

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.

Office of Alcoholism and Substance Abuse Services

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Implementation of a Program for the Designation of Vital Access Providers

I.D. No. ASA-29-14-00002-P

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

Proposed Action: This is a consensus rule making to add Part 802 to Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 19.09(b), 19.20, 19.20-a, 19.40, 32.02; L. 2014, ch. 53

Subject: Implementation of a program for the designation of Vital Access providers.

Purpose: To ensure preservation of access to essential services in economically challenged regions of the state.

Text of proposed rule: PART 802

VITAL ACCESS PROGRAM and PROVIDERS

802.1 Background and Intent.

The Purpose of this Part is to provide a means to support the stability and geographic distribution of substance use disorder treatment services throughout all geographic and economic regions of the state. A designation of Vital Access Provider denotes the state's determination to ensure patient access to a provider's essential services otherwise jeopardized by the provider's payer mix or geographic isolation. Vital Access Providers in the OASAS system are limited to eligible OASAS certified inpatient rehabilitation facilities, or such other programs as may be designated by the commissioner.

802.2 Legal Base

(a) Section 19.07(e) of the Mental Hygiene Law authorizes the Commissioner ("Commissioner") of the Office to adopt standards including necessary rules and regulations pertaining to chemical dependence services.

(b) Section 19.09(b) of the Mental Hygiene Law authorizes the Commissioner to adopt regulations necessary and proper to implement any matter under his or her jurisdiction.

(c) Section 19.40 of the Mental Hygiene Law authorizes the Commissioner to issue operating certificates for the provision of chemical dependence services.

(d) Section 25.09 of the Mental Hygiene Law authorizes the Office to establish limits on the amount of financial support which may be advanced or reimbursed to a program for the administration of such program.

(e) Section 32.01 of the Mental Hygiene Law authorizes the Commissioner to adopt any regulation reasonably necessary to implement and effectively exercise the powers and perform the duties conferred by Article 32 of the Mental Hygiene Law.

(f) Section 32.07(a) of the Mental Hygiene Law authorizes the Commissioner to adopt regulations to effectuate the provisions and purposes of Article 32 of the Mental Hygiene Law.

(g) Section 43.02 of the Mental Hygiene Law authorizes the establishment of rates or methods of payment for services at facilities subject to licensure or certification by the Office.

(h) Section 23 of part C of chapter 58 of the laws of 2009, authorizes the commissioner, with the approval of the Commissioner of Health and the Director of the Budget, to promulgate regulations pursuant to Article 32 of the Mental Hygiene Law utilizing the APG methodology described in subdivision (c) of section 841.14 of this Part for the purpose of establishing standards and methods of payments made by government agencies pursuant to title 11 of article 5 of the Social Services Law for chemical dependence outpatient clinic services.

(i) Chapter 53 of the Laws of 2014 authorizes the commissioner to provide special funding to certain designated providers.

802.3 Definitions.

(a) "Vital Access Program" means a program of supplemental state funding and/or temporary rate adjustments available to designated vital access providers pursuant to Part 841 of this Title and the provisions of this Part.

(b) "Vital Access Provider" ("VAP") means an OASAS certified program that is designated by the commissioner as essential but not financially viable because of its service to financially vulnerable populations and/or provision of essential services in an otherwise underserved region.

802.4 Vital Access Program.

(a) Program. The Vital Access Program is a program of ongoing supplement to the non-capital component of service reimbursement rates calculated pursuant to Part 841 of this Title, or exemption from payment reductions, as long as the designation as a vital access provider, as determined pursuant to this section, applies.

(b) Eligibility. The commissioner may grant approval of temporary adjustments to OASAS certified inpatient rehabilitation (IPRs) programs, or such other programs as may be designated by the commissioner, which demonstrate through submission of a written application that the additional resources provided by a temporary rate adjustment will achieve one or more of the following:

- (1) protect or enhance access to care;
- (2) protect or enhance quality of care;
- (3) improve the cost effectiveness of the delivery of health care services; or
- (4) otherwise protect or enhance the health care delivery system, as determined by the commissioner.

(c) Application. (1) The written application pursuant to subdivision (a) shall be submitted to the commissioner at least sixty (60) days prior to the requested effective date of the temporary rate adjustment and shall include a proposed budget to achieve the goals of the proposal.

(2) The commissioner may require that applications submitted pursuant to this section be submitted in response to and in accordance with a Request For Applications or a Request For Proposals issued by the commissioner.

(3) In rural communities, federal designation as critical access, essential access, or sole community provider will serve to meet the threshold criteria as a vital access provider.

(d) Conditions on Approval. (1) Any temporary rate adjustment issued pursuant to this section shall be in effect for a specified period of time as determined by the commissioner, of up to three years. At the end of the specified timeframe, the facility shall be reimbursed in accordance with the otherwise applicable rate-setting methodology as set forth in applicable statutes and Part 841 of this Title.

(2) The commissioner may establish, as a condition of receiving such a temporary rate adjustment, benchmarks and goals to be achieved in conformity with the facility's written application as approved by the commissioner and may also require that the facility submit such periodic reports concerning the achievement of satisfactory progress, as determined by the commissioner, in accomplishing such benchmarks and goals shall be a basis for ending the facility's temporary rate adjustment prior to the end of the specified timeframe.

802.5 Severability.

If any provision of this Part or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Part that can be given effect without the invalid provision or applications, and to this end the provisions of this Part are declared to be severable.

Text of proposed rule and any required statements and analyses may be obtained from: Sara Osborne, Senior Attorney, NYS Office of Alcoholism and Substance Abuse Services, 1450 Western Ave., Albany, NY 12203, (518) 485-2317, email: Sara.Osborne@oasas.ny.gov

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

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

Consensus Rule Making Determination

14 NYCRR Part 802 was adopted by emergency upon filing with the Department of State on May 14, 2014 for purposes of preservation of health, safety and welfare of individuals receiving services within the OASAS treatment system. Chapter 53 of the laws of 2014, provided for the commissioners of health and mental hygiene to make available funds to certain designated providers of health and behavioral health services which might be endangered due to shifting demographics and changes in health care financing (Medicaid managed care and Affordable Care Act).

The adoption of Part 802 is necessary to implement a process for application and review by the Office to designate eligible programs. If OASAS did not promulgate regulations the process for OASAS and its providers to conduct this application process and subsequent distribution of needed funding would not be implemented. Further, protections for individuals receiving services would be threatened by the confusion resulting from existing regulations in other agencies for the same program.

This rule making is filed as a Consensus rule on the grounds no person is likely to object because its purpose is to provide additional funding to programs operating in regions most needing assistance due to demographic obstacles to vital revenue resources.

Job Impact Statement

OASAS does not anticipate a substantial adverse impact on jobs and employment opportunities. The proposed regulation requires submission by eligible providers of a written application for designation as a Vital Access Provider in order to receive supplemental funding intended to support the stability and geographic distribution of substance use disorder treatment services throughout all geographic and economic regions of the state. This regulation would establish eligibility standards for application and a process for application review to ensure the appropriate programs are designated as Vital Access providers.

The proposed regulation will not have an adverse impact on existing jobs or the development of new employment opportunities for New York residents. It is anticipated that the proposed regulation will not have an adverse impact on existing employees. The proposed regulation does not have an adverse impact on jobs or employment opportunities anywhere in the State, therefore, no region is disproportionately affected by the proposed regulation.

The proposed regulation will have no adverse impact on existing jobs or the development of new employment opportunities.

Department of Economic Development

EMERGENCY RULE MAKING

Empire Zones Reform

I.D. No. EDV-29-14-00001-E

Filing No. 579

Filing Date: 2014-07-03

Effective Date: 2014-07-03

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

Action taken: Amendment of Parts 10 and 11; renumbering and amendment of Parts 12-14 to Parts 13, 15 and 16; and addition of new Parts 12 and 14 to Title 5 NYCRR.

Statutory authority: General Municipal Law, art. 18-B, section 959; L. 2000, ch. 63; L. 2005, ch. 63; and L. 2009, ch. 57

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

Specific reasons underlying the finding of necessity: Regulatory action is needed immediately to implement the statutory changes contained in Chapter 57 of the Laws of 2009. The emergency rule also clarifies the administrative procedures of the program, improves efficiency and helps make it more cost-effective and accountable to the State's taxpayers, particularly in light of New York's current fiscal climate. It bears noting that General Municipal Law section 959(a), as amended by Chapter 57 of the Laws of 2009, expressly authorizes the Commissioner of Economic Development to adopt emergency regulations to govern the program.

Subject: Empire Zones reform.

Purpose: Allow Department to continue implementing Zones reforms and adopt changes that would enhance program's strategic focus.

Substance of emergency rule: The emergency rule is the result of changes to Article 18-B of the General Municipal Law pursuant to Chapter 63 of the Laws of 2000, Chapter 63 of the Laws of 2005, and Chapter 57 of the Laws of 2009. These laws, which authorize the empire zones program, were changed to make the program more effective and less costly through higher standards for entry into the program and for continued eligibility to remain in the program. Existing regulations fail to address these requirements and the existing regulations contain several outdated references. The emergency rule will correct these items.

The rule contained in 5 NYCRR Parts 10 through 14 (now Parts 10-16 as amended), which governs the empire zones program, is amended as follows:

1. The emergency rule, tracking the requirements of Chapter 63 of the Laws of 2005, requires placement of zone acreage into "distinct and separate contiguous areas."

2. The emergency rule updates several outdated references, including: the name change of the program from Economic Development Zones to Empire Zones, the replacement of Standard Industrial Codes with the North American Industrial Codes, the renaming of census-tract zones as investment zones, the renaming of county-created zones as development zones, and the replacement of the Job Training Partnership Act (and private industry councils) with the Workforce Investment Act (and local workforce investment boards).

3. The emergency rule adds the statutory definition of "cost-benefit analysis" and provides for its use and applicability.

4. The emergency rule also adds several other definitions (such as applicant municipality, chief executive, concurring municipality, empire zone capital tax credits or zone capital tax credits, clean energy research and development enterprise, change of ownership, benefit-cost ratio, capital investments, single business enterprise and regionally significant project) and conforms several existing regulatory definitions to statutory definitions, including zone equivalent areas, women-owned business enterprise, minority-owned business enterprise, qualified investment project, zone development plans, and significant capital investment projects. The emergency rule also clarifies regionally significant project eligibility. Additionally, the emergency rule makes reference to the following tax credits and exemptions: the Qualified Empire Zone Enterprise ("QEZE") Real Property Tax Credit, QEZE Tax Reduction Credit, and the QEZE Sales and Use Tax Exemption. The emergency rule also reflects the

eligibility of agricultural cooperatives for Empire Zone tax credits and the QEZE Real Property Tax Credit.

5. The emergency rule requires additional statements to be included in an application for empire zone designation, including (i) a statement from the applicant and local economic development entities pertaining to the integration and cooperation of resources and services for the purpose of providing support for the zone administrator, and (ii) a statement from the applicant that there is no viable alternative area available that has existing public sewer or water infrastructure other than the proposed zone.

6. The emergency rule amends the existing rule in a manner that allows for the designation of nearby lands in investment zones to exceed 320 acres, upon the determination by the Department of Economic Development that certain conditions have been satisfied.

7. The emergency rule provides a description of the elements to be included in a zone development plan and requires that the plan be resubmitted by the local zone administrative board as economic conditions change within the zone. Changes to the zone development plan must be approved by the Commissioner of Economic Development ("the Commissioner"). Also, the rule adds additional situations under which a business enterprise may be granted a shift resolution.

8. The emergency rule grants discretion to the Commissioner to determine the contents of an empire zone application form.

9. The emergency rule tracks the amended statute's deletion of the category of contributions to a qualified Empire Zone Capital Corporation from those businesses eligible for the Zone Capital Credit.

10. The emergency rule reflects statutory changes to the process to revise a zone's boundaries. The primary effect of this is to limit the number of boundary revisions to one per year.

11. The emergency rule describes the amended certification and decertification processes. The authority to certify and decertify now rests solely with the Commissioner with reduced roles for the Department of Labor and the local zone. Local zone boards must recommend projects to the State for approval. The labor commissioner must determine whether an applicant firm has been engaged in substantial violations, or pattern of violations of laws regulating unemployment insurance, workers' compensation, public work, child labor, employment of minorities and women, safety and health, or other laws for the protection of workers as determined by final judgment of a judicial or administrative proceeding. If such applicant firm has been found in a criminal proceeding to have committed any such violations, the Commissioner may not certify that firm.

