action taken: Amendment of Appendix 1 of Title 4 NYCRR.**Statutory authority:** Civil Service Law, section 6(1)**Subject:** Jurisdictional Classification.**Purpose:** To classify positions in the exempt class.

Text or summary was published in the March 26, 2014 issue of the Register, I.D. No. CVS-12-14-00004-P.

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

Text of rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: jennifer.paul@cs.ny.gov

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification**I.D. No.** CVS-12-14-00005-A**Filing No.** 940**Filing Date:** 2014-11-13**Effective Date:** 2014-12-03

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

Action taken: Amendment of Appendix 2 of Title 4 NYCRR.**Statutory authority:** Civil Service Law, section 6(1)**Subject:** Jurisdictional Classification.**Purpose:** To classify a position in the non-competitive class.

Text or summary was published in the March 26, 2014 issue of the Register, I.D. No. CVS-12-14-00005-P.

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

Text of rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: jennifer.paul@cs.ny.gov

Assessment of Public Comment

The agency received no public comment.

Department of Economic Development

NOTICE OF EXPIRATION

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

START-UP Program

| I.D. No. | Proposed | Expiration Date |
|--------------------|-------------------|-------------------|
| EDV-46-13-00002-EP | November 13, 2013 | November 13, 2014 |

Education Department

EMERGENCY/PROPOSED

RULE MAKING

NO HEARING(S) SCHEDULED

New York State Common Core Learning Standards (CCLS) in Mathematics

I.D. No. EDU-48-14-00007-EP**Filing No.** 961**Filing Date:** 2014-11-18**Effective Date:** 2014-11-18

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

Proposed Action: Amendment of section 100.5(g)(1)(ii)(a) of Title 8 NYCRR.

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

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

Specific reasons underlying the finding of necessity: The proposed amendment is necessary to implement Regents policy to provide, at the local school district's discretion, an additional opportunity for students receiving Algebra I (Common Core) instruction to take the Regents Examination in Integrated Algebra in addition to the Regents examination in Algebra I (Common Core) at the June 2015 test administration, and meet the requirement for graduation by passing either examination.

Because the Board of Regents meets at scheduled intervals, the earliest the proposed amendment could be presented for regular (non-emergency) adoption, after publication in the State Register and expiration of the 45-day public comment period provided for in State Administrative Procedure Act (SAPA) section 202(1) and (5), is the February 9-10, 2015 Regents meeting. Furthermore, pursuant to SAPA section 203(1), the earliest effective date of the proposed amendment, if adopted at the February meeting, would be February 25, 2015, the date a Notice of Adoption would be published in the State Register. However, emergency action to adopt the proposed rule is necessary now for the preservation of the general welfare to ensure that school districts and students are given sufficient notice to prepare for and timely implement in the 2014-2015 school year the

provision providing, at the local school district's discretion, an additional opportunity for students receiving Algebra I (Common Core) instruction to take the Regents Examination in Integrated Algebra in addition to the Regents examination in Algebra I (Common Core) at the June 2015 test administration, and meet the requirement for graduation by passing either examination.

It is anticipated that the emergency rule will be presented to the Board of Regents for adoption as a permanent rule at the February 8-9, 2015 Regents meeting, which is the first scheduled meeting after expiration of the 45-day public comment period mandated by the State Administrative Procedure Act for proposed rulemakings.

Subject: New York State Common Core Learning Standards (CCLS) in mathematics.

Purpose: To provide additional flexibility in the transition to the Common Core-aligned Regents Examination in Algebra I by allowing, at the discretion of the local school district, students receiving Algebra I (common core) instruction to take the Regents Examination in Integrated Algebra in addition to the Regents examination in Algebra I (common core) at the June 2015 test administration, and meet the requirement for graduation by passing either examination.

Text of emergency/proposed rule: Clause (a) of subparagraph (ii) of paragraph (1) of subdivision (g) of section 100.5 of the Regulations of the Commissioner is amended, effective November 18, 2014, as follows:

(a) Students who first begin instruction in a commencement level mathematics course aligned to the Common Core Learning Standards in September 2013 and thereafter shall meet the mathematics requirement for graduation in clause (a)(5)(i)(b) of this section by passing a commencement level Regents examination in mathematics that measures the Common Core Learning Standards, or an approved alternative pursuant to section 100.2(f) of this Part; provided that:

(1) for the June 2014, August 2014, [and] January 2015 and June 2015 administrations only, students receiving algebra I (common core) instruction may, at the discretion of the applicable school district, take the Regents examination in integrated algebra in addition to the Regents examination in algebra I (common core), and may meet the mathematics requirement for graduation in clause (a)(5)(i)(b) of this section by passing either examination; and

(2) . . .

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 February 15, 2015.

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

Data, views or arguments may be submitted to: Ken Wagner, Deputy Commissioner, Office of Curriculum, Assessment and Educational Technology, EBA Room 875, 89 Washington Ave., Albany, NY 12234, (518) 474-5915, email: NYSEDP12@nysed.gov

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

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

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

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

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

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

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

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

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

2. LEGISLATIVE OBJECTIVES:

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

3. NEEDS AND BENEFITS:

The proposed amendment provides additional flexibility in the transition to the Common Core-aligned Regents Examination in Algebra I by allowing, at the discretion of the local school district, students receiving Algebra I (common core) instruction to take the Regents Examination in Integrated Algebra in addition to the Regents examination in Algebra I (common core) at the June 2015 test administration, and meet the requirement for graduation by passing either examination.

The last administrations of the current Regents Examinations in Integrated Algebra, Geometry and Algebra 2/Trigonometry will be in January 2015, January 2016, and January 2017, respectively. The transition plan for the new Regents Exams in Math (Common Core) includes the following:

- Students who first begin instruction in a commencement level mathematics course aligned to the CCLS in September 2013 and thereafter shall meet the mathematics requirement for graduation by passing a commencement level Regents Examination in mathematics that measures the CCLS, or an approved alternative.

- Students who first began or will complete an Integrated Algebra, Geometry, or Algebra 2/Trigonometry course prior to September 2013 shall meet the mathematics requirements for graduation by passing the corresponding Regents Examinations aligned to the Mathematics Core Curriculum (Revised 2005), while those examinations are still being offered. For the June 2014, August 2014 and January 2015 administrations only, students receiving Algebra I (Common Core) instruction may, at local discretion, take the Regents Examination in Integrated Algebra (2005 Revised) in addition to the Regents Examination in Algebra I (Common Core) and may meet the Mathematics graduation requirement by passing either exam.

The proposed amendment would extend to the June 2015 test administration, the option of taking the Regents Examination in Integrated Algebra (2005 Revised) in addition to the Regents Examination in Algebra I (Common Core) and meeting the Mathematics graduation requirement by passing either exam.

4. COSTS:

(a) Costs to State government: none.

(b) Costs to local government: none.

(c) Costs to private regulated parties: none.

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

The proposed amendment does not impose any direct costs to the State, school districts, charter schools or the State Education Department. The proposed amendment provides additional flexibility in the transition to the Common Core-aligned Regents Examination in Algebra I by allowing, at the discretion of the local school district, students receiving Algebra I (common core) instruction to take the Regents Examination in Integrated Algebra in addition to the Regents examination in Algebra I (common core) at the June 2015 test administration, and meet the requirement for graduation by passing either examination. It is anticipated that any indirect costs associated with these requirements will be minimal and capable of being absorbed using existing school resources.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment does not impose any additional program, service, duty or responsibility upon local governments. The proposed amendment would extend to the June 2015 test administration, the option of taking the Regents Examination in Integrated Algebra (2005 Revised) in addition to the Regents Examination in Algebra I (Common Core) and meeting the Mathematics graduation requirement by passing either exam. Whether or not to offer such option is within the discretion of each school district.

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:

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

9. FEDERAL STANDARDS:

There are no related federal standards in this area.

10. COMPLIANCE SCHEDULE:

The proposed amendment is necessary to implement requirements for transitioning to Common Core mathematics examinations, and does not impose any additional compliance requirements or costs on school districts or charter schools. It is anticipated regulated parties will be able to achieve compliance with the rule by its effective date. The proposed amendment would extend to the June 2015 test administration, the option of taking the Regents Examination in Integrated Algebra (2005 Revised) in addition to the Regents Examination in Algebra I (Common Core) and meeting the Mathematics graduation requirement by passing either exam. Whether or not to offer such option is within the discretion of each school district.

Regulatory Flexibility Analysis**Small Businesses:**

The proposed amendment provides additional flexibility in the transition to the Common Core-aligned Regents Examination in Algebra I by allowing, at the discretion of the local school district, students receiving Algebra I (common core) instruction to take the Regents Examination in Integrated Algebra in addition to the Regents examination in Algebra I (common core) at the June 2015 test administration, and meet the requirement for graduation by passing either examination.

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

Local Government:**1. EFFECT OF RULE:**

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

2. COMPLIANCE REQUIREMENTS:

The proposed amendment does not impose any additional compliance requirements on school districts or charter schools. The proposed amendment would extend to the June 2015 test administration, the option of taking the Regents Examination in Integrated Algebra (2005 Revised) in addition to the Regents Examination in Algebra I (Common Core) and meeting the Mathematics graduation requirement by passing either exam. Whether or not to offer such option is within the discretion of each school district or eligible charter school.

3. PROFESSIONAL SERVICES:

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

4. COMPLIANCE COSTS:

The proposed amendment does not impose any direct costs to school districts or charter schools. The proposed amendment provides additional flexibility in the transition to the Common Core-aligned Regents Examination in Algebra I by allowing, at the discretion of the local school district, students receiving Algebra I (common core) instruction to take the Regents Examination in Integrated Algebra in addition to the Regents examination in Algebra I (common core) at the June 2015 test administration, and meet the requirement for graduation by passing either examination. It is anticipated that any indirect costs associated with these requirements will be minimal and capable of being absorbed using existing school resources.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

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

6. MINIMIZING ADVERSE IMPACT:

The proposed amendment does not directly impose any additional compliance requirements or costs to school districts and charter schools. The proposed amendment is necessary to implement Regents policy to provide additional flexibility in the transition to the Common Core-aligned Regents Examination in Algebra I by allowing, at the discretion of the local school district, students receiving Algebra I (common core) instruction to take the Regents Examination in Integrated Algebra in addition to the Regents examination in Algebra I (common core) at the June 2015 test administration, and meet the requirement for graduation by passing either examination. It is anticipated that any indirect costs associated with the

proposed amendment will be minimal and capable of being absorbed using existing school resources.

7. LOCAL GOVERNMENT PARTICIPATION:

Copies of the proposed amendment have been provided to District Superintendents with the request that they distribute them to school districts within their supervisory districts for review and comment. Copies were also provided for review and comment to the chief school officers of the five big city school districts 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 to provide additional flexibility in the transition to the Common Core-aligned Regents Examination in Algebra I by allowing, at the discretion of the local school district, students receiving Algebra I (common core) instruction to take the Regents Examination in Integrated Algebra in addition to the Regents examination in Algebra I (common core) at the June 2015 test administration, and meet the requirement for graduation by passing either examination.

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 each of the 695 public school districts in the State, including those located in the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square mile or less. The proposed amendment also applies to charter schools in such areas, to the extent they offer instruction in the high school grades and issue Regents diplomas. At present, there is one charter school located in a rural area that is authorized to issue Regents diplomas.

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

The proposed amendment does not impose any additional compliance requirements on school districts or charter schools located in rural areas. The proposed amendment would extend to the June 2015 test administration, the option of taking the Regents Examination in Integrated Algebra (2005 Revised) in addition to the Regents Examination in Algebra I (Common Core) and meeting the Mathematics graduation requirement by passing either exam. Whether or not to offer such option is within the discretion of each school district or charter school.

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

3. COMPLIANCE COSTS:

The proposed amendment does not impose any direct costs to school districts or charter schools located in rural areas. The proposed amendment provides additional flexibility in the transition to the Common Core-aligned Regents Examination in Algebra I by allowing, at the discretion of the local school district, students receiving Algebra I (common core) instruction to take the Regents Examination in Integrated Algebra in addition to the Regents examination in Algebra I (common core) at the June 2015 test administration, and meet the requirement for graduation by passing either examination. It is anticipated that any indirect costs associated with these requirements will be minimal and capable of being absorbed using existing school resources.

4. MINIMIZING ADVERSE IMPACT:

The proposed amendment does not directly impose any additional compliance requirements or costs to school districts and charter schools located in rural areas. The proposed amendment is necessary to implement Regents policy to provide additional flexibility in the transition to the Common Core-aligned Regents Examination in Algebra I by allowing, at the discretion of the local school district, students receiving Algebra I (common core) instruction to take the Regents Examination in Integrated Algebra in addition to the Regents examination in Algebra I (common core) at the June 2015 test administration, and meet the requirement for graduation by passing either examination.

Because the Regents policy upon which the proposed amendment is based applies to all school districts in the State and to charter schools authorized to issue Regents diplomas, it is not possible to establish differing compliance or reporting requirements or timetables or to exempt school districts or charter schools from coverage by the proposed amendment. The proposed amendment does not directly impose any additional compliance requirements or costs on school districts or charter schools. It is anticipated that any indirect costs associated with the proposed amendment will be minimal and capable of being absorbed using existing school resources.

5. RURAL AREA PARTICIPATION:

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

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 to provide additional flexibility in the transition to the Common Core-aligned Regents Examination in Algebra I by allowing, at the discretion of the local school district, students receiving Algebra I (common core) instruction to take the Regents Examination in Integrated Algebra in addition to the Regents examination in Algebra I (common core) at the June 2015 test administration, and meet the requirement for graduation by passing either examination.

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 amendment provides additional flexibility in the transition to the Common Core-aligned Regents Examination in Algebra I by allowing, at the discretion of the local school district, students receiving Algebra I (common core) instruction to take the Regents Examination in Integrated Algebra in addition to the Regents examination in Algebra I (common core) at the June 2015 test administration, and meet the requirement for graduation by passing either examination.

The proposed amendment relates to State learning standards, State assessments, graduation and diploma requirements, and higher levels of student achievement, and will not have an adverse impact on jobs or employment opportunities. Because it is evident from the nature of the amendment that it will have a positive impact, or no impact, on jobs or employment opportunities, no further steps were needed to ascertain those facts and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

NOTICE OF ADOPTION

Pupils with Limited English Proficiency (English Language Learner [ELL] Programs)

I.D. No. EDU-27-14-00012-A

Filing No. 960

Filing Date: 2014-11-18

Effective Date: 2014-12-03

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

Action taken: Addition of Subpart 154-3 to Title 8 NYCRR.

Statutory authority: Education Law, sections 207(not subdivided), 208(not subdivided), 215(not subdivided), 305(1), (2), 2117(1), 2854(1)(b), 3204(2), (2-a), (3) and (6)

Subject: Pupils with Limited English Proficiency (English Language Learner [ELL] Programs).

Purpose: To prescribe identification/exit procedures for students with disabilities in ELL programs.

Text or summary was published in the July 9, 2014 issue of the Register, I.D. No. EDU-27-14-00012-P.

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

Revised rule making(s) were previously published in the State Register on October 1, 2014.

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

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2019, which is the 4th or 5th year after the year in which this rule is being adopted. This review period, justification for proposing same, and invitation for public comment thereon, were contained in a RFA, RAFA or JIS:

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

Assessment of Public Comment

Since publication of the Notice of Revised Rule Making in the State Register on October 1, 2014, the State Education Department received comments from nine individuals and organizations during the public comment period.

A comment stated that Committees on Special Education (CSEs) and bilingually certified personnel do not have the knowledge and skills to distinguish between a disability and second language acquisition, and recommended that a central team under the district's division of English Language Learners (ELLs), or a State Education Department/school district collaboration team, should assess and determine knowledge and skills. The Department disagrees and states that proposed section 154-3.3 provides that as part of the initial screening process, the Language Proficiency Teams (LPTs), and not the CSEs (the composition of which is defined by 8 NYCRR section 200.3), would make a recommendation as to whether the student has second language needs and therefore needs to move to the next step in the process of taking the statewide English Language proficiency assessment. If the student will take the statewide assessment, the CSE would determine whether the student would take the assessment with or without accommodations or an alternate assessment where one has been prescribed by the Commissioner. Certified Bilingual and English to Speakers of Other Languages (ESOL) teachers are qualified to determine second language acquisition needs.

Another comment stated that in compliance with the Individuals with Disabilities Education Act (IDEA), the CSE must determine the student's dominant language in order to rule out whether the student has a disability and ensure that English language proficiency assessments used for this purpose are valid and reliable for the population being assessed. Furthermore, the CSE must ascertain that such assessments are conducted by qualified and trained professionals, knowledgeable about second language acquisition. The Department responds that the IDEA does not include a requirement that the CSE determine the student's dominant language. However, it does require the CSE to ensure that assessments and other evaluation materials used to assess a student are provided and administered in the student's native language, which for this purpose is defined as the language normally used by the student in the home or learning environment [see 8 NYCRR section 100.2(ff)]. The Part 117 screening process and the Part 154 identification process for ELLs would inform the CSE as to the student's native language. In the event the student appears to have an obvious and severe disability and has not first completed the ELL screening and identification process, the CSE must in consultation with the student's parents, determine the native language of the student for purposes of administering assessments and other evaluation materials to the student. All other students who are suspected of both having a disability and suspected of being an ELL, but not yet identified as either a student with a disability or an ELL, will first go through the standard ELL identification process pursuant to section 154-2.3(a)(1) through (4).

A comment suggested that the requirement for two letters to be sent to parents by the principal and the Superintendent, respectively, regarding a student's placement in an English as a Second Language (ESL) program, should be reduced to one letter, communicating the district's final decision. The Department responds that the requirements in section 154-3.3(e) and (f) for, respectively, an initial notice of identification within ten days, followed by a second and final determination within five days, applies to a recommendation that a student with a disability is not an ELL. The Department's goal in requiring two notifications is for the first communication to inform the parents of the initial determination to give them an opportunity to raise any concerns they may have prior to final identification. Collapsing this notice requirement into a single notice after the final identification decision would deny parents this opportunity.

A comment stated that the proposed rule is not clear in identifying the school principal to whom the LPT must send its recommendation, as there is a possibility that a student may be placed in a different school than the one to which the student was originally referred. The Department responds that the principal of the school the student is currently attending at the time of identification shall make the initial recommendation to the superintendent and shall send out notification to the parent of the recommendation.

A comment stated that a student's Individualized Education Program (IEP) must include the form of entry and exit assessment the student is able to participate in (e.g. standardized test, with or without modifications, or alternate assessment). The Department responds that the IEP of an ELL with a disability must be developed in consideration of the language needs of the student as such needs relate to the student's IEP. The IEP must also indicate if: (1) the student will participate in an alternate assessment on a particular State or districtwide assessment of student achievement, and (2) whether the student needs any individual testing accommodations in the administration of districtwide assessments of student achievement and, in accordance with Department policy, State assessments of student achievement necessary to measure the academic achievement and functional performance of the student.

A comment indicated that districts should be required to obtain work samples from evaluation in at least the top five languages spoken in New York State. The Department responds that pursuant to section 154-2.3, interview notes, academic and assessment history and work samples derived from the ELL identification process are to be maintained in each student's cumulative record.

In response to a comment that the Department clarify possible conflicts with Response to Intervention (RTI) legislation, the Department states the requirement that all school districts develop and implement RTI programs in grades K-4 in the area of reading does not conflict with the proposed additions in Subpart 154-3.

A comment recommended that the English Language Arts (ELA) exam or the English Regents exam in grades 3-12 should be able to be used as the alternate under section 154-3.4, and sought clarification as to whether the 3-8 ELA exam or Regents examination in English may be used as the "alternate assessment" in grades 3-12 under the proposed regulation. The Department responds that the "alternate assessment" must be an alternate assessment of English language proficiency. As neither the 3-8 ELA exam nor the Regents examination in English is an examination of English proficiency, neither of these exams may be used as the "alternate assessment as may be prescribed by the commissioner" under section 154-3.4.

A comment stated that local districts should be permitted to devise and initiate a valid alternate assessment for exiting ELLs with disabilities, rather than use a Statewide "one size fits all" assessment. The Department responds that it is exploring pathways toward identifying and developing alternate English proficiency assessments for ELLs with disabilities. The United States Department of Education (USDE) has clarified that "as part of a general State assessment program, all ELLs with disabilities must participate in the annual State ELP assessment with or without appropriate accommodations or by taking an alternate assessment, if necessary, consistent with their IEPs. The IDEA, Titles I and III of the ESEA, and Federal civil rights laws require that all children, including children with disabilities, take Statewide assessments that are valid and reliable for the purpose for which they are being used, and this includes the annual ELP assessment."

A number of comments expressed concerns about the proposed regulations relating to matters about which guidance from the Department will be forthcoming, or for which the Department is exploring pathways to address. These include matters relating to the identification of second language needs of students with severe disabilities; school district responsibility to provide interpretation and translation services; assisting school districts to secure appropriate assessments in other languages, including low-incidence languages; creating protocols for assessment of possible ELLs entering kindergarten; clarifying tracking and reporting requirements under section 154-3.3; clarifying use of "alternative assessment" in Subpart 154-3 in relation to the New York State Alternate Assessment (NYSAA) and the New York State English as a Second Language Achievement Test (NYSESLAT); identifying best practices and shared resources to minimize costs to school districts; and obtaining input from experts in language acquisition and in the provision of services to students with disabilities in order to ensure that federal policies are implemented at the State and school levels.

Some comments were beyond the scope of the proposed Subpart 154-3, in that they relate to provisions in Subpart 154-2, which was added to the Commissioner's Regulations as part of a separate rule making adopted by the Board of Regents in September 2014 (State Register, October 1, 2014; EDU-27-14-00011-A), including the 45-day requirement to request an identification review [8 NYCRR 154-2.3(b)(1)]; the 10-day requirement for the ELL identification process [154-2.3(b)(3)]; and the provision of interpretation and translation services [154-2.2(t) and (u); 154-2.3(a)(9)(i); 154-2.3(f)(5)].