12. The emergency rule describes new eligibility standards for certification. The new factors which may be considered by the Commissioner when deciding whether to certify a firm is (i) whether a non-manufacturing applicant firm projects a benefit-cost ratio of at least 20:1 for the first three years of certification, (ii) whether a manufacturing applicant firm projects a benefit-cost ratio of at least 10:1 for the first three years of certification, and (iii) whether the business enterprise conforms with the zone development plan.

13. The emergency rule adds the following new justifications for decertification of firms: (a) the business enterprise, that has submitted at least three years of business annual reports, has failed to provide economic returns to the State in the form of total remuneration to its employees (i.e. wages and benefits) and investments in its facility greater in value to the tax benefits the business enterprise used and had refunded to it; (b) the business enterprise, if first certified prior to August 1, 2002, caused individuals to transfer from existing employment with another business enterprise with similar ownership and located in New York state to similar employment with the certified business enterprise or if the enterprise acquired, purchased, leased, or had transferred to it real property previously owned by an entity with similar ownership, regardless of form of incorporation or organization; (c) change of ownership or moving out of the Zone, (d) failure to pay wages and benefits or make capital investments as represented on the firm's application, (e) the business enterprise makes a material misrepresentation of fact in any of its business annual reports, and (f) the business enterprise fails to invest in its facility substantially in accordance with the representations contained in its application. In addition, the regulations track the statute in permitting the decertification of a business enterprise if it failed to create new employment or prevent a loss of employment in the zone or zone equivalent area, and deletes the condition that such failure was not due to economic circumstances or conditions which such business could not anticipate or which were beyond its control. The emergency rule provides that the Commissioner shall revoke the certification of a firm if the firm fails the standard set forth in (a) above, or if the Commissioner makes the finding in (b) above, unless the Commissioner determines in his or her discretion, after consultation with the Director of the Budget, that other economic, social and environmental factors warrant continued certification of the firm. The emergency rule further provides for a process to appeal revocations of certifications based on (a) or (b) above to the Empire Zones Designation Board. The emergency rule also provides that the Commissioner may

revoke the certification of a firm upon a finding of any one of the other criteria for revocation of certification set forth in the rule.

14. The emergency rule adds a new Part 12 implementing record-keeping requirements. Any firm choosing to participate in the empire zones program must maintain and have available, for a period of six years, all information related to the application and business annual reports.

15. The emergency rule clarifies the statutory requirement from Chapter 63 of the Laws of 2005 that development zones (formerly county zones) create up to three areas within their reconfigured zones as investment (formerly census tract) zones. The rule would require that 75% of the acreage used to define these investment zones be included within an eligible or contiguous census tract. Furthermore, the rule would not require a development zone to place investment zone acreage within a municipality in that county if that particular municipality already contained an investment zone, and the only eligible census tracts were contained within that municipality.

16. The emergency rule tracks the statutory requirements that zones reconfigure their existing acreage in up to three (for investment zones) or six (for development zones) distinct and separate contiguous areas, and that zones can allocate up to their total allotted acreage at the time of designation. These reconfigured zones must be presented to the Empire Zones Designation Board for unanimous approval. The emergency rule makes clear that zones may not necessarily designate all of their acreage into three or six areas or use all of their allotted acreage; the rule removes the requirement that any subsequent additions after their official redesignation by the Designation Board will still require unanimous approval by that Board.

17. The emergency rule clarifies the statutory requirement that certain defined "regionally significant" projects can be located outside of the distinct and separate contiguous areas. There are four categories of projects: (i) a manufacturer projecting the creation of fifty or more net new jobs in the State of New York; (ii) an agri-business or high tech or biotech business making a capital investment of ten million dollars and creating twenty or more net new jobs in the State of New York, (iii) a financial or insurance services or distribution center creating three hundred or more net new jobs in the State of New York, and (iv) a clean energy research and development enterprise. Other projects may be considered by the empire zone designation board. Only one category of projects, manufacturers projecting the creation of 50 or more net new jobs, are allowed to progress before the identification of the distinct and separate contiguous areas and/or the approval of certain regulations by the Empire Zones Designation Board. Regionally significant projects that fall within the four categories listed above must be projects that are exporting 60% of their goods or services outside the region and export a substantial amount of goods or services beyond the State.

18. The emergency rule clarifies the status of community development projects as a result of the statutory reconfiguration of the zones.

19. The emergency rule clarifies the provisions under Chapter 63 of the Laws of 2005 that allow for zone-certified businesses which will be located outside of the distinct and separate contiguous areas to receive zone benefits until decertified. The area which will be "grandfathered" shall be limited to the expansion of the certified business within the parcel or portion thereof that was originally located in the zone before redesignation. Each zone must identify any such business by December 30, 2005.

20. The emergency rule elaborates on the "demonstration of need" requirement mentioned in Chapter 63 of the Laws of 2005 for the addition (for both investment and development zones) of an additional distinct and separate contiguous area. A zone can demonstrate the need for a fourth or, as the case may be, a seventh distinct and separate contiguous area if (1) there is insufficient existing or planned infrastructure within the three (or six) distinct and separate contiguous areas to (a) accommodate business development and there are other areas of the applicant municipality that can be characterized as economically distressed and/or (b) accommodate development of strategic businesses as defined in the local development plan, or (2) placing all acreage in the other three or six distinct and separate contiguous areas would be inconsistent with open space and wetland protection, or (3) there are insufficient lands available for further business development within the other distinct and separate contiguous areas.

The full text of the emergency rule is available at www.empire.state.ny.us

This notice is intended to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires September 30, 2014.

Text of rule and any required statements and analyses may be obtained from: Thomas P Regan, NYS Department of Economic Development, 625 Broadway, Albany, NY 12245, (518) 292-5123, email: tregan@esd.ny.gov

Regulatory Impact Statement

STATUTORY AUTHORITY:

Section 959(a) of the General Municipal Law authorizes the Commis-

sioner of Economic Development to adopt on an emergency basis rules and regulations governing the criteria of eligibility for empire zone designation, the application process, the certification of a business enterprises as to eligibility of benefits under the program and the decertification of a business enterprise so as to revoke the certification of business enterprises for benefits under the program.

LEGISLATIVE OBJECTIVES:

The rulemaking accords with the public policy objectives the Legislature sought to advance because the majority of such revisions are in direct response to statutory amendments and the remaining revisions either conform the regulations to existing statute or clarify administrative procedures of the program. These amendments further the Legislative goals and objectives of the Empire Zones program, particularly as they relate to regionally significant projects, the cost-benefit analysis, and the process for certification and decertification of business enterprises. The proposed amendments to the rule will facilitate the administration of this program in a more efficient, effective, and accountable manner.

NEEDS AND BENEFITS:

The emergency rule is required in order to implement the statutory changes contained in Chapter 57 of the Laws of 2009. The emergency rule also clarifies the administrative procedures of the program, improves efficiency and helps make it more cost-effective and accountable to the State's taxpayers, particularly in light of New York's current fiscal climate.

COSTS:

A. Costs to private regulated parties: None. There are no regulated parties in the Empire Zones program, only voluntary participants.

B. Costs to the agency, the state, and local governments: There will be additional costs to the Department of Economic Development associated with the emergency rule making. These costs pertain to the addition of personnel that may need to be hired to implement the Empire Zones program reforms. There may be savings for the Department of Labor associated with the streamlining of the State's administration and concentration of authority within the Department of Economic Development. There is no additional cost to local governments.

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

LOCAL GOVERNMENT MANDATES:

None. Local governments are not mandated to participate in the Empire Zones program. If a local government chooses to participate, there is a cost associated with local administration that local government officials agreed to bear at the time of application for designation as an Empire Zone. One of the requirements for designation was a commitment to local administration and an identification of local resources that would be dedicated to local administration.

This emergency rule does not impose any additional costs to the local governments for administration of the Empire Zones program.

PAPERWORK:

The emergency rule imposes new record-keeping requirements on businesses choosing to participate in the Empire Zones program. The emergency rule requires all businesses that participate in the program to establish and maintain complete and accurate books relating to their participation in the Empire Zones program for a period of six years.

DUPLICATION:

The emergency rule conforms to provisions of Article 18-B of the General Municipal Law and does not otherwise duplicate any state or federal statutes or regulations.

ALTERNATIVES:

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

FEDERAL STANDARDS:

There are no federal standards in regard to the Empire Zones program. Therefore, the emergency rule does not exceed any Federal standard.

COMPLIANCE SCHEDULE:

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

Regulatory Flexibility Analysis

1. Effect of rule

The emergency rule imposes new record-keeping requirements on small businesses and large businesses choosing to participate in the Empire Zones program. The emergency rule requires all businesses that participate in the program to establish and maintain complete and accurate books relating to their participation in the Empire Zones program for a period of six years. Local governments are unaffected by this rule.

2. Compliance requirements

Each small business and large business choosing to participate in the Empire Zones program must establish and maintain complete and accurate books, records, documents, accounts, and other evidence relating to such business's application for entry into the Empire Zone program and relating to existing annual reporting requirements. Local governments are unaffected by this rule.

3. Professional services

No professional services are likely to be needed by small and large businesses in order to establish and maintain the required records. Local governments are unaffected by this rule.

4. Compliance costs

No initial capital costs are likely to be incurred by small and large businesses choosing to participate in the Empire Zones program. Annual compliance costs are estimated to be negligible for both small and large businesses. Local governments are unaffected by this rule.

5. Economic and technological feasibility

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

6. Minimizing adverse impact

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

7. Small business and local government participation

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

Rural Area Flexibility Analysis

The Empire Zones program is a statewide program. Although there are municipalities and businesses in rural areas of New York State that are eligible to participate in the program, participation by the municipalities and businesses is entirely at their discretion. The emergency rule imposes no additional reporting, recordkeeping or other compliance requirements on public or private entities in rural areas. Therefore, the emergency rule will not have a substantial adverse economic impact on rural areas or reporting, recordkeeping or other compliance requirements on public or private entities in such rural areas. Accordingly, a rural area flexibility analysis is not required and one has not been prepared.

Job Impact Statement

The emergency rule relates to the Empire Zones program. The Empire Zones program itself is a job creation incentive, and will not have a substantial adverse impact on jobs and employment opportunities. In fact, the emergency rule, which is being promulgated as a result of statutory reforms, will enable the program to continue to fulfill its mission of job creation and investment for economically distressed areas. Because it is evident from its nature that this emergency rule will have either no impact or a positive impact on job and employment opportunities, no further affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

Education Department

EMERGENCY RULE MAKING

Annual Professional Performance Reviews (APPR)

I.D. No. EDU-08-14-00023-E

Filing No. 593

Filing Date: 2014-07-08

Effective Date: 2014-07-08

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

Action taken: Amendment of section 8.4 and Subpart 30-2 of Title 8 NYCRR.

Statutory authority: Education Law, sections 101(not subdivided), 207(not subdivided), 215(not subdivided), 305(1), (2) and 3012-c; L. 2014, ch. 56, part AA, subparts A, E and G

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

Specific reasons underlying the finding of necessity: 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) for revised rule makings, is the September 2014 Regents meeting. Furthermore, pursuant to SAPA section 203(1), the earliest effective date of the proposed amendment, if adopted at the September 2014 meeting, would be October 1, 2014, the date a Notice of Adoption would be published in the State Register. Therefore, emergency action to adopt the proposed rule is necessary now for the preservation of the general welfare in order to ensure that school districts and boards of cooperative educational services are notified of the clarifying definition of performance for termination decisions made based on APPR results for the 2013-2014 school year and thereafter.

Subject: Annual Professional Performance Reviews (APPR).

Purpose: To implement Chapter 56 of the Laws of 2014 relating to traditional standardized assessments and Annual Professional Performance Review plans, the expedited review process for material changes to eliminate unnecessary tests, and establishing caps on testing time for State tests (1%) and other standardized tests (1%), and for test preparation time under standardized conditions (2%) based on the minimum required annual instructional hours for such grade.

Text of emergency rule: 1. That the emergency rule amending Subpart 30-2 of the Rules of the Board of Regents that was adopted by the Board of Regents as an emergency measure at the April 28-29 meeting is repealed, effective July 9, 2014.

2. Subdivision (b) of section 30-2.2 of the Rules of the Board of Regents shall be amended, effective July 9, 2014, to read as follows:

(b) Approved student assessment shall mean a standardized student assessment approved by the commissioner for inclusion in the State Education Department's lists of approved standardized student assessments for the locally selected measures subcomponent and/or to measure student growth in non-tested subjects for the State assessment or other comparable measures subcomponent or for grades kindergarten through two, an assessment that is not a traditional standardized assessment that meets the requirements in paragraph (1) of this subdivision.

(1) Approved Assessments in grades kindergarten through two.

(i) Effective March 2, 2014, all standardized assessments for students in kindergarten through grade two shall be removed from the actual list of approved student assessments for use in annual professional performance review plans for the 2014-2015 school year and thereafter and traditional standardized assessments in grades kindergarten through grade two will no longer be approved assessments for these grades. However, an assessment that is not a traditional standardized assessment shall be considered an approved student assessment if the superintendent, district superintendent, or chancellor of a school district/BOCES that chooses to use such assessment certifies in its APPR plan that the assessment is a not a traditional standardized assessment [, as defined by the Commissioner in guidance,] and that the assessment meets the minimum requirements prescribed by the Commissioner in guidance.

(ii) Any school district or BOCES with an annual professional performance review plan approved or determined by the Commissioner [for use in the 2013-2014 school year] prior to April 1, 2014 that provides for the use of an approved student assessment for students in kindergarten through grade two remains in effect in accordance with Education Law § 3012-c(2)(l) and the district or BOCES may continue to use such assessments until a material change is made and approved by the Commissioner to eliminate such use.

3. Subdivision (v) of section 30-2.2 of the Rules of the Board of Regents shall be renumbered to subdivision (w) of section 30-2.2 of the Rules of the Board of Regents, effective July 9, 2014.

4. A new subdivision (v) is added to section 30-2.2 of the Rules of the Board of Regents, effective July 9, 2014, to read as follows:

(v) Traditional standardized assessment shall mean a systematic method of gathering information from objectively scored items that allow the test taker to select one or more of the given options or choices as their response. Examples include multiple-choice, true-false, and matching items. Traditional standardized assessments are those that require the student (and not the examiner/assessor) to directly use a "bubble" answer sheet. Traditional standardized assessments do not include performance assessments or assessments in which students perform real-world tasks that demonstrate application of knowledge and skills; assessments that are otherwise required to be administered by federal law; and/or assessments used for diagnostic or formative purposes, including but not limited to assessments used for diagnostic screening required by Education Law § 3208(5).

5. Paragraph (2) of subdivision (a) of section 30-2.3 of the Rules of the Board of Regents shall be amended, effective July 9, 2014, to read as follows:

(2)(i) By July 1, 2012, the governing body of each school district and BOCES shall adopt a plan, on a form prescribed by the Commissioner, for the annual professional performance review of all of its classroom teachers and building principals in accordance with the requirements of

Education Law § 3012-c and this Subpart, and shall submit such plan to the Commissioner for approval. The plan may be an annual or multi-year plan, for the annual professional performance review of all of its classroom teachers and building principals. The Commissioner shall approve or reject the plan by September 1, 2012, or as soon as practicable thereafter. The Commissioner may also reject a plan that does not rigorously adhere to the provisions of Education Law § 3012-c and the requirements of this Subpart. Should any plan be rejected, the Commissioner shall describe each deficiency in the submitted plan and direct that each such deficiency be resolved through collective bargaining to the extent required under article fourteen of the Civil Service Law. If any material changes are made to the plan, the school district or BOCES must submit the material changes, on a form prescribed by the Commissioner, to the Commissioner for approval.

(ii) If material changes are made to a plan that solely relate to the elimination of unnecessary assessments on students, the Commissioner shall expedite his or her review of such material changes and solely review those sections of the plan that relate to the eliminated assessments to ensure compliance with Education Law § 3012-c and this Subpart, provided that the superintendent, district superintendent or chancellor shall provide a written explanation of the changes made to the plan, on a form prescribed by the Commissioner, and certify that no other material changes have been made to the plan. The Commissioner shall complete the review of material changes properly and completely submitted within 10 business days of submission. In order to be considered properly and completely submitted, the submission must use the form prescribed by the Commissioner and meet the requirements of Education Law § 3012-c and this Subpart, and contain all required information including all appropriate signatures with appropriate dates.

(iii) To the extent that by July 1, 2012 or by July 1 of any subsequent year, if all of the terms of the plan have not been finalized as a result of unresolved collective bargaining negotiations, the entire plan shall be submitted to the Commissioner upon resolution of all of its terms, consistent with Article 14 of the Civil Service Law.

6. A new paragraph (4) shall be added to subdivision (a) of section 30-2.3 of the Rules of the Board of Regents, effective July 9, 2014, to read as follows:

(4) Any plan submitted to the Commissioner on or after March 2, 2014 for use in the 2014-2015 school year and thereafter shall include a signed certification, on a form prescribed by the Commissioner, by the superintendent, district superintendent or chancellor, attesting that [no more than one percent of total instructional time in each classroom or program of the district or BOCES is spent taking any locally determined traditional standardized third-party assessments from the approved list or traditional standardized district, regional or BOCES developed assessments for purposes of Education Law § 3012-c. This paragraph shall not apply to assessments used for formative or diagnostic purposes];

(i) the amount of time devoted to traditional standardized assessments that are not specifically required by state or federal law for each classroom or program of the grade does not exceed, in the aggregate, one percent of the minimum in required annual instructional hours for such classroom or program of the grade; and

(ii) the amount of time devoted to test preparation under standardized testing conditions for each grade does not exceed, in the aggregate, two percent of the minimum required annual instructional hours for such grade.

Time devoted to teacher administered classroom quizzes or exams, portfolio reviews, or performance assessments shall not be counted towards the limits established by this subdivision. In addition, formative and diagnostic assessments shall not be counted towards the limits established by this subdivision and nothing in this subdivision shall be construed to supersede the requirements of a section 504 plan of a qualified student with a disability or federal law relating to English language learners or the individualized education program of a student with a disability.

7. Section 8.4 of the Rules of the Board of Regents is amended, effective July 9, 2014, to read as follows:

§ 8.4 Courses and examinations in public schools.

(a) The commissioner shall establish regulations governing the following:

[(a)](1) approved courses of study in public schools;

[(b)](2) subjects in which Regents examinations are given in such schools;

[(c)](3) the method of rating answer papers;

[(d)](4) the credits to be allowed for subjects in which Regents examinations are not regularly offered.

(b) The amount of time devoted to required State assessments administered by or on behalf of the State and developed by the State directly or by contract for each grade shall not exceed, in the aggregate, one percent of the minimum required annual instructional hours for such grade. Nothing

in this subdivision shall be construed to supersede the requirements of a section of the 504 plan of a qualified student with disability or federal law relating to English Language Learners or the individualized education program of a student with disabilities.

8. Subparagraph (iii) of paragraph (1) of subdivision (b) of section 30-2.5 of the Rules of the Board of Regents shall be amended, effective July 9, 2014, to read as follows:

(iii) Except as otherwise provided in subparagraphs (i) and (ii) of this paragraph, for classroom teachers who teach one of the core subjects, as defined in this subparagraph, where there is no approved growth or value-growth model at that grade level or in that subject, the school district or BOCES shall measure student growth based on a State-determined district-or BOCES-wide student growth goal setting process using a State assessment if one exists, or a Regents examination or department-approved alternative examination as described in section 100.2(f) of this Title (including, but not limited to, advanced placement examinations, International Baccalaureate examinations, SAT II, etc.). If there is no State assessment or Regents examination for these grades/subjects, the district or BOCES must measure student growth based on the State determined goal-setting process with an approved student assessment, or a department-approved alternative examination as described in section 100.2(f) of this Title or a district, regional or BOCES developed assessment that is rigorous and comparable across classrooms. For purposes of this subparagraph, core subjects shall be defined as science [and social studies in grades six to] *grade* eight and high school courses in English language arts, mathematics, science and social studies that lead to a Regents examination in the 2010-2011 school year, or a State assessment in the 2012-2013 school year or thereafter. A school district or BOCES shall generate a score from 0 to 20 points for this subcomponent.

9. A new subdivision (e) shall be added to section 30-2.5 of the Rules of the Board of Regents shall be amended, effective July 9, 2014, to read as follows:

(e) *Notwithstanding any other provision of this Subpart to the contrary, no annual professional performance review plan shall be approved by the Commissioner for use in the 2014-2015 school year or thereafter that provides for the administration of traditional standardized assessments to students in kindergarten through grade two that are not being used for diagnostic purposes or are required to be administered by federal law, including but not limited to assessments developed by any vendor, third-party or other comparable entity; except that nothing in this subdivision shall preclude the use of school- or-BOCES-wide, group or team results using State assessments that are administered to students in higher grades in the school or a district, regional or BOCES developed student assessment that is developed in collaboration with a vendor, if otherwise allowed under this section or guidelines of the Commissioner. However, this subdivision shall not apply to any annual professional performance review plan approved or determined by the Commissioner for use in the 2013-2014 school year which remains in effect in the 2014-2015 school year and thereafter in accordance with Education Law § 3012-c(2)(l).*

10. Subdivision (a) of section 30-2.8 of the Rules of the Board of Regents shall be amended, effective July 9, 2014, to read as follows:

(a) Approval of student assessments for the evaluation of classroom teachers and building principals. [An] *Except as otherwise provided in subdivision (e) of this section for assessments in grades kindergarten through two, an assessment provider who seeks to place an assessment on the list of approved student assessments under this section shall submit to the Commissioner a written application in a form and within the time prescribed by the Commissioner.*

11. Subdivision (e) of section 30-2.8 of the Rules of the Board of Regents shall be amended, effective July 9, 2014, to read as follows:

(e) *Pursuant to section 30-2.2 of this Subpart, effective March 2, 2014, the Commissioner will remove the names of any traditional standardized assessments approved for use in kindergarten through grade two from the list of approved assessments for use in the 2014-2015 school year and thereafter. However, an assessment that is not a traditional standardized assessment may be considered an approved student assessment if the superintendent, district superintendent, or chancellor certifies in its plan that the assessment is a not a traditional standardized assessment [, as defined by the Commissioner in guidance,] and that the assessment meets the minimum requirements prescribed by the Commissioner in guidance.*

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. EDU-08-14-00023-EP, Issue of February 26, 2014. The emergency rule will expire September 5, 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@mail.nysed.gov

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

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

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

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

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

Education Law section 3012-c, as added by Chapter 103 of the Laws of 2010 and amended by Chapter 21 of the Laws of 2012, establishes requirements for the conduct of annual professional performance reviews (APPR) of classroom teachers and building principals employed by school districts and boards of cooperative educational services (BOCES).

2. LEGISLATIVE OBJECTIVES:

The proposed rule is consistent with the above authority vested in the Regents and Commissioner to carry into effect State educational laws and policies, and is necessary to clarify what constitutes "performance" for purposes of termination decisions related to the APPR.

3. NEEDS AND BENEFITS:

The purpose of the proposed rule is to clarify that the references to "performance" of the teacher or principal in the classroom or school for purposes of Education Law § 3012-c(1) and section 30-2.1(d) of the Rules of the Board of Regents are references to the teacher's or principal's performance on the APPR, as measured by the teacher's or principal's overall composite rating. Accordingly, where a board of education has not yet completed an APPR for a probationary teacher or principal, it may terminate the probationary teacher for any statutorily and constitutionally permissible reasons. Those reasons may include the quality of the instruction or services provided by the probationary teacher or principal based on evidence other than the composite APPR rating. Once it has completed an annual professional performance review, the board of education must consider the APPR rating as a significant factor to retain or terminate the employee, unless the employee is being terminated for statutorily and constitutionally permissible reasons other than the teacher's or principal's composite APPR rating, such as misconduct, insubordination, time and attendance issues and the like.

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.

5. LOCAL GOVERNMENT MANDATES:

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

6. PAPERWORK:

The proposed amendment does not impose any paperwork requirements on regulated parties.

7. DUPLICATION:

The rule does not duplicate existing State or Federal requirements.

8. ALTERNATIVES:

The rule has been carefully drafted to address the concerns raised by the public to clarify what constitutes performance for purposes of termination decisions relating to the APPR. Since Education Law § 3012-c applies equally to all school districts and BOCES throughout the State, it was not possible to establish different compliance and reporting requirements for regulated parties.

9. FEDERAL STANDARDS:

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

10. COMPLIANCE SCHEDULE:

The proposed amendment will become effective on its stated effective date. No further time is needed to comply.