Other comments stemmed from confusion over the scope of the proposed Subpart 154-3 and its relationship to Subpart 154-2, in that Subpart 154-3 only applies to students who have already been identified as having a disability. Students who have not yet been identified as having a disability are subject to the standard ELL identification process set forth in Subpart 154-2; for ELLs who are suspected of, but not yet identified as, of having a disability, districts must follow their existing CSE referral process, consistent with 8 NYCRR section 200.4(a).

Finally, some comments expressed concerns about changes that the Department was required to implement in order to comply with guidance issued by the USDE on July 18, 2014 regarding assessment and exit procedures for ELLs with disabilities. This included a comment that the use of a LPT for potential identification as an ELL of a student with a disability must be eliminated and that initial identification be conducted by the CSE; the Department notes that under the USDE guidance, a CSE is prohibited from making a language identification determination and, therefore, the LPT team is necessary. In addition, there was a comment that noted that since the members of the LPT and CSE are identical, except for the Teaching English to Speakers of Other Languages (TESOL)

teacher and a qualified interpreter/translator, all necessary decisions should be made at the CSE meeting, with the TESOL teacher and interpreter/translator present. However, this would contravene the USDE guidance, which clarified how ELLs with disabilities are to be assessed and exited, as well as the proper role of school district bodies such as the LPT and CSE in assessing ELLs with disabilities. Also, a comment was made that, for purposes of exiting from ELL status, the definition of English "proficiency" must be modified for students with severe disabilities, taking into account the various modes of communication and linguistic abilities of such students. In response, the Department notes that the proposed Subpart 154-3, in providing that ELLs with disabilities may only be exited upon achieving proficiency in English as set forth in section 154-3.4(b), conforms with the USDE guidance, which clarified that ELLs with disabilities may only be exited from ELL status when they meet the state's definition of "proficient" in English and hence no longer fall within the definition of an ELL.

NOTICE OF ADOPTION

School Accountability - High School Performance Levels and Performance Index

I.D. No. EDU-36-14-00007-A

Filing No. 959

Filing Date: 2014-11-18

Effective Date: 2014-12-03

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

Action taken: Amendment of section 100.18(b)(14) and (15) 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)

Subject: School accountability - high school performance levels and performance index.

Purpose: To align Commissioner's Regulations with the June 2014 Board of Regents approval of the cut points for the five performance levels on the new Common Core Regents Examinations in English language arts and mathematics.

Text of final rule: Paragraphs (14) and (15) of subdivision (b) of section 100.18 of the Regulations of the Commissioner of Education are amended, effective December 3, 2014, as follows:

(14) Performance levels shall mean:

(i) . . .

(ii) for high school *using Regents examinations based on 2005 Learning Standards or using a State alternate assessment:*

(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 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) for high school *using Regents examinations measuring the Common Core Learning Standards:*

(a) level 1 (does not demonstrate knowledge and skills for Level

2):

(1) a score of level 1 on the Regents examination in English language arts or a Regents mathematics examination;

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

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

(b) level 2 (partially meets Common Core expectations, i.e., Local Diploma level):

(1) a score of level 2 on the Regents examination in English language arts or a Regents examination in mathematics;

(c) level 3 (partially meets Common Core expectations, i.e., Regents diploma level):

(1) a score of level 3 on the Regents examination in English language arts or a Regents Examination in mathematics;

(d) level 4 (meets Common Core expectations):

(1) a score of Level 4 on the Regents examination in English language arts or a Regents examination in mathematics;

(2) a passing score on a State-approved alternative examination for those Regents examinations.

(e) level 5 (Exceeds Common Core expectations):

(1) a score of level 5 on the Regents examination in English language arts or a Regents examination in mathematics;

[(iii)] (iv) Notwithstanding the provisions of this section:

(a) . . .

(b) . . .

(c) . . .

(15) Performance index shall be calculated based on the student performance levels as follows:

(i) . . .

(ii) For high school using Regents examinations based on 2005 Learning Standards, each student scoring at level 1 will be credited with 0 points, each student scoring at level 2 with 100 points, and each student scoring at level 3 or 4 with 200 points. The performance index for each accountability group will be calculated by summing the points and dividing by the number of students in the group.

(iii) For high school using Regents examinations measuring the Common Core Learning Standards, each student scoring at level 1 and Level 2 will be credited with 0 points, each student scoring at level 3 with 100 points, and each student scoring at level 4 or 5 with 200 points. For high school using the State alternate assessment commencing with the 2013-14 school year, each student scoring at level 1 will be credited with 0 points, each student scoring at level 2 with 100 points, and each student scoring at level 3 or 4 with 200 points. The performance index for each accountability group will be calculated by summing the points and dividing by the number of students in the group.

Final rule as compared with last published rule: Nonsubstantive changes were made in section 100.18(b)(14).

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

Revised Regulatory Impact Statement

Since publication of a Notice of Proposed Rule Making in the State Register on September 10, 2014, a nonsubstantial grammatical revision was made in subparagraph (ii) of paragraph (14) of subdivision (b) of section 100.18 to add “a” to the phrase “or using a State alternate assessment [emphasis supplied].”

The above nonsubstantial revision does not require any changes to the previously published Regulatory Impact Statement.

Revised Regulatory Flexibility Analysis

Since publication of a Notice of Proposed Rule Making in the State Register on September 10, 2014, a nonsubstantial revision was made to the proposed regulation as set forth in the Statement Concerning the Regulatory Impact Statement submitted herewith.

The above nonsubstantial revision does not require any changes to the previously published Regulatory Flexibility Analysis.

Revised Rural Area Flexibility Analysis

Since publication of a Notice of Proposed Rule Making in the State Register on September 10, 2014, a nonsubstantial revision was made to the proposed regulation as set forth in the Statement Concerning the Regulatory Impact Statement submitted herewith.

The above nonsubstantial revision does not require any changes to the previously published Rural Area Flexibility Analysis.

Revised Job Impact Statement

Since publication of a Notice of Proposed Rule Making in the State Register on September 10, 2014, a nonsubstantial revision was made to the proposed regulation as set forth in the Statement Concerning the Regulatory Impact Statement submitted herewith.

The proposed amendment, as revised, relates to public school and

school district accountability and is necessary to align the Commissioner’s Regulations pertaining to high school performance levels and the computation of the high school performance index with the June 2014 Board of Regents approval of the cut points for the five performance levels on the new Common Core Regents Examinations in English language arts and mathematics. The revised proposed amendment 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 revised proposed amendment that it will have no impact, on jobs or employment opportunities, no further steps were needed to ascertain those facts and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2019, which is the 4th or 5th year after the year in which this rule is being adopted. This review period, justification for proposing same, and invitation for public comment thereon, were contained in a RFA, RAFA or JIS:

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

Assessment of Public Comment

The agency received no public comment.

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

Field Tests for State Assessments, Alternate Assessments and Regents Examinations

I.D. No. EDU-48-14-00008-P

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

Proposed Action: Amendment of sections 100.2, 100.3 and 100.4 of Title 8 NYCRR.

Statutory authority: Education Law, sections 101(not subdivided), 207(not subdivided), 208(not subdivided), 209(not subdivided), 211-a(1), (2), (3), 305(1), (2), 308(not subdivided) and 309(not subdivided)

Subject: Field tests for State assessments, alternate assessments and Regents examinations.

Purpose: To clarify that school districts must administer field tests in the schools for which they are assigned.

Text of proposed rule: 1. Subdivision (e) of section 100.2 of the Regulations of the Commissioner of Education is amended, effective February 25, 2015, as follows:

(e) Availability of Regents diploma and courses. Each public school district shall offer students attending its schools the opportunity to meet all the requirements for and receive a Regents high school diploma. Students shall have the opportunity to take Regents courses in grades 9 through 12 and, when appropriate, in grade eight. *Public schools, including charter schools, and nonpublic schools that administer State assessments, shall administer those related field tests as may be prescribed by the Commissioner for which the school has been assigned to those students enrolled in the applicable courses of study.*

2. Paragraph (2) of subdivision (b) of section 100.3 of the Regulations of the Commissioner of Education is amended, effective February 25, 2015, as follows:

(2) Required assessments. (i) Except as otherwise provided in subparagraphs (ii) and (iii) of this paragraph, at the specified grade level, all students shall take the following tests, provided that testing accommodations may be used as provided for in section 100.2(g) of this Part in accordance with department policy:

(a) beginning in January 1999, the English language arts elementary assessment and the mathematics elementary assessment shall be administered in grade four and, beginning in the 2005-2006 school year, the English language arts elementary assessments and the mathematics elementary assessment and the related field tests essential to their development as may be prescribed by the commissioner shall be administered in grades three and four; and

(b) beginning in January 2000, the elementary science assessment and the related field tests essential to its development as may be prescribed by the commissioner shall be administered in grade four.

(ii) ...

(iii) In accordance with their individualized education programs, students with disabilities instructed in the alternate academic achievement standards defined in section 100.1(t)(2)(iv) of this Part shall be adminis-

tered a State alternate assessment to measure their achievement, *and shall be administered the related field tests essential to the development of such alternate assessment as may be prescribed by the commissioner.*

3. Paragraph (2) of subdivision (b) of section 100.4 of the Regulations of the Commissioner of Education is amended, effective February 25, 2015, as follows:

(2) Required assessments. (i) Except as otherwise provided in subparagraphs (iv) and (v) of this paragraph, all students shall take the following assessments, provided that testing accommodations may be used as provided for in section 100.2(g) of this Part in accordance with department policy:

(ii) beginning with the 2005-06 school year, English language arts and mathematics assessments *and the related field tests essential to their development as may be prescribed by the commissioner* shall be administered in grades 5 and 6;

(iii) ...

(iv) ...

(v) in accordance with their individualized education programs, students with disabilities instructed in the alternate academic achievement standards defined in section 100.1(t)(2)(iv) of this Part shall be administered a State alternate assessment to measure their achievement, *and shall be administered the related field tests essential to the development of such alternate assessment as may be prescribed by the commissioner;*

(vi) ...

(vii) ...

4. Subdivision (e) of section 100.4 of the Regulations of the Commissioner of Education is amended, effective February 25, 2015, as follows:

(e) Required assessments in grades 7 and 8. Except as otherwise provided in subdivisions (f) and (g) of this section, and except for students who have been admitted to a higher grade without completing the grade at which the assessment is administered, all students shall take the following assessments, provided that testing accommodations may be used as provided for in section 100.2(g) of this Part in accordance with department policy.

(1) Beginning with school year 1998-99, the English language arts intermediate assessment shall be administered in grade 8. Beginning with the 2005-2006 school year, English language arts assessments *and the related field tests essential to their development as may be prescribed by the commissioner* shall be administered in grades 7 and 8.

(2) Beginning with the 1998-99 school year, the mathematics intermediate assessment shall be administered in grade 8. Beginning with the 2005-06 school year, mathematics assessments *and the related field tests essential to their development as may be prescribed by the commissioner* shall be administered in grades 7 and 8, provided that, for the 2013-2014 school year, students who attend grade 7 or 8 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.

(3) ...

(4) Beginning with the school year 2000-2001, the science intermediate assessment *and the related field tests essential to its development as may be prescribed by the commissioner* shall be administered in grade 8; provided that students who attend grade 8 may take a Regents examination in science in lieu of or in addition to the grade 8 science intermediate assessment, in accordance with this section and section 100.18(b)(4) of this Part, and provided further that the science intermediate assessment shall not be administered in grade 8 to students who take such assessment in grade 7 and are being considered for placement in an accelerated high school-level science course when they are in grade 8 pursuant to subdivision (d) of this section.

(5) Such other assessments as the commissioner determines appropriate.

(6) ...

5. Subdivision (g) of section 100.4 of the Regulations of the Commissioner of Education is amended, effective February 25, 2015, as follows:

(g) In accordance with their individualized education programs, students with disabilities instructed in the alternate academic achievement standards defined in section 100.1(t)(2)(iv) of this Part shall be administered a State alternate assessment to measure their achievement, *and shall be administered the related field tests essential to the development of such alternate assessment as may be prescribed by the commissioner;*

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

Data, views or arguments may be submitted to: Ken Wagner, Deputy Commissioner, Office of Curriculum, Assessment and Educational Technology, EBA Room 875, 89 Washington Ave., Albany, NY 12234, (518) 474-5915, email: NYSEDP12@nysed.gov

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

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

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

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

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

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

Education Law section 211-a(1), (2) and (3) authorize State assessments as part of an enhanced State accountability system.

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 the Commissioner with the general supervision of boards of education and their management and conduct of all departments of instruction.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment is consistent with the above statutory authority and is necessary to ensure that future New York State examinations administered to students in grades 3-12 continue to be fair and valid and of the highest quality and that there continues to be an equitable distribution of field test responsibilities across all school districts in this state.

3. NEEDS AND BENEFITS:

In accordance with federal requirements and sections 100.3, 100.4, and 100.5 of the Commissioner's regulations, the Department requires that all students in public and charter schools in Grades 3-8 must take all state assessments administered for their grade level and that all high school students must earn passing scores on Regents Exams in five subjects to satisfy the State testing requirements for graduation. State testing is a critical component of instruction in education programs. It provides an evaluation of student mastery of content and skills in various courses of study and helps shape future instruction. State assessments are required pursuant to the authority of the Board of Regents under Education Law § 208, 209 and 211-a, and at this time field testing is a necessary component of required State testing to assure the validity and reliability of those State assessments. State assessments, as noted above, are included as part of the program requirements for students in Grades 3-8 and high school under sections 100.3(b)(2), 100.4(b)(2) and (e), and 100.5(a) of the Commissioner's regulations.

Field tests and/or their precursor, pretests, are part of the State assessment program and have been administered in New York State schools since 1938. To determine which schools must administer field tests in a given school year, the Department uses a stratified random sampling methodology to ensure that each field test administration includes a sufficient representative sample and number of student participants and that the frequency of field test assignments is distributed across schools as fairly as possible.

In general, most schools have understood and appreciated their importance in the development of fair State assessments and have been cooperative in administering them when required through the assignment process described above. However, in the past few years we have experienced an increase in the number of school district administrators and board of education members questioning whether school participation in field tests is required.

The proposed amendment will make explicit the requirement that all schools administer field tests thereby ensuring that:

- responsibilities for administering field tests are distributed in a fair and equitable manner across all school districts in the State;
- New York State students continue to benefit from sustained high rates of school participation in their assigned field tests so that fair and valid future State tests can be developed; and
- the need does not arise to add to the field testing assignments for cooperating school districts in order to compensate for those districts that otherwise do not cooperate with their assigned field tests.

The Department's goal is to require the least amount of field testing necessary to build and administer high quality assessments that provide accurate information about student achievement. All field tests associated with New York State tests in Grades 3-8 and most field tests associated with Regents Exams keep to a minimum the amount of stand-alone field testing that is necessary for students and schools across the State by restricting their length to one brief, 40-minute (one class period) session. For the Grades 3-8 ELA and Math Tests, we are able to further reduce the amount of participation needed in stand-alone field tests by embedding some multiple-choice field test questions into the operational tests that are administered in the spring. Given current constraints it would not be possible to eliminate these brief field tests without making the operational test sessions too long or adding a fourth test session to each of the Grades 3-8 ELA and Math Tests.

The American Educational Research Association, American Psychological Association, and National Council on Measurement in Education states in Standards for Education and Psychological Testing that in field testing, the population "should be as representative as possible of the population(s) for which the test is intended" (Standard 3.8).

The participation of all schools is essential to ensure that all New York State operational assessments are fair and valid. Each question on every standardized test administered across this nation, from the SAT to the ACT to the MCAS (Massachusetts' Grade 3-8 assessments), must be field tested to ensure its validity. Budget constraints, coupled with New York State's practices of scoring the exams locally and making public many of the exam questions following the test administration, make it essential that most test questions be tried out in required stand-alone field tests.

4. COSTS:

- Costs to State government: None.
- Costs to local government: None.
- Costs to private regulated parties: None.
- Costs to regulating agency for implementation and continued administration of this rule: None.

The proposed amendment only affirms existing requirements for public and charter schools to participate in all aspects of the federally and state required assessments and will not impose any costs beyond those inherent under applicable State and federal law. NYS field tests are administered to students during the regular school day by the same teachers and paraprofessionals who ordinarily provide regular instruction to the student. There is no need for districts to hire any additional staff in order to comply with the amended regulations. All costs associated with the administration in schools of NYS field tests are borne by the State Education Department. Such costs include the printing of field test materials and shipping of materials to and from the schools. The proposed amendment does not impose any additional costs to the State Education Department beyond those inherent in overseeing the administration of field tests.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment makes explicit the existing requirement that schools administer to their students the field tests that are essential to the development of the State tests that schools administer in accordance with sections 100.2, 100.3 and 100.4 of the Commissioner's Regulations. The amendment will not impose any additional program, service, duty or responsibility upon any county, city, town, village, school district, fire district or other special district, beyond those inherent in applicable State and federal law.

Pursuant to the proposed amendment, school districts shall cooperate fully with administering to their students the field tests assigned to their schools as an essential component of the development of future State tests.

6. PAPERWORK:

The proposed amendment does not impose any additional recordkeeping, reporting or other paperwork requirements. The proposed amendment makes explicit the existing requirement that schools administer to their students the field tests that are essential to the development of the State tests that schools administer in accordance with sections 100.2, 100.3, and 100.4 of the Commissioner's Regulations. All grading and printing of field test materials associated with the administration in schools of NYS field tests are done by the State Education Department.

7. DUPLICATION:

The proposed amendment does not duplicate existing State or federal requirements. The proposed amendment merely makes explicit the existing requirement that schools administer to their students the field tests that are essential to the development of the State tests that schools administer

in accordance with sections 100.2, 100.3, and 100.4 of the Commissioner's Regulations, and is otherwise necessary to comply with federal requirements as discussed below under Federal Standards.

8. ALTERNATIVES:

New York State has been able to reduce somewhat the volume of stand-alone field testing that schools are required to administer by embedding some multiple-choice field test questions into the operational grades 3-8 ELA and math tests that are administered each spring. However, budget constraints, coupled with New York State's practices of scoring the exams locally and making public many or all of the exam questions following the test administration, make it essential that most test questions be tried out in required stand-alone field tests. Given current constraints it would not be possible to eliminate stand-alone field tests without making the operational test sessions too long or adding additional test sessions to each of the operation tests.

9. FEDERAL STANDARDS:

New York State is required to administer all of its elementary- and intermediate-level State assessments and many of its high school-level Regents Exams in order to comply with the federal Elementary and Secondary Education Act (ESEA). In addition, these State exams must meet rigorous technical standards on an ongoing basis to be approved by the United States Department of Education (USDE), through a process known as Peer Review. It would not be possible for New York State to continue to be in full compliance with the ESEA without the required participation of representative samples of New York State schools in the stand-alone field tests for which they have been selected.

10. COMPLIANCE SCHEDULE:

It is anticipated that regulated parties can achieve compliance with the proposed rule by its effective date. The proposed amendment merely makes explicit the existing requirement that schools administer to their students the field tests that are essential to the development of the State tests that schools administer in accordance with sections 100.2, 100.3, and 100.4 of the Commissioner's Regulations. The amendment will not impose any additional costs or compliance requirements on school districts beyond those inherent in the applicable federal and State laws.

Regulatory Flexibility Analysis

Small Businesses:

The proposed amendment merely serves to explicitly affirm the responsibility of schools to participate in the essential field test component of the New York State examination programs enumerated in sections 100.2, 100.3, and 100.4 of the Regulations of the Commissioner of Education. The proposed amendment does not impose any economic impact or 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 proposed amendment applies to each public school district and charter school in the State, and to those nonpublic schools that administer State examinations.

2. COMPLIANCE REQUIREMENTS:

The proposed amendment does not impose any additional compliance requirements beyond those inherent under applicable State and federal law. The proposed amendment makes explicit the existing requirement that schools administer to their students the field tests that are essential to the development of the State tests that schools administer in accordance with sections 100.2, 100.3, and 100.4 of the Commissioner's Regulations.

Pursuant to the proposed amendment, schools shall cooperate fully with administering to their students the field tests assigned to their schools as an essential component of the development of future State tests.

3. PROFESSIONAL SERVICES:

The proposed amendment makes explicit the existing requirement that schools administer to their students the field tests that are essential to the development of the State tests that schools administer in accordance with sections 100.2, 100.3, and 100.4 of the Commissioner's regulations. The proposed amendment imposes no additional professional services requirements on school districts beyond those inherent under applicable State and federal law.

4. COMPLIANCE COSTS:

The proposed amendment does not impose any costs beyond those inherent under applicable State and federal law. The proposed amendment merely serves to explicitly affirm the responsibility of schools to participate in the essential field test component of the New York State examination programs enumerated in sections 100.2, 100.3, and 100.4 of the Regulations of the Commissioner of Education.

NYS field tests are administered to students during the regular school day by the same teachers and paraprofessionals who ordinarily provide regular instruction to the student. There is no need for districts to hire any

additional staff in order to comply with the amended regulations. All costs associated with the administration in schools of NYS field tests are borne by the State Education Department. Such costs include the printing of field test materials and shipping of materials to and from the schools.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The proposed amendment does not impose any new technological requirements on school districts. Economic feasibility is discussed in the Compliance Costs section above.

6. MINIMIZING ADVERSE IMPACT:

The proposed amendment does not impose any additional compliance requirements or costs beyond those inherent under applicable State and federal laws.

The proposed amendment will make explicit the existing requirement that all schools administer the field tests and will ensure that:

- responsibilities for administering field tests are distributed in a fair and equitable manner across all school districts in the State;
- New York State students continue to benefit from sustained high rates of school participation in their assigned field tests so that fair and valid future State tests can be developed; and
- the need does not arise to add to the field testing assignments distributed to cooperating school districts in order to compensate for those districts that otherwise refuse to cooperate with their assigned field tests.

The Department's goal is to require the least amount of field testing necessary to build and administer high quality assessments that provide accurate information about student achievement. All field tests associated with New York State tests in grades 3-8 tests and most field tests associated with Regents Exams keep to a minimum the amount of stand-alone field testing that is necessary for students and schools across the State by restricting their length to one brief, 40-minute (one class period) session. For the grades 3-8 ELA and Math Tests we are able to further reduce the amount of participation needed in stand-alone field tests by embedding some multiple-choice field test questions into the operational tests that are administered in April/May. Given current constraints it would not be possible to eliminate these brief field tests without making the operational test sessions too long or adding a fourth test session to each of the grades 3-8 ELA and Math Tests.

The American Educational Research Association, American Psychological Association, and National Council on Measurement in Education states in Standards for Education and Psychological Testing that in field testing, the population "should be as representative as possible of the population(s) for which the test is intended" (Standard 3.8).

The participation of all schools is essential to ensure that all New York State operational assessments are fair and valid. Each question on every standardized test administered across this nation, from the SAT to the ACT to the MCAS (Massachusetts' Grade 3-8 assessments), must be field tested to ensure its validity. Budget constraints, coupled with New York State's practices of scoring the exams locally and making public many of the exam questions following the test administration, make it essential that most test questions be tried out in required stand-alone field tests.

7. LOCAL GOVERNMENT PARTICIPATION:

Copies of the proposed amendment 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 have also been provided for review and comment to the chief school officers of the five big city school districts and to charter schools. Copies were also provided for review and comment to the Commissioner's Advisory Panel of Nonpublic 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 imposes no additional compliance requirements or costs on regulated parties, but merely makes explicit the existing requirement that schools administer to their students the field tests that are essential to the development of the State tests that schools administer in accordance with sections 100.2, 100.3, and 100.4 of the Commissioner's regulations. Accordingly, there is no need for a shorter review period.

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

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed amendment applies to each public school district and charter school in the State and to those nonpublic schools that administer State examinations, including those schools located in the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square mile or less.

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

The proposed amendment does not impose any additional compliance requirements beyond those inherent under applicable State and federal law. The proposed amendment makes explicit the existing requirement that schools administer to their students the field tests that are essential to the development of the State tests that schools administer in accordance with sections 100.2, 100.3, and 100.4 of the Commissioner's Regulations.

Pursuant to the proposed amendment, schools shall cooperate fully with administering to their students the field tests assigned to their schools as an essential component of the development of future State tests.

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

3. COMPLIANCE COSTS:

The proposed amendment does not impose any costs beyond those inherent under applicable State and federal law. The proposed amendment merely serves to explicitly affirm the responsibility of schools to participate in the essential field test component of the New York State examination programs enumerated in sections 100.2, 100.3, and 100.4 of the Commissioner's Regulations.

NYS field tests are administered to students during the regular school day by the same teachers and paraprofessionals who ordinarily provide regular instruction to the student. There is no need for districts to hire any additional staff in order to comply with the amended regulations. All costs associated with the administration in schools of NYS field tests are borne by the State Education Department. Such costs include the printing of field test materials and shipping of materials to and from the schools.

4. MINIMIZING ADVERSE IMPACT:

The proposed amendment does not impose any additional compliance requirements or costs beyond those inherent under applicable State and federal laws. Because such laws upon which the proposed amendment is based must uniformly apply to all affected schools throughout the State, it is not possible to establish differing compliance or reporting requirements or timetables or to exempt schools in rural areas from coverage by the proposed amendment.

The proposed amendment will make explicit the existing requirement that all schools administer the field tests and will ensure that:

- responsibilities for administering field tests are distributed in a fair and equitable manner across all school districts in the State;
- New York State students continue to benefit from sustained high rates of school participation in their assigned field tests so that fair and valid future State tests can be developed; and
- the need does not arise to add to the field testing assignments distributed to cooperating school districts in order to compensate for those districts that otherwise refuse to cooperate with their assigned field tests.

The Department's goal is to require the least amount of field testing necessary to build and administer high quality assessments that provide accurate information about student achievement. All field tests associated with New York State tests in grades 3-8 tests and most field tests associated with Regents Exams keep to a minimum the amount of stand-alone field testing that is necessary for students and schools across the State by restricting their length to one brief, 40-minute (one class period) session. For the Grades 3-8 ELA and Math Tests we are able to further reduce the amount of participation needed in stand-alone field tests by embedding some multiple-choice field test questions into the operational tests that are administered in April/May. Given current constraints it would not be possible to eliminate these brief field tests without making the operational test sessions too long or adding a fourth test session to each of the Grades 3-8 ELA and Math Tests.

The American Educational Research Association, American Psychological Association, and National Council on Measurement in Education states in Standards for Education and Psychological Testing that in field testing, the population "should be as representative as possible of the population(s) for which the test is intended" (Standard 3.8).

The participation of all schools is essential to ensure that all New York State operational assessments are fair and valid. Each question on every standardized test administered across this nation, from the SAT to the ACT to the MCAS (Massachusetts' Grade 3-8 assessments), must be field tested to ensure its validity. Budget constraints, coupled with New York State's practices of scoring the exams locally and making public many of the exam questions following the test administration, make it essential that most test questions be tried out in required stand-alone field tests.

5. RURAL AREA PARTICIPATION:

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

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 imposes no compliance requirements or costs on regulated parties, but merely makes explicit the existing requirement that schools administer to their students the field tests that are essential to the development of the State tests that schools administer in accordance with sections 100.2, 100.3, and 100.4 of the Commissioner's Regulations. 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 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 amendment only serves to explicitly affirm the responsibility of schools to participate in the essential field test component of the New York State examination programs enumerated in sections 100.2, 100.3, and 100.4 of the Regulations of the Commissioner of Education. The proposed amendment will not have a substantial adverse impact on job or employment opportunities. Because it is evident from the nature and purpose of the proposed amendment that it will have no impact on jobs or employment opportunities, no further measures were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Professional Development Requirements for Teachers, Level III Teaching Assistants and Administrators

I.D. No. EDU-48-14-00009-P

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

Proposed Action: Amendment of sections 80-3.6, 100.2 and 154-2.3 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207(not subdivided), 215(not subdivided), 305(1), (2), 2117(1), 3001(2), 3003(1), 3004(1), 3006(1)(b) and 3009(1)

Subject: Professional development requirements for teachers, level III teaching assistants and administrators.

Purpose: To establish professional development requirements for teachers, holders of a level III teaching assistant certificate, and administrators, in language acquisition that specifically addresses the needs of students who are English Language Learners (ELLs) and integrating language and content instruction for such ELL students.

Text of proposed rule: 1. Section 80-3.6 of the Regulations of the Commissioner of Education is amended, effective February 25, 2015, to read as follows:

- (a) ...
- (b) Mandatory requirement.
 - (1) Requirements.
 - (i) Requirement for holders of professional certificates in the classroom teaching service. [The] *Except as otherwise provided in subparagraph (v) of this subdivision, the holder of a professional certificate in the classroom teaching service shall be required to successfully complete 175 clock hours of acceptable professional development during the professional development period; provided that for any professional development period beginning on July 1, 2015, a minimum of 15 percent of the required professional development clock hours shall be dedicated to language acquisition addressing the needs of English Language Learners, including a focus on best practices for co-teaching strategies, and integrating language and content instruction for such English Language Learners.*
 - (ii) Requirements for holders of level III teaching assistant certificates. The holder of a level III teaching assistant certificate shall be required to complete successfully 75 clock hours of acceptable professional development during the professional development period; *provided that for any professional development period beginning on July 1, 2015, a minimum of 15 percent of the required professional development clock hours shall be dedicated to language acquisition addressing the needs of English Language Learners and integrating language and content instruction for such English Language Learners.*
 - (iii) Requirements for holders of professional certificates in the educational leadership service. The holder of a professional certificate in the educational leadership service shall be required to complete success-

fully 175 clock hours of acceptable professional development during the professional development period; *provided that for any professional development period beginning on July 1, 2015, a minimum of 15 percent of the required professional development clock hours shall be dedicated to language acquisition addressing the needs of English Language Learners, including a focus on best practices for co-teaching strategies, and integrating language and content instruction for such English Language Learners.*

(iv) (a) [An] *Except as otherwise provided in subparagraph (v) of this subdivision, an individual holding more than one professional certificate in the classroom teaching service and/or educational leadership service shall be required to complete 175 clock hours of acceptable professional development during the five-year professional development period; provided that for any professional development period beginning on July 1, 2015, a minimum of 15 percent of the required professional development clock hours shall be dedicated to language acquisition addressing the needs of English Language Learners, including a focus on best practices for co-teaching strategies, and integrating language and content instruction for such English Language Learners.*

(b) [An] *Except as otherwise provided in subparagraph (v) of this subdivision, an individual holding a level III teaching assistant certificate and one or more professional certificates in the classroom teaching service and/or educational leadership service shall be required to complete 175 clock hours of professional development during the five-year professional development period, unless the individual does not hold a professional certificate during the entire five-year professional development period, in which case the individual shall be required to complete 75 clock hours of professional development during the five-year professional development period; provided that for any professional development period beginning on July 1, 2015, a minimum of 15 percent of the required professional development clock hours shall be dedicated to language acquisition addressing the needs of English Language Learners, including a focus on best practices for co-teaching strategies, and integrating language and content instruction for such English Language Learners.*

(v) *For any professional development period beginning on July 1, 2015, a holder of a professional certificate in the certificate title of English to Speakers of other Languages (all grades) and a holder of a bilingual extension under section 80-4.3 of this Title, shall be required to complete a minimum of 50 percent of the required professional development clock hours in language acquisition aligned with the core content area of instruction taught, including a focus on best practices for co-teaching strategies, and integrating language and content instruction for English Language Learners.*

(2) ...
(3) ...
(4) Notwithstanding the requirements of paragraph (1) of this subdivision, a holder of a certificate in the classroom teaching service who achieves certification from the National Board for Professional Teaching Standards shall be deemed to have met the professional development requirement, prescribed in this subdivision, for the five-year professional development period in which such national board certification is achieved; *provided that for any professional development period beginning on July 1, 2015:*

(i) *a holder of a professional certificate in the certificate title of English to Speakers of other Languages (all grades) and a holder of a bilingual extension under section 80-4.3 of this Title, shall be required to complete a minimum of 50 percent of the required professional development clock hours in language acquisition aligned with the core content area of instruction taught, including a focus on best practices for co-teaching strategies, and integrating language and content instruction for English Language Learners; and*

(ii) *for all other holders of professional certificates in the classroom teaching service, a minimum of 15 percent of the required professional development clock hours shall be dedicated to language acquisition addressing the needs of English Language Learners, including a focus on best practices for co-teaching strategies, and integrating language and content instruction for such English Language Learners; and*

(iii) *for an individual holding a level III teaching assistant certificate, a minimum of 15 percent of the required professional development clock hours shall be dedicated to language acquisition addressing the needs of English Language Learners and integrating language and content instruction for such English Language Learners.*

(c) ...
(d) Acceptable professional development.

(1) ...
(2) For individuals not regularly employed by an applicable school in New York in a professional development year, acceptable professional development for such year shall be study in the content area of any certificate subject to the professional development requirement held by the indi-

vidual or in pedagogy related to such certificate *and any required study in language acquisition addressing the needs of English Language Learners as described in subdivision (b) of this section:*

- (i) ...
- (ii) ...

(e) ...

(f) Recordkeeping requirements. In addition to the recordkeeping requirement for an applicable school in New York, as prescribed in section 100.2(dd) of this Title, the certificate holder shall maintain a record of completed professional development, which includes: the title of the program, the total number of hours completed, the number of hours completed in language acquisition addressing the need of English Language Learners, the sponsor's name and any identifying number, attendance verification, and the date and location of the program. Such records shall be retained for at least seven years from the date of completion of the program and shall be available for review by the department in administering the requirements of this section.

(g) ...

(h) ...

(i) ...

2. Subparagraph (iii) of paragraph (1) of subdivision (dd) of section 100.2 of the Regulations of the Commissioner of Education is amended, effective February 25, 2015, to read as follows:

(iii) A school district or BOCES shall include as part of its professional development plan a description of the professional development activities provided to all professional staff and supplementary school personnel who work with students with disabilities *and English Language Learners* to assure that they have the skills and knowledge necessary to meet the needs of students with disabilities *and English Language Learners, respectively.*

3. A new subparagraph (v) is added to paragraph (2) of subdivision (dd) of section 100.2 of the Regulations of the Commissioner of Education, effective February 25, 2015, to read as follows:

(v) *For plans covering the time period July 1, 2015 and thereafter, each school district or BOCES shall describe in its plan how it will provide:*

(a) *a holder of a professional certificate in the certificate title of English to Speakers of other Languages (all grades) and a holder of a bilingual extension under section 80-4.3 of this Title with a minimum of 50 percent of the required professional development clock hours for such certificate title in language acquisition aligned with the core content area of instruction taught, including a focus on best practices for co-teaching strategies, and integrating language and content instruction for English Language Learners; and*

(b) *all other holders of professional certificates in the classroom teaching service, a minimum of 15 percent of the required professional development clock hours in language acquisition addressing the needs of English Language Learners, including a focus on best practices for co-teaching strategies, and integrating language and content instruction for such English Language Learners; and*

(c) *a holder of a level III teaching assistant certificate, a minimum of 15 percent of the required professional development clock hours in language acquisition addressing the needs of English Language Learners and integrating language and content instruction for such English Language Learners; and*

(d) *a school district or board of cooperative educational services may seek permission on an annual basis from the commissioner for an exemption from the professional development requirements in this subparagraph where there are fewer than thirty (30) English Language Learner students enrolled or English language learners make up less than five percent (5%) of the district's or board of cooperative educational services' total student population as of such date as established by the Commissioner. The process for such exemption can be found in section 154-2.3(k) of this Title.*

4. Subdivision (k) of section 154-2.3 of the Regulations of the Commissioner of Education is amended, effective February 25, 2015, as follows:

(k) Professional Development. Each school district and board of cooperative educational services shall provide professional development to all teachers, level III teaching assistants and administrators that specifically addresses the needs of English Language Learners.

(1) Consistent with section 80-3.6 and section 100.2(dd) of this Title, a minimum of fifteen percent (15%) of the required professional development clock hours for all teachers and administrators [prescribed by Part 80 of this Title] shall be dedicated to language acquisition, including a focus on best practices for co-teaching strategies and integrating language and content instruction for English Language Learners. *For holders of a level III teaching assistant certificate, a minimum of fifteen percent (15%) of the required professional development clock hours shall be dedicated to language acquisition and content instruction for English Language Learners.* For all Bilingual and English to Speakers of Other Languages

(ESOL) certified teachers, a minimum of fifty (50%) of the required professional development clock hours prescribed by Part 80 of this Title shall be dedicated to language acquisition in alignment with core content area instruction, including a focus on best practices for co-teaching strategies and integrating language and content instruction for English Language Learners. All school districts must align and integrate such professional development for Bilingual and English to Speakers of Other Languages (ESOL) certified teachers with the professional development plan for core content area for all teachers in the district.

(2) A school district or board of cooperative educational services may seek permission on an annual basis from the commissioner for an exemption from the professional development requirements of this subdivision where there are fewer than thirty (30) English Language Learner students enrolled or English language learners make up less than five percent (5%) of the district's or board of cooperative educational services' total student population as of such date as established by the Commissioner. A district or board of cooperative educational services seeking permission for such exemption shall submit to the commissioner for approval an application, in such format and according to such timeline as may be prescribed by the commissioner, that includes:

(i) evidence that, as part of the required professional development clock hours prescribed by Part 80 of this Title, all teachers, level III teaching assistants and administrators receive training, sufficient to meet the needs of the district's or board of cooperative educational services' English Language Learner students, in language acquisition, including a focus on best practices for co-teaching strategies and integrating language and content instruction for English Language Learners; and

(ii) evidence that, as part of the required professional development clock hours prescribed by Part 80 of this Title, all Bilingual and English to Speakers of Other Languages (ESOL) certified teachers receive training, sufficient to meet the needs of the district's English Language Learner students, in language acquisition in alignment with core content area instruction, including a focus on best practices for co-teaching strategies and integrating language and content instruction for English Language Learners.

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

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

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

Regulatory Impact Statement

STATUTORY AUTHORITY:

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

Education Law section 215 authorizes the Board of Regents and the Commissioner of Education to require school districts to prepare and submit reports containing such information as they may prescribe.

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

Education Law section 2117(1) empowers the Board of Regents and the Commissioner of Education to require school districts to submit any information they deem appropriate.

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

Subdivision (1) of section 3003 of the Education Law authorizes the Commissioner of Education to certify school superintendents for service in the State's public schools.

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

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

Subdivision (1) of section 3009 of the Education Law provides that no part of the school moneys apportioned to a district shall be applied to the payment of the salary of an unqualified teacher, nor shall his salary or part

thereof, be collected by a district tax except as provided in the Education Law.

LEGISLATIVE OBJECTIVES:

The proposed rule is consistent with the above statutory authority, and is necessary to implement Regents policy on standards for instruction of English Language Learners (ELL), to ensure compliance with the Elementary and Secondary Education Act (ESEA), Title IV of the Civil Rights Act of 1964, and the Equal Educational Opportunities Act of 1974 (EEOA).

NEEDS AND BENEFITS:

Over the past 10 years, New York State ELL student enrollment has increased by 20%. According to the U.S. Department of Education, ELL student enrollment has increased by 18% nationally. Currently in New York State, over 230,000 ELLs make up 8.9% of the total public student population. Students in New York State speak over 140 languages, with 61.5% of ELL students having Spanish as their home language. In addition, 41.2% of ELL students were born outside of the United States.

In the landmark 1974 decision, *Lau v. Nichols*, the United States Supreme Court established the right of ELL students to have "a meaningful opportunity to participate in the educational program." That same year, an agreement between the New York City Board of Education and ASPIRA of New York (called the ASPIRA Consent Decree) assured that ELL students would be provided Bilingual Education. As such, ELL students must be provided with equal access to all school programs and services offered to non-ELL students, including access to programs required for graduation. Education Law § 3204 and Part 154 of the Commissioner's Regulations contain standards for educational services provided to ELL students in New York State. With this framework in place, the Department began to engage stakeholders to determine how the programs and services required in Part 154 could be enhanced to better meet the needs of the State's multilingual population.

The Department's process began in early 2012 with focus group discussions representing over 100 key stakeholders from around the state. Those discussions informed the development of a statewide survey of policy options that was released in June 2012, and resulted in over 1,600 responses from teachers, principals, superintendents, advocates and others interested in the education of ELL students. The Department then used the survey results and focus group discussions to develop proposed policy changes and enhancements. Proposed changes were then shared with stakeholders for feedback and were also shared with the U.S. Department of Justice Office of Civil Rights, U.S. Department of Education staff responsible for Title I and Title III, and members of the Board of Regents for review and feedback.

At its September 2014 meeting, the Board of Regents adopted a number of changes to Part 154 of the Commissioner's Regulations, including the addition of a new subdivision (k) to 154-2.3 to require each school district to provide professional development to all teachers and administrators that specifically addresses the needs of ELLs. Specifically, the regulation requires that a minimum of fifteen percent (15%) of the required professional development clock hours for all teachers prescribed by Part 80 of this Title be dedicated to language acquisition, including a focus on best practices for co-teaching strategies and integrating language and content instruction for English Language Learners. For all Bilingual and English to Speakers of Other Languages (ESOL) teachers, a minimum of fifty percent (50%) of the required professional development clock hours prescribed by Part 80 of this Title shall be dedicated to language acquisition in alignment with core content area instruction, including a focus on best practices for co-teaching strategies and integrating language and content instruction for English Language Learners. It further requires all school districts to align and integrate such professional development for Bilingual and English to Speakers of Other Languages (ESOL) certified teachers with the professional development plan for core content area for all teachers in the district.

The proposed rule amends sections 80-3.6 and 100.2(dd) of the Commissioner's Regulations to implement the Part 154 changes. The proposed rule also amends section 154-2.3(k) to conform to sections 80-3.6 and 100.2(dd), as amended, and to clarify that administrators and holders of a level III teaching assistant certificate also be required to complete a minimum of 15 percent of the required professional development clock hours in language acquisition addressing the needs of ELLs and integrating language and content instruction for ELLs; consistent with its requirements for teachers.

COSTS:

(a) Costs to State government:

The rule is necessary to ensure compliance with State and federal law, and does not impose any costs on State government, including the State Education Department.

(b) Costs to local government:

For most areas, the rule does not impose any new costs not currently required by existing State and federal requirements.

Currently, State regulations require school districts and BOCES to provide teachers and administrators with 175 hours, and Level III teaching assistants with 75 hours of professional development. The proposed amendment requires that a portion of those hours be dedicated to language acquisition addressing the needs of ELLs. Therefore, the proposed amendment should not impose any additional costs on districts and BOCES beyond those already imposed by regulation. However, to the extent that there are any additional costs, SED cannot estimate actual costs for each school district because they will vary widely from district to district, depending on the size of the school district, the number and types of professional development programs regarding the needs of ELLs that are currently provided, teaching staff levels, collective bargaining provisions, and how districts decide to reallocate existing resources to meet the above provisions.

Moreover, most districts are or should be serving their ELLs currently, but SED does not have data on the amount of funds currently dedicated to these activities in each district.

(c) Cost to private regulated parties: None. The rule applies to school districts.

(d) Costs to regulating agency for implementation and continued administration of this rule: See above costs to State government.

LOCAL GOVERNMENT MANDATES:

The proposed rule is necessary to implement Regents policy on standards for instruction of English Language Learners (ELL), to ensure compliance with Education Law sections 3204 and 4403, and Title I and III of the Elementary and Secondary Education Act (ESEA), Title IV of the Civil Rights Act of 1964 and Equal Educational Opportunities Act of 1974 (EEOA). The majority of the requirements in the proposed rule do not impose any program, service, duty or responsibility on school districts and BOCES beyond those imposed by the applicable State and federal statutes.

Districts shall provide professional development to all teachers and administrators that specifically addresses the needs of ELL students, in accordance with the proposed rule.

PAPERWORK:

In addition to the recordkeeping requirement prescribed in section 100.2(dd) of the Commissioner's regulations, the certificate holder shall maintain a record of his/her completed professional development, including the title of the program, the total number of hours completed and the number of hours completed in language acquisition addressing the needs of ELLs. School districts and BOCES are also required to include as part of their professional development plan a description of the professional development activities provided to all professional staff and supplementary school personnel who work with students with disabilities and ELLs to assure that they have the skills and knowledge necessary to meet the needs of students with disabilities and ELL's to assure that they have the skills and knowledge necessary to meet these students' needs.