Regulatory Flexibility Analysis

(a) Small businesses:

The purpose of the proposed rule is to clarify that the references to "performance" of the teacher or principal in the classroom or school for purposes of Education Law § 3012-c(1) and section 30-2.1(d) of the Rules of the Board of Regents are references to the teacher's or principal's performance on the APPR, as measured by the teacher's or principal's overall composite rating. Accordingly, where a board of education has not yet

completed an APPR for a probationary teacher or principal, it may terminate the probationary teacher for any statutorily and constitutionally permissible reasons. Those reasons may include the quality of the instruction or services provided by the probationary teacher or principal based on evidence other than the composite APPR rating. Once it has completed an annual professional performance review, the board of education must consider the APPR rating as a significant factor to retain or terminate the employee, unless the employee is being terminated for statutorily and constitutionally permissible reasons other than the teacher's or principal's composite APPR rating, such as misconduct, insubordination, time and attendance issues and the like.

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 amendment that it does not affect small businesses, no further steps were needed to ascertain that fact and one were taken. Accordingly, a regulatory flexibility analysis for small businesses is not required and one has not been prepared.

(b) Local governments:

1. EFFECT OF RULE:

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

2. COMPLIANCE REQUIREMENTS:

The purpose of the proposed rule is to clarify that the references to "performance" of the teacher or principal in the classroom or school for purposes of Education Law § 3012-c(1) and section 30-2.1(d) of the Rules of the Board of Regents are references to the teacher's or principal's performance on the APPR, as measured by the teacher's or principal's overall composite rating. Accordingly, where a board of education has not yet completed an APPR for a probationary teacher or principal, it may terminate the probationary teacher for any statutorily and constitutionally permissible reasons. Those reasons may include the quality of the instruction or services provided by the probationary teacher or principal based on evidence other than the composite APPR rating. Once it has completed an annual professional performance review, the board of education must consider the APPR rating as a significant factor to retain or terminate the employee, unless the employee is being terminated for statutorily and constitutionally permissible reasons other than the teacher's or principal's composite APPR rating, such as misconduct, insubordination, time and attendance issues and the like.

3. PROFESSIONAL SERVICES:

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

4. COMPLIANCE COSTS:

The proposed amendment does not impose any compliance costs on school districts and BOCES, beyond those imposed by Education Law § 3012-c.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The 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 rule has been carefully drafted to address the concerns raised by the public to clarify what constitutes performance for purposes of the APPR and termination decisions. Since Education Law § 3012-c applies equally to all school districts and BOCES throughout 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.

During the public comment period, the Department will also be seeking comments on the proposed amendment from representatives of teachers, principals, superintendents of schools, school boards, school districts and board of cooperative educational services officials, and other interested parties.

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 fewer than 200,000 inhabitants and the 71 towns and urban counties with a population density of 150 square miles or less.

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

The purpose of the proposed rule is to clarify that the references to "performance" of the teacher or principal in the classroom or school for purposes of Education Law § 3012-c(1) and section 30-2.1(d) of the Rules

of the Board of Regents are references to the teacher's or principal's performance on the APPR, as measured by the teacher's or principal's overall composite rating. Accordingly, where a board of education has not yet completed an APPR for a probationary teacher or principal, it may terminate the probationary teacher for any statutorily and constitutionally permissible reasons. Those reasons may include the quality of the instruction or services provided by the probationary teacher or principal based on evidence other than the composite APPR rating. Once it has completed an annual professional performance review, the board of education must consider the APPR rating as a significant factor to retain or terminate the employee, unless the employee is being terminated for statutorily and constitutionally permissible reasons other than the teacher's or principal's composite APPR rating, such as misconduct, insubordination, time and attendance issues and the like.

3. COSTS:

The proposed amendment does not impose any additional costs on a school district or BOCES.

4. MINIMIZING ADVERSE IMPACT:

The rule has been carefully drafted to address the concerns received by the public relating to what constitutes performance for APPR purposes and termination decisions. Since Education Law § 3012-c applies to all school districts and BOCES throughout the State, it was not possible to establish different compliance and reporting requirements for regulated parties in rural areas.

5. RURAL AREA PARTICIPATION:

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

Job Impact Statement

The purpose of the proposed rule is to clarify that the references to "performance" of the teacher or principal in the classroom or school for purposes of Education Law § 3012-c(1) and section 30-2.1(d) of the Rules of the Board of Regents are references to the teacher's or principal's performance on the APPR, as measured by the teacher's or principal's overall composite rating. Accordingly, where a board of education has not yet completed an APPR for a probationary teacher or principal, it may terminate the probationary teacher for any statutorily and constitutionally permissible reasons. Those reasons may include the quality of the instruction or services provided by the probationary teacher or principal based on evidence other than the composite APPR rating. Once it has completed an annual professional performance review, the board of education must consider the APPR rating as a significant factor to retain or terminate the employee, unless the employee is being terminated for statutorily and constitutionally permissible reasons other than the teacher's or principal's composite APPR rating, such as misconduct, insubordination, time and attendance issues and the like.

The proposed rule 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.

Assessment of Public Comment

Since publication of a Notice of Emergency Adoption and Revised Rule Making in the State Register on March 26, 2014, the State Education Department received the following comments.

1. COMMENT: Approximately 85 districts in our area used AIMSweb, NWEA, iReady, STAR Math, STAR Reading and/or STAR Early Literacy as a diagnostic tool prior to NYSED approving them as an approved assessment for APPR purposes. Districts were extremely happy when these assessments were approved as student assessments for use by school districts and BOCES in teacher and principal evaluations because, not only could they be used for diagnostic and instructional purposes, it could be used to satisfy the testing requirements of APPR. Please consider keeping these assessments on the approved list because of their diagnostic and instructional uses for grades K-2. If eliminated, districts would be forced to create another assessment or measure possibly causing MORE testing of the K-2 students rather than less as was the intent of the change in regulations.

RESPONSE: Effective March 2, 2014, all third-party assessments used in grades K-2 have been removed from the actual "approved assessment" list and pursuant to Chapter 56 of the Laws of 2014, school districts are prohibited from using traditional standardized assessments in these grades. However, Chapter 56 of the Laws of 2014 and the proposed amendment clarify that any school district or BOCES with an annual professional performance review plan approved or determined by the Commissioner on or before March 31, 2014 that provides for the use of an approved student assessment for students in kindergarten through grade two remains in effect in accordance with Education Law § 3012-c(2)(1) and the district or BOCES may continue to use such assessments until a material change is made and approved by the Commissioner to eliminate such use.

The revised proposed amendment defines a traditional standardized assessment as a systematic method of gathering information from objectively scored items that allow the test taker to select one or more of the given options or choices as their response. Examples include multiple-choice, true-false, and matching items. Traditional standardized assessments are those that require the student (and not the examiner/assessor) to directly use a "bubble" answer sheet. Traditional standardized assessments do not include performance assessments or assessments in which students perform real-world tasks that demonstrate application of knowledge and skills; assessments that are otherwise required to be administered by federal law; and/or assessments used for diagnostic or formative purposes. Therefore, if these assessments are used for diagnostic purposes and the superintendent, district superintendent, or chancellor of a school district/BOCES that chooses to use such assessment certifies in its APPR plan that the assessment is a not a traditional standardized assessment and that the assessment meets the minimum requirements prescribed by the Commissioner in guidance, these assessments may be used in grades K-2 for APPR purposes.

2. COMMENT: The provision that no APPR plan for the 2014-15 school year will be approved if it includes "traditional standardized third party or vendor assessments to students in kindergarten through grade two." Not knowing what your definition of "traditional third party, standardized assessments will be" I have a few concerns.

First, our district chose to use AIMSweb Reading & Math for our Growth sub-component for K-2 teachers in our APPR plan. We made this decision so that we would be able to use an assessment that was already in place for our students. Simply said, we wouldn't be adding or creating a new assessment on top of what we already use for RTI/Diagnostic/Formative purposes.

Secondly, it would seem that the exclusion of RTI/Diagnostic/Formative assessments such as AIMSweb, which are used to meet the state mandate of implementing an RTI approach to identifying students with learning disabilities, would have the opposite effect of reducing testing for K-2 students. For example, since we have a K-2 building we would need to create a new (and likely longer, less reliable) assessment to use for our K-2 teacher's growth sub-component. This would add to the time we utilize for assessments and end up adding an assessment that is primarily used for APPR purposes.

RESPONSE: See response to Comment #1.

3. COMMENT: Our district uses two of the approved K-2 assessment products: Aimsweb and STAR (Renaissance Learning) as diagnostic and instructional tools while also using the assessment to meet APPR requirements. The possibility of removing these options for our districts will actually INCREASE the amount of testing necessary for K-2 students instead of decreasing it as the adjustment to the regulation intends. Please consider this carefully before a decision is finalized.

RESPONSE: See response to Comment #1.

4. COMMENT: Our district has, for many years, used AIMSweb as a diagnostic test for students K-8. We were certainly pleased when SED approved AIMSweb for use with APPRs, as we were able to limit testing of students for APPR purposes by using this test both for diagnostic and for APPR purposes. The recommendations to the BOR will force disapproval of the use of these tests for the APPR. Consequently, our district will be forced to either use a group/building metric for the APPR or find another test which can be used. In the case of the latter, we will indeed be ADDING tests for the K-2 students as we will no longer be able to use AIMSweb for both purposes. Again, AIMSweb has been used in this district for years as a diagnostic. As well, the time spent on this assessment is well under the 1% cap. It is working and we are concerned about a change simply for the sake of change, or a change that is responsive to political pressures rather than a consideration of what is actually happening in schools.

While a group metric is another option, as a district, we have chosen to avoid that route, particularly as the results of the 3rd grade ELA and Math assessments would be used for the group metric. We believe that a teacher's score for their APPR should as closely as possible reflect the current work they are doing with their current classes. Certainly, the work that a K-2 teacher does will eventually contribute to a student's score in 3rd grade, but issues of cohorts and student population within any given year may not accurately represent the work that they are currently doing.

So, we are asking for clarification. If we are using AIMSweb for diagnostic purposes, in the interest of avoiding double testing, can the results of that test be used for APPR purposes? If the answer currently is no, we respectfully ask you to reconsider this decision which will not only negatively impact districts but, most importantly, will negatively impact children.

RESPONSE: See response to Comment #1.

5. COMMENT: Although I, too, support eliminating K-2 standardized assessments for APPR purposes, I propose that districts have the ability to continue using AIMSweb (included on the State approved list) for APPR

purposes. First, AIMSweb houses data for short (1 - 8 minutes) reading, writing, and math probes (assessments). These probes are better described as formative/interim assessments typically used for Response to Interventions (RTI) decision-making. What is more, the early literacy probes such as letter naming measures and letter sound measures are performance tasks. In essence, AIMSweb probes are similar in nature to the Dynamic Indicators of Basic Early Literacy Skills (DIBELS).

I bring this to your attention because we have been using AIMSweb probes two ways in grades K-5. First way, as universal screenings for RTI and second, to meet APPR guidelines for our K-5 student population. I'm thinking that districts who have double-dipped would appreciate having the ability to make a local decision regarding AIMSweb use for K-2 APPR purposes.

RESPONSE: See response to Comment #1.

Department of Environmental Conservation

NOTICE OF ADOPTION

Recreational Harvest Regulations for Summer Flounder (Fluke) and Black Sea Bass

I.D. No. ENV-19-14-00020-A

Filing No. 595

Filing Date: 2014-07-08

Effective Date: 2014-07-23

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

Action taken: Amendment of Part 40 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 11-0303, 13-0105, 13-0340-b and 13-0340-f

Subject: Recreational harvest regulations for summer flounder (fluke), and black sea bass.

Purpose: To maximize recreational angler opportunities for popular finfish species while staying in compliance with ASMFC.

Text or summary was published in the May 14, 2014 issue of the Register, I.D. No. ENV-19-14-00020-EP.

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

Text of rule and any required statements and analyses may be obtained from: Stephen Heins, Department of Environmental Conservation, 205 N. Belle Mead Rd, Suite 1, East Setauket, NY 11733, (631) 444-0435, email: swheins@gw.dec.state.ny.us

Additional matter required by statute: Pursuant to the State Environmental Quality Review Act, a negative declaration is on file with the Department.

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 Financial Services

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Arbitration

I.D. No. DFS-29-14-00003-P

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

Proposed Action: Amendment of Subpart 65-4 of Title 11 NYCRR.

Statutory authority: Financial Services Law, sections 202 and 302; Insurance Law, sections 301 and 5201 and art. 51

Subject: Arbitration.

Purpose: To revise the fee structure awarded to attorneys who prevail in no-fault disputes on behalf of applicants.

Text of proposed rule: Section 65-4.6 is amended to read as follows:

Section 65-4.6 Limitations on attorney's fees pursuant to section 5106 of the Insurance Law.

The following limitations shall apply to the payment by insurers of applicants' attorney's fees for services necessarily performed in the resolution of no-fault disputes:

(a) If an arbitration was initiated or a court action was commenced by an attorney on behalf of an applicant and the claim or portion thereof was not denied [or] *and* overdue at the time the arbitration proceeding was initiated or the action was commenced, no attorney's fees shall be granted.

(b) If the claim is resolved by the designated organization at any time prior to transmittal to an arbitrator and it was initially denied by the insurer or overdue, the payment of the applicant's attorney's fee by the insurer shall be limited [as follows]:

(1) If the resolved claim was initially denied, the attorney's fee shall be \$80.

(2) If the resolved claim was overdue but not denied, the attorney's fee shall not exceed the amount of first-party benefits and any additional first-party benefits, plus interest thereon, which the insurer agreed to pay and the applicant agreed to accept in full settlement of the dispute submitted, subject to a maximum fee of \$60.

(3) In disputes solely involving interest, the attorney's fee shall be equal to the amount of interest which the insurer agreed to pay and the applicant agreed to accept in full settlement of the dispute submitted, subject to a maximum fee of \$60.

(4) Notwithstanding the limitations of this subdivision, the insurer may, at its discretion, offer a higher attorney's fee, subject to the limitations of subdivisions (d) or (e) of this section, in order to resolve the dispute during conciliation.

(c) Except as provided in subdivisions (a) and (b) of this section, the minimum attorney's fee payable pursuant to this subpart shall be \$60.] *to 20 percent of the total amount of first-party benefits and any additional first-party benefits, plus interest thereon, for each applicant with whom the respective parties have agreed and resolved disputes, subject to a maximum fee of \$1,360.*

[(d)] (c) For disputes subject to arbitration [by the No-Fault Arbitration forum] or court proceedings, where one of the issues involves a policy issue as enumerated on the prescribed denial of claim form (NYS form NF-10), subject to [the provisions of subdivisions (a) and (c) of] this section, the attorney's fee for the arbitration or litigation of all issues shall be limited [as follows]:

[(1)] for preparatory services relating to the arbitration forum or court, the attorney shall be entitled to receive] to a fee of up to \$70 per hour, subject to a maximum fee of \$1,400.]; and

(2) in] *In addition, an attorney shall be entitled to receive a fee of up to \$80 per hour for each personal appearance before the arbitration forum or court.*

[(e)] (d) For all other disputes subject to arbitration or court proceedings, subject to the provisions of [subdivisions] *subdivision* (a) [and (c)] of this section, the attorney's fee shall be limited as follows: 20 percent of the total amount of first-party benefits and any additional first-party benefits, plus interest thereon, for each applicant per arbitration or court proceeding [awarded by the arbitrator or court], subject to a maximum fee of [\$850] *\$1,360*. If the nature of the dispute results in an attorney's fee [which] *that* could be computed in accordance with the limitations prescribed in both subdivision (c) and this subdivision, the higher attorney's fee shall be payable. [However, if the insurer made a written offer pursuant to section 65-4.2(b)(4) of this Subpart and if such offer equals or exceeds the amount awarded by the arbitrator, the attorney's fee shall be based upon the provisions of subdivision (b) of this section.

(f) (e) Notwithstanding the limitations [listed] *specified* in this section, if the arbitrator or a court determines that the issues in dispute were of such a novel or unique nature as to require extraordinary skills or services, the arbitrator or court may award an attorney's fee in excess of the limitations set forth in this section. An excess fee award shall detail the specific novel or unique nature of the dispute [which] *that* justifies the award. An excess award of an attorney's fee by an arbitrator shall be appealable to a master arbitrator.

[(g)] (f) If a dispute involving an overdue or denied claim is resolved by the parties after it has been forwarded [by the Department of Financial Services or the] *to the* conciliation center [to] *of the* appropriate arbitration forum or after a court action has been commenced, the [claimant's] attorney *for the applicant* shall be entitled to a fee, which shall be computed in accordance with the limitations set forth in this section.

[(h)] (g) No attorney shall demand, request or receive from the insurer any payment of fees not permitted by this section.¹

[(i)] (h) Notwithstanding any other provision of this section and with respect to billings on and after the effective date of this regulation, if the charges by a health care provider, who is an applicant for benefits, exceed the limitations contained in the schedules established pursuant to section 5108 of the Insurance Law, no attorney's fee shall be payable by the insurer. This provision shall not be applicable to charges that involve interpretation of such schedules or inadvertent miscalculation or error.

¹ Attorneys should be aware of the Appellate Division Rules prohibiting fees in connection with the collection of first-party no-fault benefits (22 NYCRR sections 603.7(e)(7), 691.20(e)(7), 806.13(f) and 1022.31(f)).

Text of proposed rule and any required statements and analyses may be obtained from: Camielle Barclay, New York State Department of Financial Services, One State Street, New York, NY 10004, (212) 480-5299, email: camielle.barclay@dfs.ny.gov

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

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

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

Regulatory Impact Statement

1. Statutory authority: Sections 202 and 302 of the Financial Services Law, and Sections 301 and 5221 and Article 51 of the Insurance Law.

Financial Services Law Section 202 establishes the office of the Superintendent of Financial Services ("Superintendent").

Financial Services Law Section 302 and Insurance Law Section 301 authorize the Superintendent to effectuate any power accorded by, and prescribe regulations interpreting, the Financial Services Law, Insurance Law, or any other applicable law.

Insurance Law Section 5221 specifies the duties and obligations of the Motor Vehicle Accident Indemnification Corporation with respect to the payment of no-fault benefits to qualified persons.

Article 51 of the Insurance Law governs the no-fault insurance system. 2. Legislative objectives: Article 51 of the Insurance Law is popularly referred to as the "no-fault law." No-fault legislation was introduced to rectify problems that were inherent in the existing tort system, under which injured parties had sought claims settlement and the prompt payment of health care and loss of earnings benefits. Insurance Law § 5106(a) was enacted as part of that measure, and it provides, in material part, that a no-fault insurance "claimant shall also be entitled to recover his attorney's reasonable fee, for services necessarily performed in connection with securing payment of the overdue claim, subject to limitations promulgated by the superintendent in regulations."

3. Needs and benefits: The current regulation: (1) imposes a \$60 minimum fee to be awarded to an attorney who prevails in court or at arbitration; (2) limits the attorney fee to either \$60 or \$80 during the conciliation phase of the arbitration process; and (3) generally limits the fee to be awarded to an attorney who prevails in court or at arbitration to \$850, all of which encourages attorneys for applicants (generally, health service providers who have obtained assignments from insureds) to unbundle disputed claims in court and arbitration filings and discourages them from consolidating disputed claims whenever feasible. Revising the current regulation is thus necessary to curtail the increase in filings of low monetary value claims in court and arbitration proceedings. To that end, the proposed amendment: (1) eliminates the \$60 minimum attorney's fee; (2) eliminates the \$60-or-\$80 attorney-fee limit that applies during the conciliation phase of the arbitration process; and (3) increases the maximum fee to be awarded to an attorney who prevails in court or at arbitration to \$1,360. These changes to the current fee structure should reduce the backlog of pending lawsuits and arbitrations by creating a more expeditious process to resolve disputes. The amendment should also reduce no-fault fraud and abuse by making billing practices more transparent, because when an action is consolidated, multiple services billed by a health service provider will be presented in a single legal action, allowing the finder of fact in arbitration or court to identify any questionable billing patterns, whereas with separate legal proceedings, billed services are spread out among multiple arbitrators or judges, making fraudulent and abusive billing more difficult to detect.

Additionally, the amendment removes the reference to the Department of Financial Services ("Department") from proposed section 65-4.6(f) (current section 65-4.6(g)), because disputes involving overdue or denied claims are administered by an organization designated by the Superintendent as set forth in 11 NYCRR 65-4.2.

4. Costs: This rule should have no cost impact on applicants, applicants' attorneys, insurers, self-insurers, or state and local governments. The Department expects that the amendment to the rule's attorney-fee structure will incentivize attorneys to consolidate no-fault actions, and therefore reduce costs associated with multiple filings and backlog of pending

lawsuits and arbitrations. The Department thus anticipates that no insurer subject to the rule, if any, or self-insurer will experience a cost increase as a result of this amendment, because any increase in attorneys' fees is likely to be mitigated by the savings caused by the consolidation of legal proceedings.

5. Local government mandates: This rule does not impose any requirement upon a city, town, village, school district, or fire district. However, local governments who are self-insurers are subject to this amendment's revised attorney-fee provisions when disputed claims are awarded to applicants by arbitrators and courts.

6. Paperwork: This amendment does not impose any additional paperwork on any persons affected by the rule. By encouraging applicants' attorneys to consolidate disputes whenever feasible, this amendment should result in a reduction of disputed claims filings in courts and arbitrations and thus the generation of less paperwork.

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

8. Alternatives: The Superintendent carefully evaluated the written comments made by various stakeholders in response to the Department's publication in the State Register on August 21, 2013 of the rule's current attorney-fee provisions, which were published in order to solicit comments. Listed below, by topic, is a summary of alternatives to the proposed rule that the Superintendent considered.

11 NYCRR Section 65-4.6(c) ("Minimum Attorney's Fee")

Providers and their attorneys asserted that the \$60 minimum fee, prescribed in 11 NYCRR Section 65-4.6(c), awarded to an attorney who prevails in court or at arbitration is unreasonably low. Some commentators suggested an increase in the minimum fee to a level between \$120 and \$200, while others recommended an increase to \$250. Two insurers and a trade organization representing property/casualty insurers recommended that the regulation be amended to require providers and their attorneys to file only one action for all disputed claims that arise out of the same accident and involve the same injured person. One of those insurers also recommended that the amendment impose a limit of one attorney's fee award per arbitration or lawsuit, regardless of the number of healthcare providers involved in the dispute.

The Superintendent disagrees that the \$60 minimum attorney's fee should be increased. The proponents of such an increase failed to support their position that an increase would result in the prompt resolution of claims at arbitration and in court. The Superintendent also rejects the recommendation to limit the number of actions that a healthcare provider may commence, because to do so would violate Insurance Law Section 5106(b), which grants an applicant the option to bring any dispute to arbitration, and deprive providers of due process.

11 NYCRR Section 65-4.6(b) ("Maximum Conciliation Attorney's Fee")

One provider's attorney proposed that the maximum attorney's fee that applies during the conciliation phase of an arbitration process should be increased to \$400. Several providers' attorneys also recommended eliminating the lower attorney's fees that are awarded during the conciliation phase, and applying the minimum and maximum attorney's fees that are permitted during the arbitration phase.

The Superintendent proposes that the maximum attorney's fee during the conciliation phase be made equivalent to the maximum attorney's fee during the arbitration phase to curtail the increase in filings of low monetary value claims in court and arbitration. The American Arbitration Association submitted persuasive arguments for making such a change: (1) as a result of a regulatory revision made ten years ago requiring early submission of case documents and legal arguments in arbitration (the "rocket docket" phase) and the need to fulfill any additional requirements set forth on the arbitration request form, the current maximum attorney's fee is not commensurate with the increase in the amount of work an attorney must expend upon filing and during the conciliation phase of an arbitration case; (2) eliminating the current maximum attorney's fee would eliminate the disparity in attorneys' fees awarded in court as opposed to arbitration; and (3) providers' attorneys no longer would have an incentive to avoid settlement during conciliation solely to obtain higher attorney fee awards at arbitration.

11 NYCRR Sections 65-4.6(e) ("Maximum Arbitration Attorney's Fee")

Several providers and their attorneys recommended that the first party benefits plus interest awarded as attorney's fees in no-fault disputes pursuant to 11 NYCRR Section 65-4.6(e) should be increased from the prescribed 20 percent to 40 percent, subject to a maximum of \$2,500, rather than the currently prescribed \$850 maximum. An attorney suggested that the maximum fee should be increased to \$1,950, and another attorney recommended an increase to \$2,000. A provider's attorney recommended increasing the maximum fee to \$1,650 and adding a \$130 appearance fee, provided that an attorney be given the option of pursuing attorney's fees pursuant to either 11 NYCRR Section 65-4.6(e) or 11

NYCRR Section 65-4.6(d), which currently prescribes an hourly rate of \$70, subject to a maximum fee of \$1,400, for arbitrating or litigating a coverage dispute. An insurer suggested increasing the maximum fee set forth in 11 NYCRR Section 65-4.6(e) from \$850 to \$1,500 to encourage providers' attorneys to consolidate disputed claims into single actions, but only for those actions that meet an amount-in-dispute threshold of \$7,500 or more. All of the other insurers and a trade association representing property/casualty insurers strongly opposed any increase in the maximum attorney's fee.