DUPLICATION:

The rule does not duplicate existing State or Federal requirements, and is necessary to implement Regents policy on instruction standards for English Language Learners (ELL) to ensure compliance with Education Law sections 3204 and 4403, and Title I and III of the Elementary and Secondary Education Act (ESEA), Title IV of the Civil Rights Act of 1964, Equal Educational Opportunities Act of 1974 (EEOA).

ALTERNATIVES:

There were no significant alternatives and none were considered.

FEDERAL STANDARDS:

The rule is necessary to ensure compliance with Education Law sections 3204 and 4403, Title I and III of the ESEA, Title IV of the Civil Rights Act of 1964, and the EEOA. These laws require states and school districts to provide ELL students with appropriate services to overcome language barriers. In addition, federal jurisprudence in landmark cases such as *Castañeda v. Pickard* established standards to ensure compliance with EEOA. For example, the *Castañeda* standard mandates that programs for language-minority students must be (1) based on a sound educational theory, (2) implemented effectively with sufficient resources and personnel, and (3) evaluated to determine whether they are effective in helping students overcome language barriers.

In addition, recent U.S. Department of Justice findings in school districts throughout the country establish high standards to ensure compliance with EEOA such as: U.S. District Court Consent Decree 2012, Denver Public Schools, Settlement Agreement 2013 between the United States of America and the Prince William County School District, Settlement Agreement 2012 between The United States and The Mercer County School District, Settlement Agreement 2012 between the United States and the Boston Public Schools.

COMPLIANCE SCHEDULE:

The rule will become effective on its stated effective date. Districts and BOCES have been given time to plan since full implementation will come into effect for the professional development period beginning July 1, 2015.

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

The purpose of the proposed rule is to establish professional development requirements for teachers, holders of a level III teaching assistant certificate, and administrators, in language acquisition that specifically addresses the needs of students who are English Language Learners (ELLs). The proposed rule does not impose any reporting, recordkeeping or other compliance requirements, and will not have an adverse economic impact, on small business. Because it is evident from the nature of the rule that it does not affect small businesses, no further steps were needed to ascertain that fact and one were taken. Accordingly, a regulatory flexibility analysis for small businesses is not required and one has not been prepared.

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

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

2. COMPLIANCE REQUIREMENTS:

At its September 2014 meeting, the Board of Regents adopted a number of changes to Part 154 of the Commissioner's Regulations, including the addition of a new subdivision (k) to 154-2.3 to require each school district to provide professional development to all teachers and administrators that specifically addresses the needs of ELLs. Specifically, the regulation requires that a minimum of fifteen percent (15%) of the required professional development clock hours for all teachers prescribed by Part 80 be dedicated to language acquisition, including a focus on best practices for co-teaching strategies and integrating language and content instruction for English Language Learners. For all Bilingual and English to Speakers of Other Languages (ESOL) teachers, a minimum of fifty percent (50%) of the required professional development clock hours prescribed by Part 80 of this Title shall be dedicated to language acquisition in alignment with core content area instruction, including a focus on best practices for co-teaching strategies and integrating language and content instruction for English Language Learners. It further requires all school districts to align and integrate such professional development for Bilingual and English to Speakers of Other Languages (ESOL) certified teachers with the professional development plan for core content area for all teachers in the district.

The proposed rule amends sections 80-3.6 and 100.2(dd) of the Commissioner's Regulations to implement the Part 154 changes. The proposed rule also amends section 154-2.3(k) to conform to sections 80-3.6 and 100.2(dd), as amended, and to clarify that administrators and holders of a level III teaching assistant certificate also be required to complete a minimum of 15 percent of the required professional development clock hours in language acquisition addressing the needs of ELLs and integrating language and content instruction for ELLs; consistent with its requirements for teachers.

3. PROFESSIONAL SERVICES:

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

4. COMPLIANCE COSTS:

For most areas, the rule does not impose any new costs not current required by existing State and federal requirements.

Currently, State regulations require school districts and BOCES to provide teachers and administrators with 175 hours, and Level III teaching assistants with 75 hours of professional development. The proposed amendment requires that a portion of those hours be dedicated to language acquisition addressing the needs of ELLs. Therefore, the proposed amendment should not impose any additional costs on districts and BOCES beyond those already imposed by regulation. However, to the extent that there are any additional costs, SED cannot estimate actual costs for each school district because they will vary widely from district to district, depending on the size of the school district, the number and types of professional development programs regarding the needs of ELLs that are currently provided, teaching staff levels, collective bargaining provisions, and how districts decide to reallocate existing resources to meet the above provisions.

Moreover, most districts are or should be serving their ELLs currently, but SED does not have data on the amount of funds currently dedicated to these activities in each district.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The proposed rule does not impose any additional technological requirements on school districts or BOCES. Economic feasibility is addressed above under Compliance Costs.

6. MINIMIZING ADVERSE IMPACT:

The proposed rule is necessary to conform the Commissioner's Regulations to, and otherwise implement, section 154-2.3(k) of the Commissioner's Regulations by establishing professional development requirements for teachers, holders of a level III teaching assistant certificate, and administrators, in language acquisition that specifically addresses the needs of students who are English Language Learners (ELLs). Since the Regents policy applies equally to all school districts and BOCES through-

out the State, it was not possible to establish different compliance and reporting requirements.

7. LOCAL GOVERNMENT PARTICIPATION:

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

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

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

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

At its September 2014 meeting, the Board of Regents adopted a number of changes to Part 154 of the Commissioner's Regulations, including the addition of a new subdivision (k) to 154-2.3 to require each school district to provide professional development to all teachers and administrators that specifically addresses the needs of ELLs. Specifically, the regulation requires that a minimum of fifteen percent (15%) of the required professional development clock hours for all teachers prescribed by Part 80 be dedicated to language acquisition, including a focus on best practices for co-teaching strategies and integrating language and content instruction for English Language Learners. For all Bilingual and English to Speakers of Other Languages (ESOL) teachers, a minimum of fifty percent (50%) of the required professional development clock hours prescribed by Part 80 of this Title shall be dedicated to language acquisition in alignment with core content area instruction, including a focus on best practices for co-teaching strategies and integrating language and content instruction for English Language Learners. It further requires all school districts to align and integrate such professional development for Bilingual and English to Speakers of Other Languages (ESOL) certified teachers with the professional development plan for core content area for all teachers in the district.

The proposed rule amends sections 80-3.6 and 100.2(dd) of the Commissioner's Regulations to implement the Part 154 changes. The proposed rule also amends section 154-2.3(k) to conform to sections 80-3.6 and 100.2(dd), as amended, and to clarify that administrators and holders of a level III teaching assistant certificate also be required to complete a minimum of 15 percent of the required professional development clock hours in language acquisition addressing the needs of ELLs and integrating language and content instruction for ELLs; consistent with its requirements for teachers.

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

3. COMPLIANCE COSTS:

For most areas, the rule does not impose any new costs not current required by existing State and federal requirements.

Currently, State regulations require school districts and BOCES to provide teachers and administrators with 175 hours, and Level III teaching assistants with 75 hours of professional development. The proposed amendment requires that a portion of those hours be dedicated to language acquisition addressing the needs of ELLs. Therefore, the proposed amendment should not impose any additional costs on districts and BOCES beyond those already imposed by regulation. However, to the extent that there are any additional costs, SED cannot estimate actual costs for each school district because they will vary widely from district to district, depending on the size of the school district, the number and types of professional development programs regarding the needs of ELLs that are currently provided, teaching staff levels, collective bargaining provisions, and how districts decide to reallocate existing resources to meet the above provisions.

Moreover, most districts are or should be serving their ELLs currently, but SED does not have data on the amount of funds currently dedicated to these activities in each district.

4. MINIMIZING ADVERSE IMPACT:

The proposed rule is necessary to conform the Commissioner's Regulations to, and otherwise implement, section 154-2.3(k) of the Commissioner's Regulations by establishing professional development requirements for teachers, holders of a level III teaching assistant certificate, and administrators, in language acquisition that specifically addresses the needs of students who are English Language Learners (ELLs). Since the Regents policy applies equally to all school districts and BOCES throughout the State, it was not possible to establish different compliance and reporting requirements.

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 the proposed amendment 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 rule is necessary to implement long-range Regents policy relating to bilingual education and English as a New Language programs for students who are English Language Learners. 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 purpose of the proposed amendment is to establish professional development requirements for teachers, holders of a level III teaching assistant certificate, and administrators, in language acquisition that specifically addresses the needs of students who are English Language Learners (ELLs). The proposed amendment does not impose any reporting, recordkeeping or other compliance requirements, and will not have an adverse economic impact, on small businesses or local governments. Because it is evident from the nature of the proposed amendment that it will have no impact on the number of jobs or employment opportunities in New York State, no further steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

Department of Environmental Conservation

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Water Quality Standards for Class I and Class SD Waters in New York City and Suffolk County

I.D. No. ENV-48-14-00005-P

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

Proposed Action: Amendment of Parts 701 and 703 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, arts. 3, 15 and 17

Subject: Water quality standards for Class I and Class SD waters in New York City and Suffolk County.

Purpose: To amend New York’s water quality standards for Class I and Class SD waters to meet the “swimmable” goal of the Clean Water Act.

Public hearing(s) will be held at: 12:00 p.m., January 27, 2015 at Environmental Protection Agency Region 2 office, 290 Broadway, Rm. 27A, New York, NY 10007.*

*In addition, a Public Information Meeting where the Department will present an overview of the proposed rulemaking will be held. No public comment will be accepted at this Information Meeting on January 6, 2014 from 11:00 a.m. – 2:00 p.m. at U.S. Environmental Protection Agency Region 2 office, 290 Broadway, Rm. 27A, New York, NY 10007.

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

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

Text of proposed rule: Section 701.13 is amended to read as follows:

§ 701.13 Class I saline surface waters.

The best usages of Class I waters are secondary contact recreation and fishing. These waters shall be suitable for fish, shellfish, and wildlife propagation and survival. *In addition, the water quality shall be suitable for primary contact recreation, although other factors may limit the use for this purpose.*

Section 701.14 is amended to read as follows:

§ 701.14 Class SD saline surface waters.

The best usage of Class SD waters is fishing. These waters shall be suitable for fish, shellfish, and wildlife survival. *In addition, the water quality shall be suitable for primary and secondary contact recreation, although other factors may limit the use for these purposes.* This classification may be given to those waters that, because of natural or man-made conditions, cannot meet the requirements for [primary and secondary contact recreation and] fish propagation.

6 NYCRR Part 703, entitled “Surface Water and Groundwater Quality Standards and Groundwater Effluent Limitations,” is amended as follows:

Subdivisions (a) and (b) of section 703.4 are amended to read as follows:

(a) Total coliforms (number per 100 ml).

| Classes | Standard |
|---------------------------|--|
| AA | The monthly median value and more than 20 percent of the samples, from a minimum of five examinations, shall not exceed 50 and 240, respectively. |
| A, B, C, D, SB, SC, I, SD | The monthly median value and more than 20 percent of the samples, from a minimum of five examinations, shall not exceed 2,400 and 5,000, respectively. |
| SA | The median most probable number (MPN) value in any series of representative samples shall not be in excess of 70. |
| [I] | [The monthly geometric mean, from a minimum of five examinations, shall not exceed 10,000.] |
| A-Special | The geometric mean, of not less than five samples, taken over not more than a 30-day period shall not exceed 1,000. |
| GA | The maximum allowable limit is 50. |

(b) Fecal coliforms (number per 100 ml).

| Classes | Standard |
|---------------------------|---|
| A, B, C, D, SB, SC, I, SD | The monthly geometric mean, from a minimum of five examinations, shall not exceed 200. |
| [I] | [The monthly geometric mean, from a minimum of five examinations, shall not exceed 2,000.] |
| A-Special | The geometric mean, of not less than five samples, taken over not more than a 30-day period shall not exceed 200. |

Text of proposed rule and any required statements and analyses may be obtained from: Robert Simson, New York State Department of Environmental Conservation, Division of Water, 625 Broadway, Albany, NY 12233-3500, (518) 402-8233, email: Comments.NYCRR701and703@dec.ny.gov

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

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

Additional matter required by statute: The Department has completed a Negative Declaration for this rulemaking to comply with the State Environmental Quality Review Act.

Summary of Regulatory Impact Statement

Note: A copy of the full Regulatory Impact Statement can be viewed at: <http://www.dec.ny.gov/regulations/proregulations.html>

The waters of New York State (both freshwater and saline) are grouped into classes with uses designated for each class, along with standards to protect their uses. There are five classes of saline waters defined in Title 6 of the New York Codes, Rules, and Regulations (NYCRR) Part 701 (Part 701): SA, SB, SC, I, and SD. The purpose of this rulemaking is to amend Part 701 to require that the quality of Class I and Class SD waters be suitable for “primary contact recreation,” and to adopt corresponding total and fecal coliform standards in 6 NYCRR Part 703 (Part 703). Primary contact recreation refers to activities which involve direct, intentional human contact with water, such as swimming and water skiing. This rulemaking is needed to ensure that Class I and Class SD waters meet the “swimmable” goal of the federal Clean Water Act. The proposed revisions would impact limited waters in the State; the majority of Class I and Class SD waters are located in New York City, with a few waters located in Suffolk County.

1) Statutory Authority

The statutory authority for adoption of water quality regulations and standards is found in the Environmental Conservation Law (ECL) Articles 3, 15 and 17. ECL Article 3 provides that the Commissioner of the Department of Environmental Conservation (Department) may adopt regulations

to carry out the purposes of the ECL in general. ECL Articles 15 and 17 direct the Department to classify the waters of the state in accordance with best usage in the interest of the public and “maintain reasonable standards of purity of the waters of the state consistent with public health and public enjoyment thereof. . . .” Specifically, Section 17-0301 provides that the Department “shall group the designated waters of the state into classes. Such classification shall be made in accordance with considerations of best usage in the interest of the public” and further that the Department “shall adopt and assign standards of quality and purity for each such classification necessary for the public use or benefit contemplated by such classification.”

2) Legislative Objectives

The legislative objectives of the statutory authority discussed above are to “conserve, improve and protect [the State’s] natural resources and environment and to prevent, abate and control water, land and air pollution, in order to enhance the health, safety and welfare of the people of the state and their overall economic and social well being” and to guarantee that the “widest range of beneficial uses of the environment is attained without risk to health or safety, unnecessary degradation or other undesirable or unintended consequences.” The proposed amendments to Parts 701 and 703 would help the State to achieve these objectives and would also contribute to achieving the federal mandate “to restore and maintain the chemical, physical, and biological integrity of the Nation’s waters,” and the national goal, wherever attainable, of water quality which “provides for recreation in and on the water,” commonly referred to as the swimmable goal.

3) Needs and Benefits

This proposed action is needed to protect and preserve saline surface water resources for primary contact recreation uses, such as swimming, surfing, and water skiing, in accordance with the Clean Water Act regulatory requirements. The saline surface waters that would be affected by this rulemaking are all of the Class I and Class SD waters in New York State.

A) Class I and Class SD Waterbodies

A limited number of waterbodies in New York State are currently classified as Class I or Class SD. Almost all of these waterbodies are located within the bounds of New York City, and the remainder are in Suffolk County.

B) The Clean Water Act

The proposed regulatory changes are needed to ensure that Class I and Class SD waters meet the swimmable goal of the Clean Water Act. The Clean Water Act is the federal statute governing water pollution throughout the nation. In the Act, Congress set a general objective “to restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.” To achieve that objective, Congress set a national goal that, “wherever attainable,” water quality that “provides for recreation in and on the water” would be achieved by 1983. This provision, set out in section 101(a)(2) of the Act, is often referred to as the Clean Water Act’s swimmable goal.

Consistent with the general objective stated above, Congress required that each state set water quality standards for all surface waters in the state. Water quality standards include two components—designated uses and water quality criteria—that operate in tandem. Designated uses are the best uses assigned to a particular waterbody, such as a source of public drinking water or a location for swimming or fishing. The water quality criteria are the specific technical standards needed to protect particular designated uses.

C) The Swimmable Goal

Since 1975, New York State has been authorized by the United States Environmental Protection Agency (EPA) to regulate point source discharges to the waters of the state in accordance with the National Pollutant Discharge Elimination System and adopt water quality regulations to achieve the swimmable goal of the Clean Water Act. In Part 701, the Department has established surface water classifications that delineate best usages and requirements for water quality for different classes of waters. All of the surface water classifications (freshwater and saline), except those for Class I and Class SD, designate primary contact recreation as a best usage or require that the water quality be suitable for primary contact recreation. Accordingly, Class I and Class SD waters are the only surface waters within the State that are not required by Department regulation to meet the swimmable goal of the Clean Water Act. The proposed rulemaking would require that the quality of Class I and Class SD waters be suitable for primary contact recreation, and meet corresponding total and fecal coliform standards.

If the Department does not adopt regulations to achieve the swimmable goal for Class I and Class SD waters, the EPA has the authority to impose the swimmable goal for New York waters through federal regulations. The implications of the EPA taking such action are discussed further under Section 8 of this statement.

4) Costs

This rulemaking, which requires that the quality of Class I and Class

SD waters be suitable for primary contact recreation, would affect waterbodies within New York City and Suffolk County.

A) Suffolk County

This rulemaking would not impose any costs on Suffolk County or any regulated persons or local governments within the County. There are no wastewater treatment plants or other regulated parties in Suffolk County that discharge into Class I or Class SD waters. Accordingly, this rulemaking would not impose any costs on regulated persons or local governments in the County because no treatment modifications or facility upgrades would be required.

B) New York City

In New York City, there are numerous municipal wastewater treatment plants and several other regulated parties that discharge into Class I or Class SD waters. Investments in water pollution abatement are necessary to bring New York City waters into compliance with the swimmable goal. However, for several reasons, New York City is already obligated to make those investments, and therefore, the proposed amendments would not impose any costs on regulated persons or local governments in New York City above and beyond costs that are currently required.

First, the Clean Water Act obligates New York City to take appropriate measures to ensure that the waters of New York City meet the swimmable goal. Second, in 1994, the EPA promulgated a Combined Sewer Overflow (CSO) Long Term Control Plan Policy (LTCP Policy) to address LTCPs. The LTCP Policy was drafted to provide guidance for EPA, states, and municipalities on the required elements of an approvable LTCP. In 2000, the LTCP Policy was codified into federal statute in Section 402(q) of the Clean Water Act. The LTCP Policy and Section 402(q) require that CSO’s meet the requirements of the Act, including the swimmable goal. Third, in 2012, DEC and New York City signed a Modified CSO Order (CSO Order) in which the City committed to attain water quality standards as well as comply with other Clean Water Act requirements “in furtherance of the water quality goals of the federal Clean Water Act.” Fourth, some of the Class I and Class SD waters within New York City are already designated for primary contact recreation under the regulations of the Interstate Environmental Commission (IEC). Therefore, this rulemaking will not impose any costs on regulated persons or state or local governments beyond those costs that are currently required.

C) Costs to the Department, the State, and local governments

This rulemaking would not impose any costs on the Department, the State or any of its agencies, or any local governments except as discussed above in relation to New York City.

5) Local Government Mandates

This rulemaking would not impose any mandates on local governments, except New York City, as a regulated party. As discussed in Section 4(B) of this statement, it would not impose any mandates that are not already required by the Clean Water Act, EPA’s CSO LTCP Policy, the CSO Order, or the IEC. This rulemaking would not impose any mandates on Suffolk County or any local governments within the County.

6) Paperwork

There would be no paperwork or reporting requirements as a result of this rulemaking.

7) Duplication

Although this rulemaking will result in some overlap of state and federal requirements, it is necessary to achieve consistency between the Clean Water Act and New York State regulations.

8) Alternatives

The only alternative considered was the “no action” alternative. Taking no action would not address the fact that Class I and Class SD waters currently do not comply with the swimmable goal of the Clean Water Act. If the water classifications remain unchanged, it is possible that the EPA could exercise its authority to promulgate regulations for New York State to bring the Class I and Class SD waters into compliance with the Clean Water Act. If the EPA were to take this action, the Department would lose some flexibility for setting water quality standards for the state waters. Moreover, a bifurcated regulatory program would be more complicated and confusing to the regulated community. The Department has rejected the no-action alternative.

9) Federal Standards

The proposed regulatory changes do not exceed any federal minimum standards. As discussed above in Sections 3(B) and 7 of this statement, the proposed regulatory changes would bring New York State water quality classifications and requirements into compliance with the federal minimum standards, in particular the nationwide goal of achieving swimmable waters.

10) Compliance Schedule

The proposed regulatory changes would take effect on the day that the Notice of Adoption for these regulations is published in the New York State Register. The Department recognizes that it would be unreasonable, both physically and fiscally, to expect regulated parties to comply with the regulations immediately. However, the City is obligated under the CSO

Order to comply with established waterbody-specific schedules for LTCPs and construction projects, and the Department fully expects the City to meet its obligations under the CSO Order. In addition, under 6 NYCRR section 702.17, the Department may grant a variance to water quality-based effluent limitations included in a SPDES permit under certain circumstances to provide temporary regulatory relief while measures are taken to achieve compliance.

Regulatory Flexibility Analysis

1. Effect of Rule:

The proposed rule would apply to any local governments or small businesses that have permitted discharges of treated sanitary sewage into Class I or Class SD waters. All of New York's Class I and Class SD waters are located within New York City and Suffolk County.

Within Suffolk County, there are no wastewater treatment plants or other regulated parties that discharge into Class I or Class SD waters. Therefore, the proposed rule would not apply to any small businesses or local government within Suffolk County.

Within New York City, the rule would apply to the municipality of New York City and several small businesses that have permitted discharges of treated sanitary sewage. The small businesses are already required to meet the swimmable goal of the federal Clean Water Act because their State Pollutant Elimination Discharge System (SPDES) permits contain conditions that ensure they meet Class SC water quality standards. As discussed in the Regulatory Impact Statement (RIS) for this rulemaking, New York City is also already obligated to bring New York City waters into compliance with the swimmable goal. Therefore, this rulemaking would not impose any costs on regulated persons or local governments beyond those costs that are currently required.

2. Compliance Requirements:

New York City would likely need to plan, design, and/or construct pollution abatement facilities in order for Class SD and Class I waters to meet the swimmable goal of the Clean Water Act. This process generally commences with the issuance or renewal of a SPDES permit or Long-Term Control Plan and continues through a construction compliance period. The Department requires permittees to submit a report describing their chosen pollution abatement plan, including a schedule of construction. The Department must review and approve the report before construction may commence.

New York City would be required to monitor for both fecal coliform and total coliform in Class SD waters. The City currently monitors for fecal coliform in Class SD waters as part of its Sentinel Monitoring Program required under its SPDES permits and Post-Construction Compliance Monitoring Program required under its CSO Order, as discussed in the RIS. Sampling results are reported in an annual report required under the SPDES permit and CSO Order. There would be no increase in paperwork as a result of this rulemaking because the City already annually reports its water quality data, and it may report data on total coliform at the same time.

3. Professional Services:

Professional services of consulting engineers would likely be needed for the design and construction management of new pollution abatement facilities. Consulting engineers would provide the sampling and analysis, modeling, engineering, facilities planning, project development and management expertise to assist New York City in implementation of future projects. However, the projects that necessitate these services are already required, as fully discussed in the RIS.

4. Compliance Costs:

The RIS discusses the costs of complying with the proposed rule. However, as discussed above and in the RIS, there are no new costs to regulated parties, small businesses, or local and state governments associated with this rulemaking because regulated parties are currently required to comply with the standards proposed in this rulemaking.

5. Economic and Technological Feasibility:

Various technologies exist that can be used for pollution abatement to comply with the proposed Class I and Class SD water quality standards.

6. Minimizing Adverse Impact:

This rulemaking does not impose any new costs on regulated parties. As explained above and in the RIS, New York City is already obligated to bring New York City waters into compliance with the swimmable goal. The Department's water quality regulations have provisions, however, that can potentially mitigate economic impacts associated with meeting the swimmable goal. Under 6 NYCRR Section 702.17, the Department may grant a variance to effluent limitations under certain circumstances to provide temporary regulatory relief to a permittee while measures are taken to achieve compliance.

The planning, design, and/or construction of pollution abatement facilities generally commence with the issuance or renewal of a SPDES permit or Long-Term Control Plan and continue through a construction compliance period. The Department requires permittees to submit a report describing their chosen pollution abatement plan, including a schedule of

construction. The Department must review and approve the report before construction may commence.

7. Small Business and Local Government Participation:

The Department will hold a public hearing on this rulemaking to receive comments from stakeholders on the proposed regulations. In addition, the Department will hold a public information meeting, in advance of the public hearing, to present an overview of the proposed rulemaking.

8. Cure Period:

The proposed revisions in this rulemaking do not require the inclusion of a cure period, pursuant to Chapter 524 of the Laws of 2011, because there are no changes to any existing violations or penalties, and no new violations or penalties are established.

Rural Area Flexibility Analysis

This rulemaking does not impact any rural areas as defined in New York State Administrative Procedure Act section 102(10). The rule only applies to Class I and Class SD waters located in Suffolk County and New York City. There are no designated rural areas in Suffolk County or in New York City. Therefore, the Department has determined that a Rural Area Flexibility Analysis is not required.

Job Impact Statement

A job impact statement is not required for this rulemaking because the proposed rule will not have a substantial adverse impact on jobs and employment opportunities. The proposed regulatory changes are needed to ensure that Class I and Class SD waters meet the swimmable goal of the Clean Water Act. It is evident from the subject matter of this rule that it could only have a positive impact or no impact on jobs or employment opportunities. This rulemaking will not result in the loss of any jobs in New York State. Therefore, the Department has determined that a Job Impact Statement is not required.

Department of Financial Services

NOTICE OF ADOPTION

Debt Collection

I.D. No. DFS-34-13-00002-A

Filing No. 949

Filing Date: 2014-11-14

Effective Date: 2014-12-03

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

Action taken: Addition of Part 1 to Title 23 NYCRR.

Statutory authority: Financial Services Law, sections 202, 302 and 408

Subject: Debt Collection.

Purpose: Establishes the oversight of debt collectors and sets basic rules for debt collection in New York.

Substance of final rule: This rule sets forth rules for the third-party debt collectors and debt buyers collecting certain debts from New York consumers.

Section 1.1 provides definitions applicable to the rule.

Section 1.2 describes disclosures debt collectors must provide to consumers when the debt collector initially communicates with a consumer. The section also describes additional disclosures that must be provided when the debt collector is communicating with a consumer regarding a charged-off debt.

Section 1.3 requires debt collectors to disclose to consumers when the statute of limitations on a debt has expired. The section outlines specific information that must be disclosed and offers debt collectors optional model language that can be used to comply with this section.

Section 1.4 outlines a process where consumers can request additional documentation from a debt collector proving the validity of the charged-off debt and the debt collector's right to collect the charged-off debt. This section provides processes debt collectors should use to determine if a request for such substantiation of the debt is requested and the timing in which to respond to such requests.

Section 1.5 requires debt collectors to provide consumers written confirmation of debt settlement agreements and regular accounting of the debt while the consumer is paying off a debt pursuant to a settlement agreement. Debt collectors must also provide consumers with important disclosures of their rights when settling a debt.

Section 1.6 allows debt collectors to correspond with consumers by electronic mail in limited circumstances.

Section 1.7 sets the effective dates of the rules.

Final rule as compared with last published rule: Nonsubstantive changes were made in sections 1.1-1.7.

Revised rule making(s) were previously published in the State Register on July 16, 2014.

Text of rule and any required statements and analyses may be obtained from: Max Dubin, New York Department of Financial Services, One State Street, New York, NY 10004, (212) 480-7232, email: FSLReg@dfs.ny.gov

Revised Regulatory Impact Statement

No new Regulatory Impact Statement is needed. The changes to the rule are substantively similar and address the same debt collection practices. The amendments clarify the rule and provide additional time to prepare for compliance.

Revised Regulatory Flexibility Analysis

No new Regulatory Flexibility Analysis for Small Businesses and Local Governments is needed. The changes to the rule are substantively similar and address the same debt collection practices. The amendments clarify the rule and provide additional time to prepare for compliance.

Revised Rural Area Flexibility Analysis

No new Rural Area Flexibility Analysis is needed. The changes to the rule are substantively similar and address the same debt collection practices. The amendments clarify the rule and provide additional time to prepare for compliance.

Revised Job Impact Statement

No new Job Impact Statement Analysis is needed. The changes to the rule are substantively similar and address the same debt collection practices. The amendments clarify the rule and provide additional time to prepare for compliance.

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 New York State Department of Financial Services (the "Department") received many comments on revised proposed rule 23 NYCRR 1. The following report summarizes the comments and describes some revisions made in response to these comments that have been incorporated into the adopted version of the rule.

Comments came primarily from debt collectors and consumer protection advocates in New York. The overview below summarizes the comments by section of the proposed rule.

Section 1.1 Definitions:

- Attorney debt collectors commented that they are pleased that the amended rules do not apply to a debt collector who is engaged in litigation to collect the debt, however they requested further clarity of this rule. The Department made additional amendments to the rule to clarify that the rule does not cover collection of a debt through litigation or when enforcing a money judgment.

- Comments also urged the Department to include original creditors under the definition of debt collector. The Department recognizes that some original creditors, like some third-party debt collectors and debt buyers, may engage in abusive and deceptive debt collection practices. While the New York state fair debt collection practices law, violations of which the Department enforces via the Financial Services Law, applies to original creditors, this rule is focused on the activities of third-party debt collectors and debt buyers.

Section 1.2 Required initial disclosures by debt collectors:

- Both debt collectors and consumer advocates wanted clearer disclosure language of consumers' rights under the Exempt Income Protection Act. Industry commenters were also concerned that the Department's required language could be interpreted as a threat of a lawsuit. The language was amended to address these concerns. The Department also received comments suggesting that this disclosure should not be provided to all alleged debtors since some collectors never sue. While a collector may choose not to sue, the Department views the disclosure of consumers' rights regarding protected income to be important and should thus be required by the rule.

- Comments suggested reducing some disclosures and posting education about consumer rights on debt collector or New York State websites. While such links are not required, debt collectors are free to link to additional information in their correspondence.

- Debt collectors commented that the requirement to disclose a breakdown of the alleged debt was unclearly written and could result in

voluminous production of documents evidencing interest and other charges, which would not be helpful to consumers. The final version clarifies this requirement and ensures that alleged debtors will not receive overly voluminous and confusing documentation.

- Commenters requested additional disclosures of federal rights, including the right to request that a debt collector cease communication. The required disclosures are not exhaustive. The Department wished to limit the number of required disclosures so as to render them easily readable and impactful, but will continue to educate consumers about their rights and protections vis-à-vis debt collection.

Section 1.3 Disclosures for debts in which the statute of limitations may be expired:

- Comments suggested that all statute of limitations disclosures include a warning that consumers should consult an attorney. While the optional disclosure language does contain this disclosure, the required items in any disclosure are limited to certain factual statements. If a debt collector chooses to use unique disclosures, these disclosures could still include a warning that a consumer should consult an attorney.

Section 1.4 Substantiation of consumer debts:

- Debt collectors were seeking further clarity on what documentation is required for substantiation of a debt. Using language suggested in some comments, the rule clarifies this requirement. The rule acknowledges that an original signed copy of the contract or application for debt may not exist and defines what other documents can be provided to substantiate the debt. This amendment also addresses concerns that debt collectors may not possess all of the original documentation for debts charged-off prior to the effective date.

- Comments suggested that some information, like the full chain-of-title or prior settlement agreements, is unnecessary. However, many consumer debts are sold and resold several times, and in some cases, debt brokers may sell the same debts multiple times. A history of the debt is important to establish that the creditor has the right to collect the debt and to provide consumers with important records if other creditors try to collect the same debt.

- Commenters warned that debt collectors typically have not retained evidence of past settlement agreements. The rule clarifies that this requirement only pertains to settlements made pursuant to section 1.5 of this rule. Therefore, debt collectors must produce documentation of only settlements made after this rule is effectuated.

Section 1.5 Debt payment procedures:

- Debt collectors urged the Department that they need additional time to ensure that a debt is satisfied prior to providing consumers with a written confirmation of satisfaction, including waiting for checks to clear. The final rules provide some additional time.

Section 1.6 Communication through electronic mail:

- Some comments suggested that if consumers initiate electronic mail communication with debt collectors, debt collectors should be able to respond via electronic mail to confirm that (1) the consumer consents to electronic communication regarding a specific debt and (2) that the consumer affirms that the email is not furnished or owned by the consumer's employer. The rule reflects this common-sense adjustment, so that if a consumer contacts a debt collector electronically, the debt collector does not need to obtain, by mailed letter confirmation, the consumer's authorization to communicate through electronic mail.

Section 1.7 Effective date:

- Debt collectors were concerned about the applicability of the rules requiring the production of documentation to debts that had already been sold by the original creditor. As discussed above, some changes were made to accommodate the challenges of gathering information and provide flexibility in the types of documentation required if a consumer requests substantiation of the debt. The final rule also gives additional time to gather materials from original creditors and build out compliance procedures for the sections that require production of documents or data evidencing a debt.

- Comments pointed out that the effective date gives further time to build in compliance for only part of section 1.4. This was a drafting error. The additional time applies to all of section 1.4.

Other comments:

- Debt collectors inquired whether the rule creates a private right of action. The rules are not privately enforceable. The rules are state regulations enforceable by the Department, and may be enforceable by other regulators or prosecutors.

- Comments suggested referencing municipal-level debt collection rules. While these are important protections for many New Yorkers, varied disclosures across the state would create compliance and enforcement challenges for a state level rule.

Office of General Services

EMERGENCY RULE MAKING

Service-Disabled Veteran-Owned Business Enterprises

I.D. No. GNS-33-14-00004-E

Filing No. 957

Filing Date: 2014-11-17

Effective Date: 2014-11-17

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

Action taken: Addition of Part 252 to Title 9 NYCRR.

Statutory authority: Executive Law, sections 200 and 369-i(5)

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

Specific reasons underlying the finding of necessity: By enacting Article 17-B of the New York State Executive Law, the Governor has prioritized and emphasized the importance of assisting service-disabled veterans in the New York State contracting process. These are citizens who have been disabled while serving their country and are now looking to readjust to civilian life. It is incumbent upon the State to assist them in reintegrating back into the economy as quickly as possible. New York State has determined that these veterans could benefit from assistance in the State contracting process and the Office of General Services ("OGS") has determined that adoption of this rulemaking is necessary for the preservation of the general welfare of the citizens of New York State. When there are more businesses participating in the economy, all New York State citizens benefit.

The NYS public procurement program that spends billions of dollars to provide government services to its citizens, State businesses, the educational community and not-for-profits will benefit from the diversification of the vendors who meet State needs for goods and services. The service-disabled veteran-owned businesses and the State will benefit from their mutual contributions to strengthening the State economy through the expedited addition of this program in OGS.

The granting by the Governor and the Legislature of these opportunities to service-disabled veteran-owned businesses will build on synergies associated with their contract awards in the public sector, ensuring that their broader participation in the State and national economy is enhanced and further formation of such small businesses will be encouraged to benefit of our veterans.

Subject: Service-Disabled Veteran-Owned Business Enterprises.

Purpose: To establish standards, procedures and criteria with respect to the Service-Disabled Veteran-Owned Business Enterprise program.

Substance of emergency rule: The proposed regulation makes extensive changes to the existing regulations governing the award process of state procurement contracts by facilitating and promoting Service-Disabled Veteran-Owned Business Enterprise ("SDVOBE", as defined herein) participation in state procurement. This process includes state certification of SDVOBEs, the promulgation of measures and procedures to ensure these certified businesses are afforded meaningful participation in state procurement, and the monitoring and reporting of state agency compliance with the statewide goal for participation on state contracts by SDVOBEs.

Parts 252.1-252.3 define terms unique to the scope and implementation of the SDVOBE Development program, outline state agency responsibilities in terms of program purpose, scope, and applicability, as well as provide for implementation of a statewide certification program.

(1) Pursuant to Part 252.1, in order for a SDVOBE to benefit from this program, the business must be certified by the Office of General Services Division of Service-Disabled Veteran Owned Business Development (DSDVBD). This certification process is to ensure that the appropriate businesses, for which this regulation has been drafted, receive maximum benefits from the program. A certified SDVOBE means a business enterprise that is independently owned and operated and is authorized to do business in New York State. The business must be at least 51% owned by one or more service-disabled veterans in such a way that ownership is real, substantial, and continuous and the service-disabled veteran must exercise independent control over day-to-day business.

(2) The SDVOBE must be a small business, meaning that the business has a significant business presence in the state, but is not dominant in its

field and employs, based on industry, a certain number of persons as determined by the director, but not to exceed three hundred, taking into account various other factors. (252.1(v)).

(3) Pursuant to Part 252.1(s) and (z), to be considered a service-disabled veteran, one must have received an honorable or general discharge from, the United States army, navy, marines, air force, coast guard, and/or reserves thereof, and/or in the army national guard, air national guard, New York guard and/or the New York naval militia. In addition, (a) in the case of the United States army, navy, air force, marines, coast guard, army national guard or air national guard and/or reserves thereof, a veteran must have received a compensation reading of ten percent or greater from the United States department of veterans affairs or from the United States department of defense because of a service-connected disability incurred in the line of duty and (b) in the case of the New York guard or the New York naval militia and/or reserves thereof, a veteran must be certified by the New York State Division of Veterans' Affairs pursuant to the appropriate provisions contained within the code of federal regulations, as having an injury equivalent to a compensation rating of ten percent or greater from the United States department of veterans affairs or from the United States department of defense because of a service-connected disability incurred in the line of duty.

(4) Pursuant to Parts 252.1(f) and 252.2, in order for a certified SDVOBE to benefit from a state procurement contract governed by this regulation, the SDVOBE must perform a commercially useful function by actually performing, managing, and supervising the work for which he/she is responsible. Additionally, where applicable, the SDVOBE must also be responsible, with respect to materials and supplies used on the contract, for ordering and negotiating price, determining quality and quantity and installation. The SDVOBE must add substantive value to the contract to be considered a commercially useful function. Various other factors may be applied to make a final determination.

(5) This program may be implemented using a "set aside". A set aside means the reservation in whole or in part of certain procurements by state agencies bidding where more than one certified SDVOBE can provide the services and/or commodities necessary to the state procurement contract. (252.1(t)). The Commissioner of the Office of General Services, in consultation with state agencies shall develop and provide written guidance on the appropriate use of set asides to state agencies. (252.2(10)).

(6) Pursuant to Part 252.2(1), in order to maximize the effectiveness of this program, where it is practical, feasible and appropriate, state agencies will seek to meet a six percent goal of participation by SDVOBEs on all state contracts. Where it is not practical, feasible or appropriate for a State agency to seek the statewide goal of six percent, the agency may request a waiver. Individual State Agencies may adopt agency-specific goals as long as those goals are reflected in the State agency's master goal plan submitted to the DSDVBD, and that the agency-specific goals are justified based on the following factors: (1) statewide availability of SDVBs for construction, construction services, non-construction services, technology, commodities, or products; (2) statewide availability of SDVOBEs for the state agency's State contracts found in the Directory of Service-Disabled Veteran Owned Businesses maintained by Office of General Services; (3) the geographic location of the performance of the State contract; (4) the extent to which the geographical location of performance of the State contract hinders the ability of SDVOBEs to perform; and (5) other relevant factors.

(7) Pursuant to Part 252.2(2)-(4), each state agency must have a master goal plan on file with the DSDVBD which must include any agency-specific goals, justifications thereof, descriptions of implementation strategies, practices, and procedures, as well as a list of personnel responsible for implementation. Each State agency's master goal plan is subject to review by the Director of the DSDVBD to ensure reasonableness of goals, as well as to judge the prospective effectiveness of the plan with regards to the program's overall goal of promoting SDVOBEs.

(8) Pursuant to Part 252.2(5), each state agency must submit a report to the Office of General Services annually, and the report must include the relevant information necessary to assess the success of implementation of the master goal plan, including, but not limited to, the number of contracts entered into pursuant to this program's objectives and the amount of successful certification applications.

(9) Pursuant to Part 252.2(6), each state agency must demonstrate a good faith effort to meet to state agency's goal adopted pursuant to this program. Whether or not a good faith effort has been made is determined by Director of the DSDVBD using the following factors: (1) the availability of SDVOBEs capable of participating in the relevant state contracts; (2) State agency strategy to unbundle State contracts and solicit bids from SDVOBEs; (3) whether there were available SDVOBEs outside the region that could have performed; (4) whether joint ventures or other similar arrangements in order to include SDVOBEs were encouraged; (5) the number of opportunities the state agency could have made discretionary purchases from SDVOBEs, versus the number of times the state

agency actually did so; (6) the amount paid to certified SDVOBEs as a result of state agency's discretionary purchasing; (7) whether the state agency utilized set asides; (8) whether the state agency had the appropriate processes and procedures in place to ensure compliance with the goals, utilization plans, utilization reports, and waivers of this program; (9) whether the state agency submitted the appropriate reports; (10) any other relevant information or factors; and (11) any other information submitted by the state agency or other criteria that the Director of the DSDVBD deems relevant.

(10) Pursuant to Part 252.2(7), any State agency that fails to meet its goals must review its master goal plan and identify the necessary steps to be taken in order to meet its goals. The State agency may confer with the Director of DSDVBD to discuss performance improvements.

(11) Contractors shall be notified of the goal in the appropriate bid documents, and will also be provided with the current electronic list of certified Service-Disabled Veteran-Owned Businesses. Contractors will then be required by State agencies to submit utilization plans which identify how the contractor plans to meet the contract's goals for SDVOBE participation. The Contractor's utilization plan is subject to approval based on the contract's goals. If not approved, the Contractor may attempt to remedy any deficiencies and re-submit within seven days. If the contractor fails to comply he/she may be disqualified. Once a State contract is executed, and the Contractor's utilization plan has been approved, or appropriately waived, the plan will be posted on the State agency's website. Contractors must report directly to the state agency on utilization plan compliance. (252.2(17)). Subsequent to being awarded a State contract, the contractor may file a complaint with the State after becoming deficient with the implementation of the utilization plan in order to request a full or partial waiver. (252.2(18)).

(12) Similar to the scrutiny imposed on State agency compliance, contractors must be able to demonstrate a good faith effort to comply with their utilization plans by using certified SDVOBEs in a commercially useful function for the appropriate predetermined percentage value. Where the State has determined that a contractor has failed to comply and demonstrate a good faith effort to comply, after having given notice of deficiency, the state agency may proceed with the next ranked bidder if the state agency has not received a request to review its determination. Any contractor who willfully and intentionally fails to comply with the SDVOBE participation requirements shall be liable for damages, and shall provide for other appropriate remedies. (252.2(19)).

(13) State agencies are responsible for determining contractor compliance with goals established in State contracts. (252.2(16)).

(14) Pursuant to Part 252.3, in order to effectively and efficiently implement the objectives of the DSDVBD, the SDVOBEs must be properly certified. Applications can be obtained and returned to the DSDVBD. Applicants must be able to demonstrate that the SDVOBE meets the appropriate definitions of "small business," "veteran," and "service-disabled," where the service-disabled veteran exercises the requisite control and ownership over the business. As part of the application process, the place of business may be subject to inspection. Applicants will receive a status notification of the application, including any deficiencies that must be addressed, within thirty days of the date stamped on the application. Any deficiency must be cured within twenty days of notification or else the applicant will receive notification that the application has been rejected. An application may be withdrawn by an applicant without prejudice. Upon rejection of an application, an applicant must wait ninety days before re-applying. A written determination approving or denying an application must be provided in writing within sixty days of mailing the notice of application completion. Certification may be held for five years, unless certification is revoked, under the appropriate revocation procedures, due to a change in circumstances resulting in an applicant no longer being entitled to certification. Applicants already holding federal certification do not have to submit a New York State application and may instead submit a supplemental application.

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. GNS-33-14-00004-EP, Issue of August 20, 2014. The emergency rule will expire January 15, 2015.