Increasing the maximum fee set forth in 11 NYCRR Section 65-4.6(e) to \$1,360 should sufficiently address the concerns expressed by providers and their attorneys and motivate them to consolidate disputes wherever feasible. Any increase in the percentage of fees prescribed by 11 NYCRR Section 65-4.6(e) would be unreasonable, because such an increase would discourage providers' attorneys from consolidating disputed claims into single actions. Additionally, attorneys should not be given the option of pursuing fees under either 11 NYCRR Section 65-4.6(d) or 11 NYCRR Section 65-4.6(e), because 11 NYCRR Section 65-4.6(d) applies to adjudication of coverage disputes that generally involve complex legal issues requiring more preparation and appearances than the typical no-fault dispute, which is subject to 11 NYCRR Section 65-4.6(e).

9. Federal standards: There are no minimum federal standards for the same or similar subject areas. The rule is consistent with federal standards or requirements.

10. Compliance schedule: The amendment will take effect upon publication of the Notice of Adoption in the State Register.

Regulatory Flexibility Analysis

1. Effect of the rule: This amendment affects no-fault insurers authorized to do business in New York State and self-insurers of no-fault benefits. The Department is not aware of any insurer writing automobile liability insurance and required to comply with no-fault provisions that is a "small business" as defined in State Administrative Procedure Act Section 102(8) as being both independently owned and having less than one hundred employees. The Department of Financial Services ("Department") does not have any information to indicate that any self-insurer, which must have the financial ability to self-insure losses, is a small business as defined in State Administrative Procedure Act Section 102(8).

Local government units make independent determinations on the feasibility of becoming self-insured for no-fault benefits or having these benefits provided by authorized insurers. There are no provisions in the State's financial security laws that require local governments to report to the Departments of Financial Services or Motor Vehicles whether they are self-insured. Therefore, the Department has no way of estimating how many local government units are self-insured for no-fault benefits.

Small businesses that may be impacted by this rule include health service providers, who frequently are no-fault applicants having obtained assignments from insureds, and their attorneys. Their participation in the no-fault system, however, is optional and the Department has established no preauthorization or reporting requirements with respect to these small businesses. Furthermore, because the Department does not maintain records of the number of health service providers licensed in this state, the number of such applicants actually providing services to injured persons eligible for no-fault benefits, or the number of attorneys that represent such applicants in no-fault disputes, the Department is not able to estimate the number of health service providers that will be affected by this rule. However, the proposed rule only revises the fee structure pertaining to fees that are awarded to attorneys that prevail in no-fault disputes on behalf of applicants.

2. Compliance requirements: The proposed amendment should not have any impact on compliance requirements for small businesses or local governments affected by the amendment because the amendment only revises the fee structure pertaining to fees that are awarded to attorneys when an applicant prevails in a no-fault dispute.

3. Professional services: This amendment does not require any small business or local government affected by the amendment to use any professional services beyond those currently used to comply with this rule.

4. Compliance costs: The proposed amendment should have no impact on compliance costs for small businesses or local governments affected by this amendment because the amendment only revises the fee structure pertaining to fees awarded to attorneys that prevail in no-fault disputes on behalf of applicants. The Department expects that the amendment to the rule's attorney-fee structure will incentivize attorneys to consolidate no-fault actions, and therefore reduce costs associated with multiple filings and backlog of pending lawsuits and arbitrations. The Department thus anticipates that no small business subject to the rule, if any, or local government that self-insures no-fault benefits will experience a cost increase as a result of this amendment, because any increase in attorneys' fees is likely to be mitigated by the savings caused by the consolidation of legal proceedings.

5. Economic and technological feasibility: Small businesses and local

governments affected by this amendment should not incur any economic or technological impact as a result of this amendment, because the amendment does not impact the economy or require the use of technology.

6. Minimizing adverse impact: This rule should have no adverse impact on small businesses or local governments affected by this amendment because the amendment only revises the fee structure pertaining to fees that are awarded to attorneys when an applicant prevails in a no-fault dispute. As explained in item 4. above, the Department anticipates that no small business subject to the rule, if any, or local government that self-insures no-fault benefits will experience any cost increase as a result of this amendment.

7. Small business and local government participation: Interested parties, including small businesses and local governments, were given an opportunity to review and comment on certain current attorney's fee provisions of the no-fault regulation when the Department published such provisions in the State Register on August 21, 2013 for the purpose of soliciting their comments.

Rural Area Flexibility Analysis

1. Types and estimated number of rural areas: Applicants (generally, health service providers who have obtained assignments from insureds), applicants' attorneys, insurers, and self-insurers affected by this amendment do business in every county in this state, including rural areas as defined in State Administrative Procedure Act Section 102(10).

2. Reporting, recordkeeping and other compliance requirements: The proposed amendment will not impose any reporting, recordkeeping or other compliance requirements on any applicant, applicant's attorney, insurer, or self-insurer located in a rural area.

3. Costs: This amendment should not impose any additional costs on any applicant, applicant's attorney, insurer, or self-insurer located in a rural area. The Department expects that the amendment to the rule's attorney-fee structure will incentivize attorneys to consolidate no-fault actions, and therefore reduce costs associated with multiple filings and backlog of pending lawsuits and arbitrations. The Department thus anticipates that no insurer subject to the rule, if any, or self-insurer will experience a cost increase as a result of this amendment, because any increase in attorneys' fees is likely to be mitigated by the savings caused by the consolidation of legal proceedings.

4. Minimizing adverse impact: This amendment does not impose any adverse impact on rural areas, because it only revises the structure of fees that are awarded to attorneys who prevail in no-fault disputes on behalf of applicants. As explained in item 3. above, the Department anticipates that no insurer subject to the rule, if any, or self-insurer will experience any cost increase as a result of this amendment.

5. Rural area participation: Interested parties, including those located in rural areas, were given an opportunity to review and comment on certain current attorney's fee provisions of the no-fault regulation when the Department published such provisions in the State Register on August 21, 2013 for the purpose of soliciting their comments.

Job Impact Statement

The proposed rule should have no adverse impact on jobs or employment opportunities in this state, because it only revises the structure of fees that are awarded to attorneys who prevail in no-fault disputes on behalf of applicants (generally, health service providers who have obtained assignments from insureds).

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Title Insurance Agents, Affiliated Relationships, and Title Insurance Business

I.D. No. DFS-29-14-00014-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 20 (Regulations 9, 18, and 29), 29 (Regulation 87), 30 (Regulation 194), 34 (Regulation 125); and addition of Part 35 (Regulation 206) to Title 11 NYCRR.

Statutory authority: Financial Services Law, sections 202 and 302; Insurance Law, sections 107(a)(54), 301, 2101(k), 2109, 2112, 2113, 2119, 2120, 2122, 2128, 2129, 2139, 2132, 2139, 2314, 2324 and 6409

Subject: Title insurance agents, affiliated relationships, and title insurance business.

Purpose: To implement requirements of chapter 57 of Laws of NY 2014 re: title insurance agents and placement of title insurance business.

Text of proposed rule: Section 20.1 is amended as follows:

Forms of applications for temporary licenses to be issued pursuant to

Insurance Law section 2109 [of the Insurance Law] are prescribed for a temporary *insurance* broker's license, [and for a temporary] insurance agent's license, and *title insurance agent's license*. These forms may be obtained upon request to the Department of Financial Services, Albany, NY.

Section 20.2 is amended as follows:

Forms of notice of termination of appointment of insurance agents and *title insurance agents* pursuant to *Insurance Law* section 2112 [of the Insurance Law] are prescribed as follows: for agents licensed pursuant to *Insurance Law* section 2103(a) [of the Insurance Law]; for agents licensed pursuant to *Insurance Law* section 2103(b) [of the Insurance Law]. These forms may be obtained upon request to the Department of Financial Services, Albany, NY.

Section 20.3 is amended as follows:

§ 20.3 Fiduciary responsibility of insurance agents, *title insurance agents*, and *insurance* brokers; premium accounts.

(a) This section is issued for the purpose of interpreting, and facilitating compliance with, *Insurance Law* section 2120(a) and (c) [of the Insurance Law].

(b) Every insurance agent, [and every] *title insurance agent*, and insurance broker is responsible as a fiduciary for funds received by such *insurance agent*, *title insurance agent*, or *insurance* broker in such capacity; all such funds shall be held in accordance with the following paragraphs:

(1) An *insurance agent*, *title insurance agent*, or *insurance* broker who does not make immediate remittance to insurers and assureds of such funds shall deposit them in one or more appropriately identified accounts in a bank or banks duly authorized to do business in this State, from which no withdrawals shall be made except as hereinafter specified (any such account is hereinafter referred to as "a premium account").

(2) An *insurance agent*, *title insurance agent*, or *insurance* broker who makes immediate remittance to insurers and assureds of such funds need not maintain a premium account for such funds.

(3) Deposits in a premium account in excess of aggregate net premiums received but not remitted may be made to maintain a minimum balance, to guarantee the adequacy of the account, or to pay premiums due but uncollected (any such deposit is hereinafter referred to as "a voluntary deposit").

(4) No withdrawals from a premium account shall be made other than for payment of premiums to insurers, payment of return premiums to assureds, transfer to an operating account of (i) interest, if the principals have consented thereto in writing and (ii) commissions, or withdrawal of voluntary deposits, provided, however, that no withdrawal may be made if the balance remaining in the premium account thereafter is less than aggregate net premiums received but not remitted.

(5) Deposit of a premium in a premium account shall not be construed as a commingling of the net premium and of the commission portion of the premium.

(6) In the case of an *insurance agent* or *title insurance agent* operating under an "account current system", maintenance at all times in one or more premium accounts of at least the net balance of premiums received but not remitted shall be construed as compliance with *Insurance Law* section 2120(a) and (c) [of the Insurance Law], provided that the funds so held for each such principal are reasonably ascertainable from the *insurance agent's* or *title insurance agent's* records.

(c) Except as hereinabove provided, an *insurance agent*, *title insurance agent*, or *insurance* broker shall not commingle any funds received or collected as an *insurance agent*, a *title insurance agent*, or an *insurance* broker with his, her, or its own funds or with funds held by him, her, or it in any other capacity without the written consent of the person, firm, or corporation for whom they are held in a fiduciary capacity.

(d) If any provision of this section or the application thereof to any person or circumstances is held unauthorized by law, then the remainder of the section and the application of such provision to other persons or circumstances shall not be affected thereby.

Section 20.4 is amended as follows:

§ 20.4 Fiduciary responsibility of insurance agents, *title insurance agents*, and *insurance* brokers; minimum recordkeeping requirements.

(a) This section is issued for the purpose of interpreting, and facilitating compliance with, *Insurance Law* section 2120(a) and (c) [of the Insurance Law].

(b)(1) Every licensee who is required to maintain a premium account shall maintain books, records and accounts in connection with [their] the licensee's business to record:

(i) all money received in trust for insurers or members of the public;

(ii) all disbursements out of money held in trust;

(iii) all other money received and disbursed in connection with the business.

(2) At a minimum, to comply with paragraph (1) of this subdivision, every licensee [who is] required to maintain a premium account shall maintain:

(i) a book or other permanent account record, imprinted with the name and address of the licensee, showing all receipts and disbursement of money, distinguishing therein between:

(a) the receipt of money in trust for insurers and members of the public and disbursements out of money held in trust, and the record shall have the following minimum detail:

(1) for receipts:

- (i) amount of money received;
- (ii) date received;
- (iii) name of insured;
- (iv) insurer's name and policy binder number; and
- (v) description of the risk (vehicle type, property description, liability exposure, etc.); and

(2) for disbursements:

- (i) amount of money received;
- (ii) check number;
- (iii) name of insured;
- (iv) insurer's name and policy binder number; and
- (v) description of the risk (vehicle type, property description, liability exposure, etc.); and

(b) money received and money paid by the licensee for general operations, services, sales and other insurance;

(ii) records in such form to show all billings, correspondence or other transmittal related to premiums, return premiums, commissions and fees charged to members of the public; and

(iii) bank statements or passbooks, cashed checks and detailed deposit slips for both trust and general accounts.

(3) Every licensee [who is] required to maintain a premium account shall maintain accounting records in a manner that clearly reflects the nature and purpose of the transaction and accurately and fairly states or measures or properly accounts for the money or valuable consideration exchanged in the transaction.