Text of rule and any required statements and analyses may be obtained from: Paula B. Hanlon, Esq., New York State Office of General Services, 41st Floor Corning Tower, Empire State Plaza, Albany, NY 12242, (518) 474-5607, email: RegsReceipt@ogs.ny.gov

Regulatory Impact Statement

1. Statutory authority: Chapter 22 of the Laws of 2014 amended the Executive Law by creating a new Article 17-B, which establishes a program to increase participation of "Service-Disabled Veteran-Owned Business Enterprises", ("SDVOBE" as defined in the Text) in State contracting. Additionally, it required the Commissioner of the Office of General Ser-

vices ("OGS") to promulgate regulations, within 90 days of the effective date of the new Article (May 12, 2014) to implement the new program created by law.

2. Legislative objectives: By enacting Chapter 22 of the Laws of 2014, the Legislature sought to increase Service-Disabled Veterans', ("SDV" as defined in the Text) participation in the economy. The Legislature sought to provide additional assistance and support to better equip disabled veterans to form and expand small businesses. Chapter 22 provides that the Director of the Division of Service-Disabled Veterans' Business Development ("Director") or Commissioner of General Services promulgate regulations that contain specific provisions that (a) provide measures and procedures to ensure that SDVOBEs are afforded the opportunity for meaningful participation in the performance of state contracts and to assist in state agencies' identification of those state contracts for which SDVOBEs may best perform; (b) provide for measures and procedures that assist state agencies in the identification of state contracts where service-disabled veteran contract goals are practical, feasible and appropriate for the purpose of increasing the utilization of SDVOBE participation on state contracts; (c) achieve a statewide goal for participation on state contracts by SDVOBEs of six percent; (d) provide for procedures relating to submission and receipt of applications by SDVOBEs for certification; (e) provide for the monitoring and compliance of state contracts by state agencies with respect to the provisions of this article; (f) provide for the requirement that state agencies submit regular reports, as determined by the director, with respect to their SDVOBE program activity, including but not limited to, utilization reporting and state contract monitoring and compliance; (g) notwithstanding any provision of the State Finance Law, the Public Buildings Law, the Highway Law, the Transportation Law or the Public Authorities Law to the contrary, provide for the reservation or set-aside of certain procurements by state agencies in order to achieve the objectives of Article 17-B of the Executive Law; provided, however, that such procurements shall remain subject to (i) priority of preferred sources pursuant to Sections one hundred sixty-two and one hundred sixty-three of the State Finance Law; (ii) the approval of the Comptroller of the State of New York pursuant to Section one hundred twelve and Section one hundred sixty-three of the State Finance Law and Section twenty-eight hundred seventy-nine-a of the Public Authorities Law; and (iii) the procurement record requirements pursuant to Paragraph g of Subdivision nine of Section one hundred sixty-three of the State Finance Law; and (h) provide for any other purposes to effectuate the new Article 17-B.

3. Needs and benefits: In order to enable Service-Disabled Veteran-Owned Businesses to grow and thrive by conducting business with the State of New York, Chapter 22 of the Laws of 2014 specifically mandates that regulations be promulgated to effectuate the Service-Disabled Veteran-Owned Business Enterprise program. The addition of a new 9 NYCRR 252 is necessary to comply with that mandate and will assist state agencies in maximizing their opportunities.

Among other things, the regulations establish a statewide certification program that provides standards and criteria for the Division of Service-Disabled Veterans' Business Development ("Division") to consider when determining whether to approve, deny or revoke an applicant's SDVOBE certification. Having a set list of criteria and an established process to follow helps to ensure that all applications will be evaluated in a consistent manner. Without these regulations, there is a risk that applicants could be evaluated using different criteria, resulting in inconsistent determinations. Establishing the criteria in regulation creates transparency and ensures the integrity of the program.

These regulations will also assist Service-Disabled Veterans by clarifying the criteria they need to meet in order to submit an application. Providing this information in regulation helps to ensure that any SDVOBE wishing to become certified, will know what is expected of them during the application process. Without providing a detailed process to follow, applications could be incomplete upon submission or misdirected to an incorrect location. The regulations provide a clear and single resource for applicants to go to for direction.

Additionally, new Part 252 establishes standards, criteria and procedures for state agencies to follow when setting annual goals for participation. They also establish a process by which state agencies submit their master goal plans. The regulations are necessary to maintain consistency across the agencies. They provide what information needs to be reported, as well as the procedures state agencies need to follow when submitting their plans. Finally, the regulations provide consequences for those state agencies failing to meet their goals. In order for the program to be successful, there must be a documented process in place for state agencies that do not comply.

4. Costs:

a. Costs to State agencies and authorities. OGS expects that costs to State agencies and authorities associated with the proposed regulations would be minimal, if any and would be associated with the administrative responsibilities associated with the proposed regulations, such as the creation of the goal plans required by legislation.

b. Costs to local governments. The regulations do not apply to local governments and therefore do not impose any costs on local governments.

c. Costs to private regulated parties. OGS expects that there would be minimal, if any costs associated with the proposed regulations. The transmittal of applications and supporting documentation (if mailed) would have minimal costs associated, but are not anticipated to be significant or greater than normal business opportunity costs.

d. Costs to the Division. OGS expects that there will only be minimal, if any additional costs associated with the proposed regulations. The creation of a Director position is directed by the legislation. Any costs related to the proposed regulations would be associated with the administrative processing of certification applications submitted by applicants and plans and reports submitted by state agencies and Authorities.

5. Local government mandates: The subject regulations do not impose any program, service duty or responsibility upon any local governments, school districts, fire districts, or other special districts.

6. Paperwork: The regulations will have minimal paperwork implications. The Division will need to create an application form that SDVOBEs may use to apply for certification, but the application is expected to be available on-line as well as in paper form. Additionally, state agencies and Authorities are required to prepare goal plans and the Division is required to submit annual reports, but those requirements are directed by the legislation rather than by the proposed regulations. It is expected that the overall addition of paperwork to comply with the proposed regulations will be minimal.

7. Duplication: The subject regulations do not duplicate other existing federal or State requirements.

8. Alternatives: Although the option of taking no regulatory action was considered, this alternative was rejected since Chapter 22 of the Laws of 2014 requires that Director of the Division of Service-Disabled Veterans' Business Development, or the Commissioner of the Office of General Services promulgate rules and regulations for the specific purposes provided above in the "legislative objectives" section of this statement.

OGS has drafted these regulations streamlining the certification process and operations of the SDVOBE program to ensure that the benefits of the program are quickly provided to these businesses and diversify State procurements.

9. Federal standards: The regulations do not exceed any federal standards for similar SDVOBE programs.

10. Compliance schedule: OGS expects that regulated parties will be able to comply with the regulations when adopted.

Regulatory Flexibility Analysis

Application to the Service-Disabled Veteran-Owned Business Enterprise program is entirely at the discretion of each eligible business enterprise. Neither Executive Law Article 17-B nor the proposed regulations impose an obligation on any local government or business entity to participate in the program. The proposed regulations apply to State agencies and authorities as defined by Article 17-B. The proposed regulations do not impose any adverse economic impact, reporting, recordkeeping, or other compliance requirements on small businesses and/or local governments. In fact, the proposed regulations may have a positive economic impact on small businesses as the changes created in the proposed regulations may increase the number of certified small businesses that are able to access contracting opportunities throughout New York State. An argument could be made that the proposed regulations may negatively affect non-service-disabled veteran-owned businesses wishing to contract with the State, as preference/set-aside will now be given to certified service-disabled veteran-owned businesses. However, it is impossible to determine with any precision if this outcome will occur. The changes are anticipated to produce a positive impact by increasing competition between small businesses seeking to contract with the State, thus enabling contracting agencies to obtain a better value, while at the same time increasing the number of service-disabled veterans who have access to contracting opportunities.

The regulations do not apply to local governments and therefore, they will have no substantive impact on them. Additionally, it is evident from the nature of the regulations that they will have no substantive negative impact on small businesses. In fact, the regulations could have a positive impact, and therefore no further affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses and local governments is not required and one has not been prepared.

Rural Area Flexibility Analysis

The Service-Disabled Veteran-Owned Business Enterprise program is a statewide program. While there are eligible businesses located in rural areas of New York State, participation in the program is entirely voluntary. Additionally, any requirements imposed by the regulations, such as the submission of applications and reports, are the same for any business choosing to participate from rural or urban areas.

This action will not impose any adverse impact, reporting, record keeping or other compliance requirements on public or private entities in rural areas. Accordingly, a rural area flexibility analysis is not required and one has not been prepared.

Job Impact Statement

The Office of General Services projects no substantial adverse impact on jobs or employment opportunities in the State of New York as a result of the amendment of this rule. The amendment simply adds a new 9 NYCRR 252 to implement provisions of the Service-Disabled Veteran-Owned Business Enterprise program, established pursuant to Chapter 22 of the Laws of 2014. Nothing in the proposed regulations will substantially increase or decrease the number of jobs in New York State, have an adverse impact on specific regions in New York State or negatively impact jobs in New York State.

Department of Motor Vehicles

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Relicensing After Revocation

I.D. No. MTV-48-14-00006-P

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

Proposed Action: Amendment of sections 136.1, 136.4 and 136.5 of Title 15 NYCRR.

Statutory authority: Vehicle and Traffic Law, sections 215(a), 501(2)(c), 510(6), 1193(2)(b)(12), (c)(1) and 1194(2)(d)(1)

Subject: Relicensing after revocation.

Purpose: To clarify and strengthen criteria relative to relicensing after revocation.

Substance of proposed rule (Full text is posted at the following State website: www.dmv.ny.gov): The amendments to Part 136 of the Commissioner's Regulations clarify and strengthen the criteria relative to relicensing after revocation. The following is a summary of the key amendments:

Section 136.4(b)(3) is amended to establish criteria for relicensure where the applicant's permit or license with a problem driver restriction has been revoked.

Section 136.4(e) and section 136.5(d) are amended to provide that if an application is denied under section 136.4(a), (b) or (c), the Commissioner may consider unusual, extenuating or compelling circumstances as a basis to deviate from the general policy to deny an application under such section and the Commissioner may impose the problem driver restriction as a condition of approval of the application.

Section 136.5(a)(1) is amended to include a finding under section 1194-a of the VTL, refusal to submit to a chemical test in relation to VTL section 1192-a(zero tolerance), as an "alcohol –or drug-related conviction or incident." This is consistent with the current definition of an alcohol –or drug-related conviction or incident," which includes both a chemical test refusal under VTL section 1194 and a finding of a violation of VTL section 1192-a, "zero tolerance."

Section 136.5(a)(1) is also amended to clarify that where a refusal arises out of the same incident resulting in a conviction of a violation of VTL section 1192, such finding shall not be counted as a separate "alcohol –or drug-related conviction or incident."

Section 136.5(a)(4) is amended to provide that the Commissioner shall review an applicant's entire driving record between the date of the revocable offense and the date the application is reviewed by the Commissioner, not the date of the application. Incidents and convictions may occur between the date of the application and the date such application is actually reviewed. Thus, it makes sense to review the driving record by looking back from the latest possible date.

Section 136.5(b)(3) and (4) are amended to provide that the extended waiting periods set forth in such paragraphs shall be extended for an additional five or two years, respectively, if there is evidence of driving during the waiting period.

A new subdivision (7) is added to section 136.5(b) to provide for the denial of an application where the applicant has been convicted of certain alcohol-related offenses with a nexus to a fatal accident. Section 136.5(d) is amended to provide that where an application is approved due to unusual, extenuating and compelling circumstances, the Commissioner may impose the problem driver restriction.

Finally, section 136.5(e) is amended to provide that if there are two alcohol or drug-related driving convictions or incidents on an applicant's driving record, the consideration of an application for relicensing shall be held in abeyance if the applicant has one or more tickets pending, and if the pending ticket or tickets, if disposed of as a conviction of the original charge, would result in the denial of the application. This would prevent the Commissioner from approving the application of a potentially high risk driver.

Text of proposed rule and any required statements and analyses may be obtained from: Heidi Bazicki, Department of Motor Vehicles, 6 Empire State Plaza, Rm. 522A, Albany, NY 12228, (518) 474-0871, email: heidi.bazicki@dmv.ny.gov

Data, views or arguments may be submitted to: Ida L. Traschen, Department of Motor Vehicles, 6 Empire State Plaza, Rm. 522A, Albany, NY 12228, (518) 474-0871, email: ida.traschen@dmv.ny.gov

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

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

Regulatory Impact Statement

1. Statutory authority: Vehicle and Traffic Law (VTL) section 215(a) provides that the Commissioner of Motor Vehicles (Commissioner) may enact rules and regulations that regulate and control the exercise of the powers of the Department of Motor Vehicles (Department). VTL section 501(2)(c) authorizes the Commissioner to provide for driver's license restrictions based upon the types of vehicles or other factors deemed appropriate by the Commissioner. Section 510(6) of such law provides that where revocation is mandatory no new license shall be issued except in the discretion of the Commissioner. VTL section 1193(2)(b)(12) authorizes the Commissioner to waive the permanent revocation of a driver's license, where such revocation arises out of multiple alcohol- or drug-related offenses, if the applicant for the waiver meets certain criteria. Section 1193(2)(c)(1) provides that where a license is revoked as the result of a mandatory revocation arising out of an alcohol- or drug-related offense, no new license shall be issued except in the discretion of the Commissioner. Section 1194(2)(d)(1) provides that where a license is revoked arising out of a chemical test refusal, no new license shall be issued except in the discretion of the Commissioner.

2. Legislative objectives: On September 25, 2012, the Department of Motor Vehicles adopted emergency regulations regarding Part 136 of Title 15 of New York State Codes, Rules & Regulations (Part 136), Relicensing After Revocation. The regulations were subsequently amended and adopted as final on May 1, 2013.

In accordance with the objective of protecting the motoring public, this proposal further strengthens the standards used to evaluate a motorist's lifetime record, with a particular focus on alcohol- or drug-related convictions and incidents and serious driving offenses. The proposal expands the use of problem driver restriction, which limits the driving activities of the motorist and, if appropriate, requires such motorist to install an ignition interlock device in all motor vehicles owned or operated by the motorist. This restriction strikes a balance between protecting the public and allowing the motorist to engage in certain essential activities involving his or her employment, medical care, child care and educational opportunities.

The Legislature has granted the Commissioner significant authority to establish standards for relicensing after revocation, in order to ensure that high risk motorists are not allowed to operate on our State's highways. This proposed rulemaking both clarifies and expands the scope of the Commissioner's authority in relation to the relicensing process.

3. Needs and benefits: On September 25, 2012, the Department of Motor Vehicles adopted emergency regulations regarding Part 136. The regulations were subsequently amended and adopted as final on May 1, 2013. The purpose of those amendments was to deny licensure to applicants with multiple alcohol or drug-related driving incidents or convictions and serious driving offenses. This proposed rulemaking builds upon the 2012 and 2013 amendments by clarifying certain provisions and enhancing the Department's tools for keeping dangerous drivers off of New York State highways.

A person whose driver's license is revoked must apply to the Department for relicensure. Such person's driving record is subject to a review pursuant to Part 136. The Department reviews the applicant's entire driving history in order to assess his or her risk to the motoring public. Certain applicants who are approved are subject to the problem driver restriction, as set forth in Part 3.2(c)(4) of Title 15 of New York State Codes, Rules & Regulations which limits the licensee's scope of operation and may require the installation of an ignition interlock device in all motor vehicles owned or operated by such licensee.

This proposed rulemaking makes several substantive changes to Part 136. First, section 136.4(b)(3) is amended to establish criteria for relicensure where the applicant's permit or license with a problem driver

restriction has been revoked. Specifically, if a license with a problem driver restriction is revoked, the Commissioner shall deny the application for at least five years. After such waiting period, if the application is approved, the Commissioner shall impose the problem driver restriction for a period of five years and may require the applicant to install an ignition interlock device in all motor vehicles he or she owns or operates for a period of two to five years. Second, section 136.4(e) and section 136.5(d) are amended to provide that if an application is denied under section 136.4(a), (b) or (c), the Commissioner may consider unusual, extenuating or compelling circumstances as a basis to deviate from the general policy to deny an application under such section and the Commissioner may impose the problem driver restriction as a condition of approval of the application. Third, section 136.5(a)(1) is amended to include a finding under section 1194-a of the VTL, refusal to submit to a chemical test in relation to VTL section 1192-a (zero tolerance), as an "alcohol -or drug-related conviction or incident." This is consistent with the current definition of an alcohol -or drug-related conviction or incident," which includes both a chemical test refusal under VTL section 1194 and a finding of a violation of VTL section 1192-a, "zero tolerance." Fourth, such section is also amended to clarify that where a refusal arises out of the same incident resulting in a conviction of a violation of VTL section 1192, such finding shall not be counted as a separate "alcohol -or drug-related conviction or incident." Fifth, section 136.5(a)(4) is amended to provide that the Commissioner shall review an applicant's entire driving record between the date of the revocable offense and the date the application is reviewed by the Commissioner, not the date of the application. Incidents and convictions may occur between the date of the application and the date such application is actually reviewed. Thus, it makes sense to review the driving record by looking back from the latest possible date. Sixth, section 136.5(b)(3) and (4) are amended to provide that the extended waiting periods set forth in such paragraphs shall be extended for an additional period of two years or five years, depending on whether the revocation was based on an alcohol-related conviction, if there is evidence of driving during the waiting period. Seventh, a new subdivision (7) is added to section 136.5(b) to provide for the denial of an application where the applicant has been convicted of certain alcohol-related offenses with a nexus to a fatal accident. Eighth, section 136.5(d) is amended to provide that where an application is approved due to unusual, extenuating and compelling circumstances, the Commissioner may impose the problem driver restriction. Finally, section 136.5(e) is amended to provide that if there are two alcohol or drug-related driving convictions or incidents on an applicant's driving record, the consideration of an application for relicensing shall be held in abeyance if the applicant has one or more tickets pending where the pending ticket or tickets, if disposed of as a conviction of the original charge, would result in the denial of the application. This would prevent the Commissioner from approving the application of a potentially high risk driver.

This proposed rulemaking proposes two non-substantive revisions. First, a new subdivision (c) is added to section 136.1 and section 136.5(e) is amended to clarify that the provisions of Part 136 apply to an application for a license or restoration of a privilege, e.g., by an out-of-state licensee. Second, section 136.4(a)(3) is amended to correct an improper cross reference.

4. Costs: a. Cost to regulated parties and customers: Motorists with a history of driving while intoxicated who qualify for a license with the problem driver restriction will be required to install and maintain an ignition interlock device in vehicles that they own or operate. There are various models of available interlock devices. The average cost of installation and monthly maintenance is slightly over \$1,000 a year.

b. Costs to the agency and local governments: There is no cost to the agency or to local governments.

c. The information, including the source(s) of such information and the methodologies upon which the cost analysis is based: N/A.

5. Local government mandates: There are no local government mandates.

6. Paperwork: There are no paperwork requirements.

7. Duplication: This proposed rulemaking does not duplicate, overlap or conflict with any relevant rule or legal requirement of the State and federal governments.

8. Alternatives: The Department deliberated extensively about how to clarify and enhance Part 136. This proposed rulemaking represents a balanced approach to strengthen the Department's efforts to keep dangerous drivers off of the State's highways. A no action alternative was not considered.

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

10. Compliance schedule: The Department and its regulated parties will be able to achieve compliance with the proposed rulemaking upon its Notice of Adoption in the State Register.

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

A regulatory flexibility analysis for small business and local governments, a rural area flexibility analysis, and a job impact statement are not

required for this rulemaking proposal because it will not adversely affect small businesses, local governments, rural areas, or jobs.

This proposal sets forth criteria for relicensing after revocation. Due to its narrow focus, this rule will not impose an adverse economic impact on reporting, record keeping, or other compliance requirements on small businesses in rural or urban areas or on employment opportunities. No local government activities are involved.

Public Service Commission

NOTICE OF ADOPTION

Denying a Long-Term Water Supply Surcharge to Recover Costs Associated with Haverstraw Water Supply Project

I.D. No. PSC-42-13-00014-A

Filing Date: 2014-11-14

Effective Date: 2014-11-14

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

Action taken: On 11/13/14, the PSC adopted an order denying a petition by United Water New York, Inc. (UWNY) to implement a long-term water supply surcharge to recover costs associated with the Haverstraw Water Supply Project.

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

Subject: Denying a long-term water supply surcharge to recover costs associated with Haverstraw Water Supply Project.

Purpose: To deny a long-term water supply surcharge to recover costs associated with the Haverstraw Water Supply Project.

Substance of final rule: The Commission, on November 13, 2014, adopted an order denying a petition by United Water New York, Inc. (UWNY) to implement a long-term water supply surcharge to recover costs associated with the Haverstraw Water Supply Project, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(13-W-0246SA1)

NOTICE OF ADOPTION

Denying a Long-Term Water Supply Surcharge to Recover Costs Associated with the Haverstraw Water Supply Project

I.D. No. PSC-07-14-00011-A

Filing Date: 2014-11-14

Effective Date: 2014-11-14

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

Action taken: On 11/13/14, the PSC adopted an order denying a petition by United Water New York, Inc. (UWNY) to implement a long-term water supply surcharge to recover costs associated with the Haverstraw Water Supply Project.

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

Subject: Denying a long-term water supply surcharge to recover costs associated with the Haverstraw Water Supply Project.

Purpose: To deny a long-term water supply surcharge to recover costs associated with the Haverstraw Water Supply Project.

Substance of final rule: The Commission, on November 13, 2014,

adopted an order denying a petition by United Water New York, Inc. (UWNY) to implement a long-term water supply surcharge to recover costs associated with the Haverstraw Water Supply Project, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(13-W-0246SA3)

NOTICE OF ADOPTION

Approving the Joint Petition of UWW and UWNR to Merge and Become United Water Westchester, Inc.

I.D. No. PSC-08-14-00018-A

Filing Date: 2014-11-14

Effective Date: 2014-11-14

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

Action taken: On 11/13/14, the PSC adopted an order approving the joint petition of United Water Westchester, Inc. (UWW) and United Water New Rochelle, Inc. (UWNR) to transfer franchises and merge the two companies.