(4) Where this section requires a record to be kept by a licensee, it may be kept in a bound or looseleaf book, or by means of a mechanical, electronic or other device.

(5) The licensee shall:

(i) take adequate precautions, for safeguarding the records and for protection against the falsification of the information recorded; and

(ii) provide means for making the information available in an accurate and useable form for inspection and copying to any person lawfully entitled to examine the record.

(c)(1) The information [which] that is made available under subparagraph (b)(5)(ii) of this section is admissible in evidence as prima facie proof of all facts stated therein.

(2) Where this section requires a record to be kept by a licensee, it shall be preserved for at least the three-year period preceding the most recent fiscal year-end of the licensee.

(3) The records described in subdivision (b) of this section shall be maintained in this State at the licensee's principal place of business or stored in such a manner as to allow reasonable accessibility and made available upon request by the department; or if a non-resident licensee, shall be made available in this State within [10] ten days upon request.

(4) The records described in subdivision (b) of this section shall be in addition to any requirements already detailed in the Insurance Law and Regulations promulgated thereunder.

(5) The record described by subclause (b)(2)(i)(a)(1) of this section, the receipt along with a copy of the application, shall be delivered to the insured at the time of its making.

(d) If any provision of this section or the application thereof to any person or circumstances is held unauthorized by law, then the remainder of the section and the application of such provision to other persons or circumstances shall not be affected thereby.

Section 29.5 is amended as follows:

(a) [Any] Except as provide in subdivision (c) of this section, any licensee who receives any fees and/or commissions, or shares thereof, in connection with any insurance services rendered to, or insurance coverages placed or serviced on behalf of, a governmental unit, shall file, with the [Department of Financial Services] department and the most senior official of the governmental unit who ordered such insurance services or coverages, a completed Governmental Insurance Disclosure Statement, affirmed by the licensee as true under penalties of perjury, on the prescribed form [attached hereto as] set forth in Exhibit B in section 29.6 of this Part, which statement after filing shall be a public record.

(b) Statements shall be filed with [Licensing Bureau of the Department of Financial Services, at the Albany office of] the department[,] on or before [the 15th day of] April 15 in each year with respect to fees and/or commissions, or shares thereof, received as of the preceding December [31st] 31. A general agent, as defined in this Part, shall not be required to file a Governmental Insurance Disclosure Statement with respect to insurance coverages placed in his or her capacity as a general agent, or on ac-

count of which commissions or shares thereof are paid to another insurance agent or insurance broker who ordered such coverages from said general agent.

(c) Pursuant to Insurance Law section 2128(b), a title insurance agent shall not be required to file a Governmental Insurance Disclosure Statement if an industrial development agency, state of New York mortgage agency or its successor, or any similar type of entity, is the named insured under the policy and is a mortgagee with respect to the property insured.

Section 29.6(a) is amended as follows:

(a) The form in subdivision (b) of this section is hereby approved for use as specified in this Part. [Any licensee may request the return of disclosure statements heretofore or hereafter filed with the Department of Financial Services, provided such request is made in writing to the Licensing Bureau at the Albany office of the Department of Financial Services and is accompanied by a self-addressed, postage paid envelope suitable for the return of such disclosure statements.]

Section 30.3 is amended by adding a new subdivision (g) as follows:

(g) Notwithstanding subdivision (a) of this section, if an insurance producer is a title insurance agent, then the title insurance agent shall, in lieu of the disclosures required by subdivision (a) of this section, provide the written disclosures required by Insurance Law section 2113(b). As part of such disclosure, the title insurance agent shall provide a description of the title insurance agent's role in the title insurance transaction and provide the information required by subdivision (b) of this section.

Section 34.1(a) and (b) are amended as follows:

(a) Agent means [any person, firm, association or partnership] an insurance agent as defined in Insurance Law section 2101(a)[, and licensed pursuant to section 2103 of the Insurance Law] or a title insurance agent as defined in Insurance Law section 2101(y).

(b) Broker means [any person, firm, association or corporation] an insurance broker as defined in Insurance Law section 2101(c) [and licensed pursuant to section 2104 of the Insurance Law].

Section 34.2 is amended by adding a new subdivision (h) as follows:

(h) Subdivisions (c), (d), and (e) of this section shall not apply to a title insurance agent that is a licensed attorney who transacts title insurance business from the agent's law office.

Text of proposed rule and any required statements and analyses may be obtained from: Paul Zuckerman, New York State Department of Financial Services, One State Street, New York, NY 10004, (212) 480-5286, email: paul.zuckerman@dfs.ny.gov

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

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

Five-Year Review of Existing Rules An assessment of public comments received by the agency in response to its publication of a list of rules to be reviewed.

Regulatory Impact Statement

1. Statutory authority: The Superintendent's authority to promulgate these amendments and the new Part derives from sections 202 and 302 of the Financial Services Law ("FSL") and sections 107(a)(54), 301, 2101(k), 2109, 2112, 2113, 2119, 2120, 2122, 2128, 2129, 2132, 2139, 2314, and 6409 of the Insurance Law.

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

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

Insurance Law section 107(a)(54) defines title insurance agent.

Insurance Law section 2101(k) defines insurance producer to include title insurance agent.

Insurance Law section 2109 addresses temporary licenses for title insurance agents and other insurance producers.

Insurance Law section 2112 addresses appointments by insurers of insurance agents and title insurance agents.

Insurance Law section 2113 requires that title insurance agents and persons affiliated with such title insurance agents provide certain disclosures to applicants for insurance when referring such applicants to persons with which they are affiliated. Section 2113 also requires the Superintendent to promulgate regulations to enforce the affiliated person disclosure requirements and to consider any relevant disclosures required by the federal real estate settlement procedures act of 1974 ("RESPA"), as amended.

Insurance Law section 2119 permits title insurance agents to charge fees for certain ancillary services not encompassed within the rate of premium provided its pursuant to a written memorandum.

Insurance Law section 2120 addresses the fiduciary responsibility of title insurance agents and other producers.

Insurance Law section 2122 addresses advertising by title insurance agents and other insurance producers.

Insurance Law section 2128 prohibits fee sharing with respect to business placed with governmental entities.

Insurance Law section 2132 governs continuing education for title insurance agents and other insurance producers.

Insurance Law section 2139 is the licensing section for title insurance agents.

Insurance Law section 2314 prohibits title insurance corporations and title insurance agents from deviating from filed rates.

Insurance Law section 2324 prohibits rebating, improper inducements and other discriminatory behavior with respect to most kinds of insurance, including title insurance.

Insurance Law section 6409 contains specific prohibitions against rebating, improper inducements and other discriminatory behavior with respect to title insurance.

2. Legislative objectives: Long-sought and critically needed legislation to license title insurance agents was enacted as part of Chapter 57 of the New York Laws of 2014, which was signed into law by the governor on March 31, 2014. By way of background, title insurance agents in New York: (a) handle millions of dollars of borrowers' and sellers' funds, (b) record documents, and (c) pay off mortgages. Yet for years, title insurance agents have conducted business in New York without licensing or other regulatory oversight, standards or guidelines. Because, as a matter of practice in New York, the title insurance agents control the bulk of the title insurance business, including bringing in customers, conducting the searches and other title work, the title insurance corporations often have little choice but to deal with title insurance agents who they may otherwise consider questionable or unscrupulous. Without licensing or regulatory oversight, an unscrupulous title insurance agent who was fired by one title insurer could simply take the business to another title insurer, who is usually more than willing to appoint that title insurance agent.

This lack of State regulation over title insurance agents made for an alarming weakness in New York law, and specifically New York law addressing title insurance rebating and inducement. For example, lack of regulatory oversight and licensing created a gaping loophole, which led to serious breaches of fiduciary duties and exploitation by unscrupulous actors to commit fraud in the mortgage origination and financing process. Over the years, this gap in New York law and lack of regulatory oversight allowed these actors to freely engage in theft, abuse, charging of excessive fees, and illegal rebates and inducements to the detriment of consumers, with little fear of prosecution. These abuses cost consumers of the State millions of dollars and at least one New York title insurer became insolvent because of the activities of its title insurance agents.

3. Needs and benefits: Now that New York law requires title insurance agents to be licensed, a number of existing regulations governing insurance producers need to be amended in order to include title insurance agents or to address unique circumstances involving them, including affiliated persons' arrangements and required consumer disclosures. Specifically, Insurance Regulation 9 addresses temporary licenses; Insurance Regulation 18 addresses appointment of insurance agents; and Insurance Regulation 29 regulates premium accounts and fiduciary responsibilities of insurance agents and insurance brokers; and each is amended to include references to title insurance agents. Insurance Regulation 87 addresses special prohibitions regarding sharing compensation with other licensees with respect to certain governmental entities and is amended to address a limited exception for title insurance business insuring State of New York Mortgage Agency and certain other circumstances. Regulation 30 addresses insurance producer compensation transparency and is amended to reflect specific requirements in new Insurance Law section 2113 for title insurance agents. Insurance Regulation 125 governs insurance agents and brokers that maintain multiple offices and is amended to clarify the applicability of the regulation to title insurance agents. Regulation 25 also is amended to address unique circumstances involving title insurance agents who are also licensed attorneys.

New Insurance Regulation 206 addresses a number of miscellaneous issues involving title insurance agents. Some of these changes simply add provisions that are similar to those that apply to other insurance producers; for example, it prescribes the form of applications and requires licensees to notify the Department of any change of business or residence address. Other provisions of Regulation 206 set forth the new disclosure requirements; require title insurance agents to comply with a rate service organization's annual statistical data call; and address the obligation of title insurance agents and title insurance corporations with respect to title closers. Of particular significance are provisions of the regulations that codify Department opinions regarding affiliated business relations with respect to the applicability of Insurance Law section 6409, which prohibits rebates, inducements and certain other discriminatory behaviors.

4. Costs: Regulated parties impacted by these rules are title insurance agents, which heretofore were not licensed by the Department, and title in-

surance corporations. They may need to provide new disclosures in accordance with the regulation if they are not already making such disclosures but they already have an obligation to make changes to notices pursuant to the legislation. There are also new reporting requirements to the Department but these are the same that apply with respect to other licensees. In any event, the costs of these new disclosures and reporting requirements should not be significant. The proposed rules also subject title insurance agents to requirements regarding the maintenance of fiduciary accounts that already apply to other insurance producers. The cost impact on title insurance agents will likely vary from agent to agent but should not be significant.

Although the Department already was handling complaints and investigating matters regarding title insurance, because licensing title insurance agents is a new responsibility for the Department, anticipated costs to the Department are at this time uncertain. Existing personnel and line titles will handle any new licensing applications or enforcements issues initially.

These rules impose no compliance costs on any state or local governments.

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

6. Paperwork: The amendments and new rules now apply certain requirements that are applicable to other insurance producers to title insurance agents as well. For example, title insurance agents are made subject to the same reporting requirements as other insurance producers when changing addresses, maintaining records, and submitting applications, and title insurers are required to file certificates of appointment of their title insurance agents with the Department. In addition, to reflect the specific notice requirements of Insurance Law section 2113, the disclosure requirements to insureds under Insurance Regulation 194 are modified for title insurance agents to reflect the statutory requirements. The new law also contains certain new disclosure requirements and the new rules implement those changes, and require certain other disclosures to applicants for insurance, such as a notice advising insureds or applicants for insurance about the different kinds of title policies available to them.

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

8. Alternatives: The Department circulated drafts of the proposed rules to a number of interested parties and, as a result, the Department made a number of changes to proposed new Regulation 206, particularly with respect to affiliated business relationships, and title insurance corporation or title insurance agent responsibility for title insurance closers.

With respect to affiliated business relationships, comments ranged from requests that the Department implement specific percentage limitations on business that result from referrals made by affiliated persons to eliminating the requirement that affiliated title insurance agents or title insurance corporations have significant and multiple sources of business. The Department, in interpreting the requirements of Insurance Law section 6409(d), believes that the standards enunciated in the regulation, and which codify longstanding Department opinions, reflect a reasonable interpretation of that statute. With respect to responsibility for title insurance closers, since title closers act to bind the title insurance corporation at the closing, the regulation reflects a balance, consistent with new Insurance Law section 2139(k), which imposes on title insurance corporations and title insurance agents that employ them a due diligence obligation to ensure that the closers, while acting in such capacity, act in a proper and appropriate manner.

9. Federal standards: RESPA, and regulations thereunder, contain certain requirements and disclosures that apply to residential real estate settlement transactions. These requirements are minimum requirements and do not preempt state laws that provide greater consumer protection. The amendments and new rules are not inconsistent with RESPA and, consistent with New York law, provide greater consumer protection to the public.