Statutory authority: Public Service Law, sections 89-h and 108

Subject: Approving the joint petition of UWW and UWNR to merge and become United Water Westchester, Inc.

Purpose: To approve the joint petition of UWW and UWNR to merge and become United Water Westchester, Inc.

Substance of final rule: The Commission, on November 13, 2014, adopted an order approving the joint petition authorizing the merger of United Water Westchester, Inc. and United Water New Rochelle, Inc. (UWNR) and to permit UWNR to change its name and operate as United Water Westchester, Inc., subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(14-W-0006SA1)

NOTICE OF ADOPTION

Approving the Terms of a Joint Proposal of UWW, UWNR and Staff for a Multi-Year Rate Plan

I.D. No. PSC-09-14-00004-A

Filing Date: 2014-11-14

Effective Date: 2014-11-14

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

Action taken: On 11/13/14, the PSC adopted an order approving the terms of a joint proposal of United Water Westchester, Inc. (UWW) and United Water New Rochelle, Inc. (UWNR) and staff for a multi-year rate plan.

Statutory authority: Public Service Law, section 89-c(1) and (10)

Subject: Approving the terms of a joint proposal of UWW, UWNR and staff for a multi-year rate plan.

Purpose: To approve the terms of a joint proposal of UWW, UWNR and staff for a multi-year rate plan.

Substance of final rule: The Commission, on November 13, 2014, adopted an order approving the terms of a joint proposal filed by United Water Westchester, Inc., United Water New Rochelle, Inc. and Staff of the Department of Public Service to adopt a multi-year rate plan, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(13-W-0539SA1)

NOTICE OF ADOPTION

Approving the Terms of a Joint Proposal of UWW, UWNR and Staff for a Multi-Year Rate Plan

I.D. No. PSC-09-14-00007-A

Filing Date: 2014-11-14

Effective Date: 2014-11-14

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

Action taken: On 11/13/14, the PSC adopted an order approving the terms of a joint proposal of United Water Westchester, Inc. (UWW), United Water New Rochelle, Inc. (UWNR) and Staff for a multi-year rate plan.

Statutory authority: Public Service Law, section 89-c(1) and (10)

Subject: Approving the terms of a joint proposal of UWW, UWNR and Staff for a multi-year rate plan.

Purpose: To approve the terms of a joint proposal of UWW, UWNR and Staff for a multi-year rate plan.

Substance of final rule: The Commission, on November 13, 2014, adopted an order approving the terms of a joint proposal filed by United Water Westchester, Inc., United Water New Rochelle, Inc. and Staff for a multi-year rate plan, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(13-W-0564SA1)

NOTICE OF ADOPTION

Directing RG&E and Ginna to Negotiate an Agreement

I.D. No. PSC-30-14-00024-A

Filing Date: 2014-11-14

Effective Date: 2014-11-14

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

Action taken: On 11/13/14, the PSC adopted an order directing Rochester Gas and Electric Corporation (RG&E) and R.E. Ginna Nuclear Power Plant, LLC (Ginna) to negotiate an agreement.

Statutory authority: Public Service Law, sections 5(1), 65(1), (2), (3), 66(1), (2), (3), (5), (8) and (12)

Subject: Directing RG&E and Ginna to negotiate an agreement.

Purpose: To direct the initiation of an agreement between RG&E and Ginna.

Substance of final rule: The Commission, on November 13, 2014,

adopted an order directing Rochester Gas and Electric Corporation and R.E. Ginna Nuclear Power Plant, LLC (Ginna Facility) to negotiate a Reliability Support Services Agreement related to the continued operation of the Ginna Facility, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(14-E-0270SA1)

NOTICE OF ADOPTION

Authorizing NFG to Issue Up to \$100 Million in Promissory Notes

I.D. No. PSC-31-14-00005-A

Filing Date: 2014-11-14

Effective Date: 2014-11-14

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

Action taken: On 11/13/14, the PSC adopted an order authorizing National Fuel Gas Distribution Corp. (NFG) to issue promissory notes up to \$100 million and to enter into derivative instruments through December 31, 2017.

Statutory authority: Public Service Law, section 69

Subject: Authorizing NFG to issue up to \$100 million in promissory notes.

Purpose: To authorize NFG to issue up to \$100 million in promissory notes.

Substance of final rule: The Commission, on November 13, 2014, adopted an order authorizing National Fuel Gas Distribution Corporation to issue and sell, no later than December 31, 2017, up to \$100 million of promissory notes, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(14-G-0228SA1)

**PROPOSED RULE MAKING
HEARING(S) SCHEDULED**

Major Gas Rate Increase Filing

I.D. No. PSC-48-14-00010-P

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

Proposed Action: The Commission is considering a proposal filed by Central Hudson Gas and Electric Corporation to make various changes in the rates, charges, rules and regulations contained in its Schedule for Gas Service, P.S.C. No. 12—Gas.

Statutory authority: Public Service Law, sections 5, 65 and 66

Subject: Major gas rate increase filing.

Purpose: To establish rates and practices for gas service.

Public hearing(s) will be held at: 10:00 a.m., Monday, Jan. 12, 2015 and continuing daily as needed at Department of Public Service, Three Empire State Plaza, 3rd Fl. Hearing Rm., Albany, NY (Evidentiary Hearing Schedule*)

*On occasion, there are requests to reschedule or postpone evidentiary hearing dates. If such a request is granted, notification of any subsequent scheduling changes will be available at the DPS Web Site (www.dps.ny.gov) under Cases 14-E-0318 and 14-G-0319.

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

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

Substance of proposed rule: The Commission is considering a proposal filed by Central Hudson Gas and Electric Corporation (Central Hudson or the Company) to increase the Company's gas delivery base revenues for the rate year ending June 30, 2016 by approximately \$5.9 million, which is a 7.4% increase in delivery revenues (or about a 2.69% increase in an average residential customers' total bill). In its proposed filing, Central Hudson states the primary driver for the rate filing is property tax expense along with increased operating expenses and rate base. The statutory suspension period for the proposed filing runs through June 21, 2014. The Commission may adopt, in whole or in part, modify or reject terms set forth in Central Hudson's proposal or other negotiated proposals.

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-0319SP1)

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Major Electric Rate Increase Filing

I.D. No. PSC-48-14-00011-P

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

Proposed Action: The Commission is considering a proposal filed by Central Hudson Gas and Electric Corporation to make various changes in the rates, charges, rules and regulations contained in its Schedule for Electric Service, P.S.C. No. 15—Electricity.

Statutory authority: Public Service Law, sections 5, 65 and 66

Subject: Major electric rate increase filing.

Purpose: To establish rates and practices for electric service.

Public hearing(s) will be held at: 10:00 a.m., Monday, Jan. 12, 2015 and continuing daily as needed at Department of Public Service, Three Empire State Plaza, 3rd Fl. Hearing Rm., Albany, NY (Evidentiary Hearing Schedule)*

*On occasion, there are requests to reschedule or postpone evidentiary hearing dates. If such a request is granted, notification of any subsequent scheduling changes will be available at the DPS Web Site (www.dps.ny.gov) under Cases 14-E-0318 and 14-G-0319.

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

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

Substance of proposed rule: The Commission is considering a proposal filed by Central Hudson Gas and Electric Corporation (Central Hudson or the Company) to increase the Company's electric delivery base revenues for the rate year ending June 30, 2016 by approximately \$40.1 million,

which is a 14.8% increase in delivery revenues (or about an 8.44% increase in an average residential customers' total monthly bill). In its proposed filing, Central Hudson states the primary driver for the rate filing is property tax expense along with increased operating expenses and rate base. The statutory suspension period for the proposed filing runs through June 21, 2014. The Commission may adopt, in whole or in part, modify or reject terms set forth in Central Hudson's proposal or other negotiated proposals.

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-0318SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Authority to Update Its System Improvement Charge (SIC Mechanism)

I.D. No. PSC-48-14-00012-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 whether to approve, modify or reject a petition filed by New York American Water Company, Inc. (f/k/a Long Island Water Corporation) to update projects to be covered by its System Improvement Charge (SIC Mechanism).

Statutory authority: Public Service Law, sections 89-b and 89-c

Subject: Authority to update its System Improvement Charge (SIC Mechanism).

Purpose: To allow or disallow New York American Water Company to update its System Improvement Charge (SIC Mechanism).

Substance of proposed rule: In 2012, the Commission established New York American Water Company, Inc.'s (NYAW) (f/k/a Long Island Water Corporation) current rate plan. That plan includes a System Improvement Charge (SIC) mechanism, which allows NYAW to recover carry charges for specific completed infrastructure projects until the Company's next rate case.

In an October 27, 2014 Petition, NYAW states that the SIC projects identified in the current rate plan are either completed or near completion and proposes that the SIC mechanism be updated to include new infrastructure projects identified in the petition. The petition states that updating the SIC mechanism as proposed will allow the Company to continue to construct necessary capital improvements that benefit ratepayers, while providing NYAW with an opportunity to earn its authorized rate of return under the current rate plan.

The Commission is considering whether to approve, deny, or modify, in whole or in part, the petition to update the SIC mechanism. The Commission may consider all other 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, 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.

(14-W-0489SP1)

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

Petition for Submetering of Electricity**I.D. No.** PSC-48-14-00013-P

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

Proposed Action: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by Albee Tower 1 Owners LLC to submeter electricity at 70 Fleet Street, Brooklyn, 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 Albee Tower 1 Owners LLC to submeter electricity at 70 Fleet Street, Brooklyn, New York.

Substance of proposed rule: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by Albee Tower 1 Owners LLC to submeter electricity at 70 Fleet Street, Brooklyn, New York, located in the territory of Consolidated Edison. Edison of New York, Inc., and to take any other actions necessary to address the petition.

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

Data, views or arguments may be submitted to: Kathleen H. Burgess, 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-0320SP1)

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

Considering the Recommendations Contained in Staff's Electric Outage Investigation Report for MNRR, New Haven Line

I.D. No. PSC-48-14-00014-P

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

Proposed Action: The Commission is considering whether to require Con Edison to implement the recommendations contained in Department of Public Service's Staff investigation report of the September 2013 electric outage affecting the Metro-North Railroad, New Haven Line.

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

Subject: Considering the recommendations contained in Staff's electric outage investigation report for MNRR, New Haven Line.

Purpose: To consider the recommendations contained in Staff's electric outage investigation report for MNRR, New Haven Line.

Substance of proposed rule: On November 13, 2014, Staff of the Department of Public Service (Staff) presented to the Public Service Commission (PSC) its investigation report of the September 2013 electric outage affecting the Metropolitan Transit Authority's Metro-North Railroad, New Haven Line. The report contains, among other things, a list of findings and recommendations that upon implementation by the utility are intended to eliminate or reduce the likelihood of a similar future event. The PSC is considering whether to require Consolidated Edison Company of New York, Inc. (Con Edison) to implement the recommendations contained within Staff's report. Specifically, Section 2.0 of the report makes certain findings and proposes the following specific recommendations to address operating deficiencies by Con Edison that were noted in the course of Staff's electric outage investigation.

• Recommendation:

(1) Neither Con Edison nor MNRR should remove from service cable 38W09 to complete further upgrades at Mount Vernon substation until both sides have developed a plan that would reasonably ensure that should a failure of the single cable occur, MNRR will be able to provide uninterrupted service to its commuters of the New Haven Line.

(2) Con Edison should conduct a review of the current electric supply configurations for each of its railroad, subway, airports, water supply, and wastewater customers. Con Edison should determine whether design configuration similar to those present at MNRR's Mount Vernon substation also exist for members of these customer groups.

If such N-1 configurations do exist, then prior to a planned outage of one of the electric supplies to a customer's facilities, regardless of whether the outage is requested by the customer or Con Edison and scheduled to last 12 hours or more, Con Edison should take the following steps:

a) Inform the customer of the risk of a total loss of supply should the remaining supply fail or otherwise become unavailable;

b) Ascertain whether the customer has an alternative electric supply and a contingency plan should both Con Edison electric supplies become unavailable;

c) If the customer has an alternative electric supply, the customer's senior management should provide in writing, with signature(s), a description of the alternative electric supply, its capability as a percentage of full service when compared with normal utility supply, the length of time that would be required to have the alternative supply providing service, its history of use and testing schedule;

d) If the level of service of the alternative supply or mitigation measures is less than 100% when compared with normal utility supply, the customer's senior management should affirm, with signature(s) that this a satisfactory circumstance for its customers and the governmental agency that oversees or regulates its operations;

e) If the customer does not have an alternative electric supply, then the customer working with Con Edison should develop a contingency plan to either provide an additional source of supply or other mitigation measures. The alternative supply or mitigation measures under no circumstance should provide no less than 50% of full service when compared with normal utility supply and should be able to be placed in service in no less than twelve hours following the total loss of supply. Further, the customer's senior management should affirm, with signature(s) that this a satisfactory circumstance for its customers and the governmental agency that oversees or regulates its operations;

f) Con Edison, at all times, should provide Staff with all of the above information two weeks prior to the intentional removal of an electric supply from service to a railroad, subway, airport, water supply or wastewater customer. Should circumstances arise that do not conform to the two week period, then the above information should be provided as soon as it is available, but no less than 24 hours prior to the outage.

Con Edison must not simply accept a railroad, subway, airport, water supply, and wastewater customer's contingency plan for outages of power supplies or equipment requested by the customer. Con Edison needs to demonstrate that they understand the capabilities and limitations of the customer's proposed plan and potential consequences. Con Edison should also alert the customer and its own senior management if the proposed plan is found to be inadequate.

(3) Con Edison's freeze operation procedures, at a minimum, should be immediately revised to require the following:

1) temperatures of an adjacent cable(s) are to be continuously monitored at several locations to ascertain a satisfactory temperature profile along its exposed length;

2) temperatures of soils surrounding the cables are to be continuously monitored (the depth of soil penetration to be monitored to be provided by Con Edison engineering);

3) explicit instructions for personnel action to be taken in the event that the monitored temperatures of either the cable or soils are approaching dangerous levels (dangerous levels to be provided by Con Edison engineering); and

4) evaluations of the load characteristics are to be performed to assess atypical patterns or potential risks.

A full copy of Staff's investigation report can be found on the Department of Public Service website (www.dps.ny.gov) under the Document and Matter Management (DMM) system by inserting case number 13-E-0529. The Commission may decide to approve, reject or modify the recommendations, in whole or in part. 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.

(13-E-0529SP1)

Department of Taxation and Finance

NOTICE OF ADOPTION

Fuel Use Tax on Motor Fuel and Diesel Motor Fuel and the Art. 13-A Carrier Tax Jointly Administered Therewith

I.D. No. TAF-34-14-00003-A

Filing No. 954

Filing Date: 2014-11-17

Effective Date: 2014-11-17

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

Action taken: Amendment of section 492.1(b)(1) of Title 20 NYCRR.

Statutory authority: Tax Law, sections 171, subd. First, 301-h(c), 509(7), 523(b) and 528(a)

Subject: Fuel use tax on motor fuel and diesel motor fuel and the art. 13-A carrier tax jointly administered therewith.

Purpose: To set the sales tax component and the composite rate per gallon for the period October 1, 2014 through December 31, 2014.

Text or summary was published in the August 27, 2014 issue of the Register, I.D. No. TAF-34-14-00003-P.

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

Text of rule and any required statements and analyses may be obtained from: Kathleen D. O’Connell, Tax Regulations Specialist, Department of Taxation and Finance, Office of Counsel, Building 9, W.A. Harriman Campus, Albany, NY 12227, (518) 530-4153, email: tax.regulations@tax.ny.gov

Assessment of Public Comment

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

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Fuel Use Tax on Motor Fuel and Diesel Motor Fuel and the Art. 13-A Carrier Tax Jointly Administered Therewith

I.D. No. TAF-48-14-00002-P

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

Proposed Action: Amendment of section 492.1(b)(1) of Title 20 NYCRR.

Statutory authority: Tax Law, sections 171, subd. First, 301-h(c), 509(7), 523(b) and 528(a)

Subject: Fuel use tax on motor fuel and diesel motor fuel and the art. 13-A carrier tax jointly administered therewith.

Purpose: To set the sales tax component and the composite rate per gallon for the period January 1, 2015 through March 31, 2015.

Text of proposed rule: Pursuant to the authority contained in subdivision First of section 171, subdivision (c) of section 301-h, subdivision 7 of section 509, subdivision (b) of section 523, and subdivision (a) of section 528 of the Tax Law, the Commissioner of Taxation and Finance hereby proposes to make and adopt the following amendment to the Fuel Use Tax

Regulations, as published in Article 3 of Subchapter C of Chapter III of Title 20 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

Section 1. Paragraph (1) of subdivision (b) of section 492.1 of such regulations is amended by adding a new subparagraph (lxxvii) to read as follows:

| Motor Fuel | | | Diesel Motor Fuel | | |
|---------------------------------|----------------|----------------|---------------------|----------------|----------------|
| Sales Tax Component | Composite Rate | Aggregate Rate | Sales Tax Component | Composite Rate | Aggregate Rate |
| (lxxvi) October - December 2014 | | | | | |
| 16.0 | 24.0 | 42.4 | 16.0 | 24.0 | 40.65 |
| (lxxvii) January - March 2015 | | | | | |
| 16.0 | 24.0 | 41.8 | 16.0 | 24.0 | 40.05 |

Text of proposed rule and any required statements and analyses may be obtained from: Kathleen D. O’Connell, Tax Regulations Specialist, Department of Taxation and Finance, Office of Counsel, Building 9, W.A. Harriman Campus, Albany, NY 12227, (518) 530-4153, email: tax.regulations@tax.ny.gov

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

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

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

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

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Filing Requirements for Farm Distilleries Under Article 18 of the Tax Law

I.D. No. TAF-48-14-00003-P

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

Proposed Action: Amendment of section 60.1 of Title 20 NYCRR. This rule is proposed pursuant to SAPA § 207(3), Five Year Review of Existing Rules.

Statutory authority: Tax Law, sections 171, subdivision First, 429(1) and 436 (not subdivided)

Subject: Filing requirements for farm distilleries under article 18 of the Tax Law.

Purpose: To allow farm distilleries to file annual rather than monthly alcoholic beverage tax returns.

Text of proposed rule: Pursuant to the authority contained in subdivision First of section 171, subdivision (1) of section 429, and section 436 (not subdivided) of the Tax Law, the Commissioner of Taxation and Finance hereby proposes to make and adopt the following amendments to the Alcoholic Beverage Tax Regulations of the Department of Taxation and Finance, as published in Subchapter H of Chapter 1 of Title 20 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

Section 1. Subclause (1) of clause (b) of subparagraph (i) of paragraph 3 of subdivision (a) of section 60.1 of such regulations is amended to read as follows:

 (“1”) a brewer, pursuant to sections 51 and 56 of the Alcoholic Beverage Control Law, or a farm brewery pursuant to sections 51-a and 56 of such law[, whose annual production of beer will not exceed 60,000 barrels] (“i.e.,” a “micro-brewer” or “farm brewery”); or

Section 2. Paragraph 4 of subdivision (a) of section 60.1 of such regulations is amended to read as follows:

(4)(i) A distributor that:

 (“a”)(“1”) is an out-of-state winery and is required to register as a distributor solely because such person ships its wine directly to any New York State resident for such resident’s personal use; and

 (“2”) is licensed by the State Liquor Authority of New York State as a direct shipper, pursuant to section 79-c of the Alcoholic Beverage Control Law; or

 (“b”) is licensed by the State Liquor Authority of New York State as a farm winery, pursuant to section 76-a of the Alcoholic Beverage Control Law, or as a special farm winery pursuant to section 76-d of the

Alcoholic Beverage Control Law[, or as a micro-winery pursuant to section 76-f of the Alcoholic Beverage Control Law];

(“c”) is licensed by the State Liquor Authority of New York State as a farm distillery, pursuant to section 61 of the Alcoholic Beverage Control Law;

may apply to the department to file an annual tax return in lieu of the monthly returns required by paragraph (1) of this subdivision. Such annual return shall relate to the distributor’s activities during the calendar year and shall be due on or before January 20th of the succeeding calendar year. Such return must show the information required in paragraph (1) of this subdivision, except that “month” shall be read as “year,” and must be accompanied by proof of such distributor’s continuing license as a direct shipper, farm winery, special farm winery or [micro-winery] farm distillery.

(ii)(“a”) If a distributor meeting the requirements of subparagraph (i) of this paragraph (a “qualifying distributor”) at any time during the period to be covered by an annual return ceases to be licensed by the State Liquor Authority, such distributor must file a return reflecting the distributor’s activities from January 1st of such annual period through the end of the month during which the distributor ceased to meet the qualifications of subparagraph (i) of this paragraph. Such return must be filed on or before the 20th day of the month following the month during which the distributor ceased to meet the requirements of subparagraph (i) of this paragraph, and any tax due must be paid with filing of such return.

(“b”) If a distributor meeting the requirements of clause (i)(“b”) of this paragraph at any time during the period to be covered by an annual return becomes reclassified with the State Liquor Authority as a winery other than a farm winery[,] or a special farm winery, [or a micro-winery,] such distributor must immediately begin filing monthly tax returns, as described in paragraph (1) of this subdivision.

(“c”) If a distributor meeting the requirements of clause (i)(“c”) of this paragraph at any time during the period to be covered by an annual return becomes reclassified with the State Liquor Authority as a distillery other than a farm distillery, such distributor must immediately begin filing monthly tax returns, as described in paragraph (1) of this subdivision.

(iii) If it becomes necessary for a qualifying distributor to begin filing monthly returns during an annual period, pursuant to the provisions of clause (ii)(“b”) or clause (ii)(“c”) of this paragraph, such distributor must also file a return reflecting the distributor’s activities from January 1st of such annual period through the end of the month during which the distributor ceased to meet the qualifications of subparagraph (i) of this paragraph. Such return must be filed on or before the 20th day of the month following the month during which the distributor ceased to meet the requirements of such subparagraph (i) of this paragraph, and any tax due must be paid with filing of such return.

(iv) If it becomes necessary for a qualifying distributor to begin filing monthly returns during an annual period, pursuant to the provisions of clause (ii)(“b”) or clause (ii)(“c”) of this paragraph, such distributor may apply to the department to file on an annual basis for the next or any subsequent calendar year if such distributor anticipates that it will again meet the requirements of clause (i)(“b”) or clause (i)(“c”) of this paragraph. Such application must include an explanation of why the distributor was required to begin filing monthly returns during the previous annual period and why the distributor does not expect such circumstances to re-occur in the upcoming annual period.

Text of proposed rule and any required statements and analyses may be obtained from: Kathleen O’Connell, Department of Taxation and Finance, Office of Counsel, Building 9, W.A. Harriman Campus, Albany, NY 12227, (518) 530-4153, email: tax.regulations@tax.ny.gov

Data, views or arguments may be submitted to: Kathleen D. O’Connell, Department of Taxation and Finance, Building 9, W.A. Harriman Campus, Albany, NY 12227, (518) 530-4153, email: tax.regulations@tax.ny.gov

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

Reasoned Justification for Modification of the Rule

The Department of Taxation and Finance submitted for publication in the Rule Review section of the January 8, 2014, issue of the State Register summaries of rules that were adopted by the Commissioner of Taxation and Finance in 2009, as notice of the department’s intent to review such rules pursuant to section 207 of the State Administrative Procedure Act. This information was also posted on the department’s web site (<http://www.tax.state.ny.us/rulemaker/regulations/fiveyearrev.htm>). The public was invited to submit comments concerning the continuation or modification of these rules by February 24, 2014. No public comments were received by the department concerning the 2009 amendments to 20

NYCRR Section 60.1 (Filing Requirements for Certain Wine Distributors Registered Under Article 18 of the Tax Law). The 2009 rule allowed certain New York State farm wineries, micro-wineries, and out-of-state direct wine shippers to file annual alcoholic beverage tax returns rather than monthly returns as previously required. In addition, the 2009 rule amended section 60.1 to reflect that out-of-state direct wine shippers are not required to report certain inventory information on their alcoholic beverage tax returns. The amendments were adopted by the commissioner on April 21, 2009 and published in the State Register on May 6, 2009 (TAF-07-09-00012-A).

The current rule expands the ability to file annual alcoholic beverage tax returns rather than monthly returns to entities licensed by the State Liquor Authority of New York State as a farm distillery, pursuant to section 61 of the Alcoholic Beverage Control Law. The rule would also eliminate unnecessarily specific references to annual production by farm breweries and an obsolete citation to the Alcoholic Beverage Control Law.

The expansion of the annual filing option to include farm distilleries will reduce the administrative cost and burden of tax return filing on such entities, with little or no resultant cost to state and local governments. The elimination of specific production references will make it unnecessary to amend the regulations merely because of changes in the production thresholds set forth in the Alcoholic Beverage Control Law.

For the most part, the amendments that were made in 2009 are not being amended by this rule; therefore, these 2009 amendments remain valid and are continued without modification, unless explicitly amended. Because the Department reviewed the entire 2009 rule in developing this rule, the 2009 rule and this rule will be reviewed in one combined rule review in the future, beginning in 2019.

Regulatory Impact Statement

1. Statutory authority: Tax Law, section 171, subdivision First, and sections 429(1) and 436 (not subdivided). Section 171, subdivision First of the Tax Law provides for the Commissioner of Taxation and Finance to make reasonable rules and regulations, which are consistent with the law, that may be necessary for the exercise of the Commissioner’s powers and the performance of the Commissioner’s duties under the Tax Law. Section 436 of the Tax Law provides for the authority provided by section 171 to be exercisable specifically with respect to the alcoholic beverage tax imposed by Article 18 of the Tax Law. Section 429(1) of the Tax Law, while providing generally for monthly alcoholic beverage tax returns, provides that the Commissioner may require tax returns to be made at such times and covering such periods as is deemed necessary in order to insure the payment of the tax.

2. Legislative objectives: The rule is being proposed pursuant to this authority to allow returns to be filed by certain filers for periods and upon such dates other than those prescribed in the Tax Law. The rule also eliminates an unnecessarily specific reference to annual production by farm breweries and eliminates an obsolete citation to the Alcoholic Beverage Control Law.

3. Needs and benefits: The rule amends section 60.1(a) of the Alcoholic Beverage Tax Regulations to allow entities licensed by the State Liquor Authority of New York State as a farm distillery, pursuant to section 61 of the Alcoholic Beverage Control Law, to apply to file annual alcoholic beverage tax returns rather than monthly returns as currently required. Records show that the tax liability of these farm distilleries is minimal; annual filing would reduce the burden placed upon these filers.

4. Costs:

(a) Costs to regulated persons: The regulated parties affected by this rule are farm distilleries that are currently filing Form MT-40, “Return of Tax on Wines, Liquors, Alcohol, and Distilled or Rectified Spirits,” each month. The regulated parties may elect to file an annual tax return. Form MT-40 will be modified to accommodate both monthly and annual filing. The administrative cost and burden of tax return filing will be reduced. However, to make the election to file an annual return, the regulated party will need to file Form MT-38, “Application for Annual Filing Status for Certain Beer and Wine Manufacturers.” Form MT-38 is a half-page form, currently used by certain beer and wine distributors to elect to file annual tax returns. Form MT-38 will be modified to accommodate certain farm distilleries. The cost to the regulated parties choosing to file annually to fill out this application form is miniscule. Overall, there is no measurable cost impact resulting from adopting this rule, which will benefit the regulated parties.

(b) Costs to the State and its local governments including this agency: It is estimated that implementation of this regulation will cause an estimated minimal State revenue loss. Because the returns that may be filed annually instead of monthly will be filed in the same fiscal year in which the monthly returns would have been filed, there will be no fiscal impact attributable to filing in a different fiscal year. The Department may experience a minimal cost from a loss in the use of the money. It is estimated that fewer than 50 farm distilleries will be eligible to remit tax annually rather than monthly, and eligible distilleries have such small liability and

interest rates are so low, that the Department believes the loss would be insignificant. Additionally, it is estimated that annual, rather than monthly, processing of these returns should result in a slight reduction of this agency's administrative costs. This rule will have no cost in terms of revenue impact on local governments.

(c) **Information and methodology:** This analysis is based on a review of the statutory requirements and on discussions among personnel from the Department's Taxpayer Guidance Division, Office of Counsel, Office of Tax Policy Analysis Bureau of Tax and Fiscal Studies, Office of Budget and Management Analysis, and Management Analysis and Project Services Bureau.

5. **Local government mandates:** This rule imposes no mandates upon any county, city, town, village, school district, fire district, or other special district.

6. **Paperwork:** The rule imposes no reporting requirements, forms or other paperwork upon regulated parties beyond those required by statute. It is noted that this rule will reduce the number of returns required to be filed by the affected parties who apply and are allowed to file annual returns and, in turn, reduce the number of returns processed by the Department.

7. **Duplication:** There are no relevant rules or other legal requirements of the Federal or State governments that duplicate, overlap, or conflict with this rule.

8. **Alternatives:** The intention of the Department is to allow the option of annual filing for affected parties which will benefit both the affected parties and the Department. An alternative would be to offer quarterly filing, which would not be as beneficial to the affected parties or the Department.

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

10. **Compliance schedule:** No time is needed in order for regulated parties to comply with this rule nor does the rule impose any new compliance requirements. The rule will take effect on the date that the Notice of Adoption is published in the State Register and affected parties will be allowed to make the election to file annual ABT returns for tax years beginning on or after January 1, 2015.

Regulatory Flexibility Analysis

A Regulatory Flexibility Analysis for Small Businesses and Local Governments is not being submitted with this rule because the rule will not impose any adverse economic impact or any reporting, recordkeeping, or other compliance requirements on small businesses or local governments beyond those required by statute. The rule allows certain New York State farm distilleries to file annual alcoholic beverage tax returns rather than monthly returns as currently required.

The following organizations are being given an opportunity to participate in the rule's development: the Association of Towns of New York State; the Office of Coastal, Local Government, and Community Sustainability of the New York State Department of State; the Division for Small Business of Empire State Development; the National Federation of Independent Businesses; the New York State Association of Counties; the New York Conference of Mayors and Municipal Officials; the Small Business Committee of the New York State Business Council; the Retail Council of New York State; and the New York Association of Convenience Stores; the Tax Section of the New York State Bar Association; the Association of the Bar of the City of New York; the New York State Society of Enrolled Agents; the New York State Society of CPAs; and the Taxation Committee of the Business Council of New York State.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis is not being submitted with this rule because it will not impose any adverse impact on rural areas or any reporting, recordkeeping, or other compliance requirements on public or private entities in rural areas. The rule allows entities licensed by the State Liquor Authority of New York State as a farm distillery, pursuant to section 61 of the Alcoholic Beverage Control Law, to file annual alcoholic beverage tax returns rather than monthly returns as currently required.

The following organizations are being given an opportunity to participate in the rule's development: the Association of Towns of New York State; the Office of Coastal, Local Government, and Community Sustainability of New York State Department of State; the Division for Small Business of Empire State Development; the National Federation of Independent Businesses; the New York State Association of Counties; the New York Conference of Mayors and Municipal Officials; the Small Business Committee of the Business Council of New York State; the Retail Council of New York State; the New York Association of Convenience Stores; the Tax Section of the New York State Bar Association; the Association of the Bar of the City of New York; the New York State Society of Enrolled Agents; the New York State Society of CPAs; and the Taxation Committee of the Business Council of New York State.

Job Impact Statement

A Job Impact Exemption is not being submitted with this rule because it is evident from the subject matter of the rule that it would have no impact on

jobs and employment opportunities. The rule allows entities licensed by the State Liquor Authority of New York State as a farm distillery, pursuant to section 61 of the Alcoholic Beverage Control Law, to file annual alcoholic beverage tax returns rather than monthly returns as currently required. It is estimated that fewer than 50 farm distilleries will be eligible for annual filing.

Office of Temporary and Disability Assistance

NOTICE OF ADOPTION

Noncompliance with Supplemental Nutrition Assistance Program (SNAP) Work Requirements; SNAP Conciliation Process

I.D. No. TDA-36-14-00014-A

Filing No. 955

Filing Date: 2014-11-17

Effective Date: 2014-12-29

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

Action taken: Amendment of sections 385.11 and 385.12 of Title 18 NYCRR.

Statutory authority: Social Services Law, section 95(1)(b); United States Code Title 7, sections 2011, 2013 and 2029

Subject: Noncompliance with Supplemental Nutrition Assistance Program (SNAP) work requirements; SNAP conciliation process.

Purpose: To render State regulations governing noncompliance and the conciliation process consistent with federal requirements.

Text or summary was published in the September 10, 2014 issue of the Register, I.D. No. TDA-36-14-00014-P.

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

Text of rule and any required statements and analyses may be obtained from: Richard P. Rhodes, Jr., New York State Office of Temporary and Disability Assistance, 40 North Pearl Street, 16C, Albany, NY 12243-0001, (518) 486-7503, email: richard.rhodesjr@otda.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 Temporary and Disability Assistance (OTDA) received two comments from various organizations relative to the regulatory amendments. These comments have been reviewed and duly considered in this Assessment of Public Comments.

Two comments requested amendment of the regulatory text to require a finding of "willful misconduct" on the part of the program participant before imposing a Supplemental Nutrition Assistance Program (SNAP) Employment and Training (E&T) sanction. OTDA disagrees with these comments, insofar as the SNAP E&T Program is not a pilot program. The United States Department of Agriculture's (USDA) Food and Nutrition Service (FNS) provides that the "willful misconduct" standard applies only to "Fiscal Year 2015 Pilot Projects to Reduce Dependency and Increase Work Requirements and Work Effort Under the [SNAP]" (USDA FNS Request for Applications CDFA # 10.596 [released Aug. 25, 2014] at p. 19, available at <http://www.fns.usda.gov/sites/default/files/SNAP-ET-Pilot-RFA-pdf>) ("[f]or proposed pilot projects that include mandatory subsidized or unsubsidized employment as an E&T activity, applicants must agree to adhere to the standards of willful misconduct for failure to work").

Two comments requested OTDA to change the SNAP E&T Program from a mandatory SNAP E&T program to a voluntary SNAP E&T program, or, alternatively, for OTDA to adopt a regulation affording social services districts (SSDs) the option to do so. This comment is beyond the scope of this Assessment of Public Comments insofar as it does not specifically pertain to the regulatory amendments. It is not the purpose of the regulatory amendments to reconsider or otherwise amend the provisions surrounding SNAP E&T policy in New York State; rather, their purpose is to update prior policies associated with SNAP E&T sanctions by including the federally-required option for individuals to avoid a SNAP

E&T sanction by demonstrating program compliance. Consequently, comments proposing policy changes which fall outside of the scope of the regulatory amendments are not appropriately addressed in this Assessment of Public Comments.

A related comment also purports that the Regulatory Impact Statement (RIS) is deficient under State Administrative Procedure Act (SAPA) § 202-a(3)(g) because it does not address “alternative approaches” to the regulatory amendments, including a discussion of such alternatives and the reasons why they were not incorporated into the rule. OTDA disagrees with this comment. As stated in the RIS, the intended purpose of the regulatory amendments is to conform OTDA’s regulations with federal regulations and policies, including, but not limited to, a waiver approved by the USDA’s FNS to modify certain requirements of 7 Code of Federal Regulations (C.F.R.) § 273.7(f)(1)(ii). With these regulatory amendments, OTDA is not considering alternative approaches available to the states. The regulatory amendments focus only upon the requirements set forth in the USDA waiver; consequently, the RIS satisfies the requirements of the SAPA.

One comment requested that the regulatory language be amended to exempt additional groups from mandatory participation in the SNAP E&T Program, including homeless individuals, households with more than three children, women in their third trimesters of pregnancy, part-time employees whose schedules conflict with Program work requirements, migrant workers, individuals who are temporarily laid off but have “connections to the work force,” and, at the discretion of SSDs, SNAP recipients who are required to travel long distances to assigned job sites. This comment is beyond the scope of this Assessment of Public Comments insofar as it does not specifically pertain to the regulatory amendments, and therefore, is not appropriately addressed in this Assessment of Public Comments. OTDA’s regulations continue to require that those who are not capable of work are exempt from work requirements and that instances of noncompliance result in sanctions only if the noncompliance is without good cause.

One comment requested amendment of the regulatory language to include domestic violence as a “specific, explicit” basis for exemption of an individual from the SNAP E&T Program work rules. OTDA asserts that this comment is beyond the scope of this Assessment of Public Comments insofar as it does not specifically pertain to the regulatory amendments, and therefore, is not appropriately addressed in this Assessment of Public Comments. However, even if this comment was properly within the scope of this Assessment of Public Comments, OTDA notes that under existing regulations, such a scenario could constitute good cause for noncompliance with the SNAP E&T work requirements.

One comment requested OTDA to amend the regulatory language to adopt the minimum sanction periods for non-compliance with SNAP E&T work requirements as prescribed under federal SNAP regulations. This comment is beyond the scope of this Assessment of Public Comments. The new language set forth in 18 NYCRR § 385.12(e)(2) is merely a re-statement of the existing sanction structure which is currently set forth in 18 NYCRR § 385.12(e)(1), also clarifying that it is applicable only to recipients. As previously stated, the intended purpose of the regulatory amendments is to conform OTDA’s regulations with federal regulations and policies, including, but not limited to, a waiver approved by the USDA’s FNS; insofar as this waiver does not address the duration of sanctions imposed for noncompliance with the SNAP E&T work requirements, nor do the regulatory amendments.

NOTICE OF ADOPTION

Standard Utility Allowances (SUAs) for the Supplemental Nutrition Assistance Program (SNAP)

I.D. No. TDA-38-14-00023-A

Filing No. 962

Filing Date: 2014-11-18

Effective Date: 2014-12-03

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

Action taken: Amendment of section 387.12 of Title 18 NYCRR.

Statutory authority: Social Services Law, sections 20(3)(d) and 95; 7 United States Code, section 2014(e)(6)(C); 7 Code of Federal Regulations, section 273.9(d)(6)(iii)

Subject: Standard Utility Allowances (SUAs) for the Supplemental Nutrition Assistance Program (SNAP).

Purpose: The proposed regulatory amendments set forth the federally mandated and approved SUAs as of 10/1/14.

Text or summary was published in the September 24, 2014 issue of the Register, I.D. No. TDA-38-14-00023-EP.

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

Text of rule and any required statements and analyses may be obtained from: Richard P. Rhodes, Jr., New York State Office of Temporary and Disability Assistance, 40 North Pearl Street, 16C, Albany, NY 12243-0001, (518) 486-7503, email: richard.rhodesjr@otda.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 agency received no public comment.

Triborough Bridge and Tunnel Authority

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Proposal to Establish a New Crossing Charge Schedule for Use of Bridges and Tunnels Operated by TBTA

I.D. No. TBA-48-14-00004-P

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

Proposed Action: Repeal of section 1021.1; and addition of new section 1021.1 to Title 21 NYCRR.

Statutory authority: Public Authorities Law, section 553(5)

Subject: Proposal to establish a new crossing charge schedule for use of bridges and tunnels operated by TBTA.

Purpose: Proposal to raise additional revenue.

Public hearing(s) will be held at: 5:00 p.m., December 1, 2014 at Baruch College, 17 Lexington Ave., Manhattan, NY; 5:00 p.m., December 1, 2014 at Hostos Community College, 450 Grand Conc., Bronx, NY; 5:00 p.m., December 2, 2014 at NYS Power Authority, 123 Main St., White Plains, NY; 6:00 p.m., December 3, 2014 at York College, 94-20 Guy R Brewer Blvd., Jamaica, NY; 5:00 p.m., December 3, 2014 at Hilton Long Island Hotel, Salon C&D, 598 Broad Hollow Rd., Melville, NY; 5:00 p.m., December 8, 2014 at Palisades Center, 1000 Palisades Center Dr., West Nyack, NY; 6:00 p.m., December 10, 2014 at College of Staten Island Center for the Arts, Bldg. 1P, Springer Concert Hall, 2800 Victory Blvd., Staten Island, NY; 6:00 p.m., December 11, 2014 at Whitman Theater at Brooklyn College, 2900 Bedford Ave., Brooklyn, NY.

Hearing dates, times and places may be subject to change; check the MTA website, mta.info, for the latest information.

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

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

Text of proposed rule:

TRIBOROUGH BRIDGE AND TUNNEL AUTHORITY CROSSING CHARGES

| | | | | |
|--|-------------------|---|-----------------------------|--|
| A. E-ZPass Charges | VERRAZANO-NARROWS | ROBERT F. BRIDGE KENNEDY, | HENRY HUDSON PARKWAY-BRIDGE | MARINE GIL |
| York Customer Service Center Customers | (a) | BRONX-WHITESTONE, AND THROGS NECK BRIDGES AND QUEENS MIDTOWN AND HUGH L CAREY TUNNELS | | HODGES MEMORIAL, AND CROSS BAY VETERANS MEMORIAL BRIDGES |

| CLASSIFICATION | Crossing Charges | | | |
|--|------------------|---------|--------|---------|
| 1 Two-axle vehicles, including: passenger vehicles, station wagons, self-propelled mobile homes, ambulances, hearses, vehicles with seating capacity of not more than 15 adult persons (including the driver) and trucks with maximum gross weight (MGW) of 7,000 lbs. and under | \$5.54 | \$5.54 | \$2.54 | \$2.08 |
| *Registered Staten Island Residents using an eligible vehicle taking 3 or more trips per month | \$3.12 | | | |
| *Registered Staten Island Residents using an eligible vehicle taking less than 3 trips per month | \$3.31 | | | |
| *Registered Rockaway Residents using an eligible vehicle | | | | \$1.36 |
| *Each additional axle costs | \$3.25 | \$3.25 | \$2.50 | \$2.50 |
| 2 All vehicles with MGW greater than 7,000 lbs. and buses (other than franchise buses using E-ZPass and motor homes) | | | | |
| *Two-axle vehicles | \$10.00 | \$10.00 | | \$5.00 |
| *Three-axle vehicles | \$16.39 | \$16.39 | | \$8.20 |
| *Four-axle vehicles | \$20.95 | \$20.95 | | \$10.48 |
| *Five-axle vehicles | \$27.31 | \$27.31 | | \$13.66 |
| *Six-axle vehicles | \$31.87 | \$31.87 | | \$15.94 |
| *Seven-axle vehicles | \$38.23 | \$38.23 | | \$19.12 |
| *Each additional axle | \$6.39 | \$6.39 | | \$3.20 |
| 3 Two-axle franchise buses | \$4.01 | \$4.01 | | \$2.00 |
| 4 Three-axle franchise buses | \$4.76 | \$4.76 | | \$2.51 |
| 5 Motorcycles | \$2.41 | \$2.41 | \$1.73 | \$1.73 |
| *Each additional axle | \$1.50 | \$1.50 | \$1.50 | \$1.50 |

The Authority reserves the right to determine whether any vehicle is of unusual or unconventional design, weight or construction and therefore not within any of the listed categories. The Authority also reserves the right to determine the crossing charge for any such vehicle of unusual or unconventional design, weight or construction.

Bicycles are not permitted over Bronx-Whitestone, Throgs Neck, Henry Hudson, and Verrazano-Narrows Bridges, or through the tunnels. Such vehicles may cross the Robert F. Kennedy, Marine Parkway-Gil Hodges Memorial and Cross Bay Veterans Memorial Bridges without payment of crossing charge, but must be walked across the pedestrian paths of such bridges.

Only vehicles authorized to use parkways are authorized to use the Henry Hudson Bridge. An unauthorized vehicle using the Henry Hudson Bridge must pay the Marine Parkway-Gil Hodges Memorial Bridge rate.

E-ZPass crossing charges apply to New York E-ZPass Customer Service Center customers only and are available subject to terms, conditions and agreements established by the Authority.

There are no residential restrictions with regard to enrollment as a TBTA Customer in the New York Customer Service Center.

(a) Under Verrazano-Narrows one-way crossing charge collection program, all per crossing charges shown should be doubled. Presently paid in westbound direction only.

Text of proposed rule and any required statements and analyses may be obtained from: M. Margaret Terry, Esq., Triborough Bridge and Tunnel Authority, 2 Broadway, 24th Floor, New York, New York 10004, (646) 252-7619, email: mterry@mtabt.org

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

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

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

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