10. Compliance schedule: Chapter 57 of the New York Laws of 2014 takes effect on September 27, 2014. In order to facilitate the orderly implementation of the new law, the Superintendent was authorized to promulgate regulations in advance of the effective date, but to be make such regulations effective on that date.

Regulatory Flexibility Analysis

1. Effect of the rule: These rules affect title insurance corporations authorized to do business in New York State, title insurance agents and persons affiliated with such corporations and agents.

No title insurance corporation subject to the amendment falls within the definition of "small business" as defined in State Administrative Procedure Act section 102(8), because no such insurance corporation is both independently owned and has less than one hundred employees.

It is estimated that there are about 1,800 title insurance agents doing business in New York currently. Since they are not currently licensed by

the Department of Financial Services (“Department”), it is not known how many of them are small businesses, but it is believed that a significant number of them may be small businesses.

Persons affiliated with title insurance agents or title insurance corporations would not, by definition, be independently owned and would thus not be small businesses.

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

2. Compliance requirements: The proposed rules conform and implement requirements regarding title insurance agents and placement of title insurance business with Chapter 57 of the Laws of 2014, which made title insurance agents subject to licensing in New York for the first time. A number of the rules will make title insurance agents subject to the same requirements that apply to other insurance producers. There are also disclosure requirements unique to title insurance.

3. Professional services: This amendment does not require any person to use any professional services.

4. Compliance costs: Title insurance agents will need to provide new disclosures in accordance with the regulation if they are not already making such disclosures but they already have an obligation to make changes to notices pursuant to the legislation. There are also new reporting requirements to the Department but these are the same that apply with respect to other licensees. In any event, the costs of these new disclosures and reporting requirements should not be significant. The proposed rules now subject title insurance agents to requirements regarding the maintenance of fiduciary accounts that already apply to other insurance producers. The cost impact on title insurance agents will likely vary from agent to agent but should not be significant.

5. Economic and technological feasibility: Small businesses that may be affected by this amendment should not incur any economic or technological impact as a result of this amendment.

6. Minimizing adverse impact: This rule should have no adverse impact on small businesses.

7. Small business participation: Interested parties, including an organization representing title insurance agents, were given an opportunity to comment on draft proposed rules.

Rural Area Flexibility Analysis

The Department of Financial Services (“Department”) finds that this rule does not impose any additional burden on persons located in rural areas, and will not have an adverse impact on rural areas. This rule applies uniformly to regulated parties that do business in both rural and non-rural areas of New York State.

Rural area participation: Interested parties, including those located in rural areas, were given an opportunity to review and comment on draft versions of these rules.

Job Impact Statement

The Department of Financial Services finds that these rules should have no negative impact on jobs and employment opportunities. The rules conform to and implement the requirements of, with respect to title insurance agents and the placement of title insurance business, Chapter 57 of the Laws of 2014, which make title insurance agents subject to licensing in New York for the first time and, by establishing a regulated marketplace, may lead to increased employment opportunity.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Regulation of the Conduct of Virtual Currency Businesses

I.D. No. DFS-29-14-00015-P

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

Proposed Action: Addition of Part 200 to Title 23 NYCRR.

Statutory authority: Financial Services Law, sections 102, 104, 201, 206, 301, 302, 309 and 408

Subject: Regulation of the conduct of virtual currency businesses.

Purpose: To regulate retail-facing virtual currency business activity in order to protect New York consumers and users and ensure the safety and soundness of New York licensed providers of virtual currency products and services. This regulation complements the Department of Financial Services’ Order of March 11, 2014, which provides for the regulation, pursuant to the Banking Law, of exchanges that interact primarily with institutions.

Substance of proposed rule (Full text is posted at the following State website: www.dfs.ny.gov): The following is a summary of the proposed regulation:

Section 200.1, “Introduction,” sets forth the statutory authority for the rule.

Section 200.2, “Definitions,” defines terms used throughout the proposed regulation. Most significantly this Section defines “virtual currency” and “virtual currency business activity”.

Section 200.3, “License,” prohibits any Person from engaging in virtual currency business activity without a license.

Section 200.4, “Application,” sets forth the information to be included in a prospective licensee’s application.

Section 200.5, “Application fees,” requires applicants to pay an application fee to the Department of Financial Services (the “Department”) and provides that licensees may need to pay fees for the processing of additional applications related to the license.

Section 200.6, “Action by superintendent,” provides for the superintendent to approve or deny an application and, if approved, to suspend or revoke a license on specified grounds after a hearing.

Section 200.7, “Compliance,” requires licensees to comply with all applicable federal and state law, designate a compliance officer, and maintain and enforce various written compliance policies.

Section 200.8, “Capital requirements,” sets forth minimum capitalization requirements and a list of permissible investments.

Section 200.9, “Custody and protection of customer assets,” requires licensees to establish a bond or trust account for the benefit of their customers, requires licensees to hold virtual currency in the same type and amount as any virtual currency owed by the licensee, and prohibits licensees from encumbering customer assets.

Section 200.10, “Material change to business,” requires licensees to seek prior approval by written application to introduce a new, or materially change an existing, product or service.

Section 200.11, “Change of control; mergers and acquisitions,” requires licensees to seek prior approval by written application before executing a change of control or merger or acquisition.

Section 200.12, “Books and records,” requires licensees to maintain certain records pertaining to each transaction and make such records available to the Department upon request.

Section 200.13, “Examinations,” requires licensees to permit the superintendent to examine the licensee, including the licensee’s books and records, at least once every two years and to make special investigations as deemed necessary by the superintendent.

Section 200.14, “Reports and financial disclosures,” requires licensees to file quarterly financial statements and audited annual financial statements, to make special reports upon request, and to notify the Department upon discovery of any breach of law or upon a proposed change to the methodology used to calculate the value of virtual currency in fiat currency.

Section 200.15, “Anti-money laundering program,” requires licensees to establish and implement an anti-money laundering program, which includes customer identification and transaction monitoring, to maintain records, and to make reports as required by applicable federal anti-money laundering law.

Section 200.16, “Cyber security program,” requires licensees to design a cyber security program and written policy, designate a chief information security officer, make reports, and conduct audits.

Section 200.17, “Business continuity and disaster recovery,” requires licensees to establish and maintain a written business continuity and disaster recovery plan to address disruptions to normal business operations.

Section 200.18, “Advertising and marketing,” requires licensees to display a legend regarding its licensure by the Department, maintain all advertising and marketing materials, comply with all applicable federal and state disclosure requirements, and not make any false or misleading representations or omissions.

Section 200.19, “Consumer protection,” requires licensees to disclose material risks and terms and conditions to customers and to establish an anti-fraud policy.

Section 200.20, “Complaints,” requires licensees to disclose the licensee’s and the Department’s contact information and other information pertaining to the resolution of complaints.

Section 200.21, “Transitional period,” requires Persons already engaged in virtual currency business activity to apply for a license with the Department within 45 days of the effective date of the regulation.

Text of proposed rule and any required statements and analyses may be obtained from: Office of General Counsel - Dana V. Syracuse, New York State Department of Financial Services, One State Street, New York, NY 10004, (212) 709-1663, email: dana.syracuse@dfs.ny.gov

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

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

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

Regulatory Impact Statement

1. Statutory Authority.

Section 102 of the Financial Services Law (FSL) states the legislature’s

intent that the superintendent of Financial Services regulate “new financial services products,” and “ensure the continued safety and soundness of New York’s banking, insurance and financial services industries, as well as the prudent conduct of the providers of financial products and services, through responsible regulation and supervision.” The definition of “financial product or service” in FSL section 104(a)(2) includes “any financial product or service offered or sold to consumers” other than those regulated under the exclusive jurisdiction of a federal or other New York state agency or where such regulation of such financial product or service would be preempted by federal law. Virtual currency meets the definition of “financial product or service,” and is therefore subject to regulation by the superintendent.

Moreover, the superintendent has the explicit power under FSL section 301(c) “to protect users of financial products and services,” and, under FSL section 302(a)(1), to “prescribe . . . rules and regulations. . . effectuating any power given to the superintendent under the provisions of this chapter.” The superintendent therefore has statutory authority to prescribe regulations regarding virtual currency for the purpose of protecting users of virtual currency and virtual currency-related services.

Other statutory authority includes: Financial Services Law, sections 201, 202, 206, 302, 303, 304-a, 305, 306, 309, 404, 408; State Administrative Procedures Act, section 102; Banking Law, sections 10, 14, 36, 37, 39, 40, 44, 44-a, 78, 128, 225-a, 600, 601-a, 601-b; and Executive Law, section 63.

2. Legislative Objectives.

FSL section 201 is entitled “Declaration of policy” and states:

(a) It is the intent of the legislature that the superintendent shall supervise the business of, and the persons providing, financial products and services, including any persons subject to the provisions of the insurance law and the banking law.

(b) The superintendent shall take such actions as the superintendent believes necessary to:

(1) foster the growth of the financial industry in New York and spur state economic development through judicious regulation and vigilant supervision;

(2) ensure the continued solvency, safety, soundness and prudent conduct of the providers of financial products and services;

(3) ensure fair, timely and equitable fulfillment of the financial obligations of such providers;

(4) protect users of financial products and services from financially impaired or insolvent providers of such services;

(5) encourage high standards of honesty, transparency, fair business practices and public responsibility;

(6) eliminate financial fraud, other criminal abuse and unethical conduct in the industry; and

(7) educate and protect users of financial products and services and ensure that users are provided with timely and understandable information to make responsible decisions about financial products and services.

Virtual currency business activity is currently in its infancy and is almost entirely unregulated. The current lack of regulation, along with the dangers associated with virtual currency, may subject consumers and the businesses themselves to undue risk. The proposed regulation is intended to protect members of the public by imposing regulatory standards on virtual currency transactions and services that involve New York or New York residents, ensure the solvency, safety, soundness, and prudent conduct of persons or entities engaged in virtual currency business activity, and to foster the growth of the financial industry in New York by setting forth clear guidelines that will inspire confidence and allow for the establishment of legal virtual currency business activity.

3. Needs and Benefits.

Extensive research and analysis by the Department of Financial Services (the “Department”), including a two-day hearing held in January 2014, has made clear the need for a new and comprehensive set of regulations that address the novel aspects and risks of virtual currency. Existing laws and regulations do not cover proposed or current virtual currency business activity. The proposed regulation is therefore necessary to ensure that: (a) persons or entities engaged in virtual currency business activity operate in a safe and sound manner; (b) New York consumers and other residents are protected from the risks posed by virtual currency business activity; and (c) persons or entities engaged in new virtual currency business activity have a framework within which they can grow.

4. Costs.

Persons licensed under the proposed regulation will be responsible for ensuring that they are in compliance with this regulation, which will impose some costs on their operations. The Department will develop procedures to effectuate the licensing and examination of regulated persons or entities engaged in virtual currency business activity. In addition, the Department’s operating expenses will be assessed in accordance with the provisions of FSL section 206. There should be no costs to any local governments as a result of the proposed regulation.

5. Local Government Mandates.

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

6. Paperwork.

Persons licensed under the proposed regulation will be required to keep and maintain books and records, make quarterly financial reports to the superintendent, and provide written applications for the initial license, and to seek approval for changes in control of, or material changes to, their businesses.

7. Duplication.

The proposed regulation does not duplicate, overlap, or conflict with any other regulations.

8. Alternatives.

The Department considered amending existing laws or regulations, particularly under the Banking Law, to include virtual currency. The Department decided not to pursue that alternative because of the widespread and potentially unforeseen ramifications such modification could have on the financial services industry and currently regulated entities. The Department also considered not acting at all, but concluded that failure to regulate virtual currency business activity will place the public at risk.

9. Federal Standards.

There are no applicable federal standards.

10. Compliance Schedule.

Persons or entities engaging in virtual currency business activity as of the effective date of the regulation must file an application for a license within 45 days of the effective date of the regulation.

Regulatory Flexibility Analysis

1. Effect of the rule.

Local governments do not engage in the virtual currency business activity covered by the proposed regulation. This regulation will not impose any adverse economic impact or any reporting, recordkeeping, or other compliance requirements on local governments. To the extent a small business engages in any of the conduct specified in the proposed regulation, it will be required to comply with the requirements of the regulation. At this time, because virtual currency technology is relatively new, there exists no comprehensive estimate of the number of small businesses in New York that would be impacted by the proposed regulation.

2. Compliance requirements.

Small businesses, like all businesses licensed under the proposed regulation, will be required to make quarterly financial reports to the superintendent of Financial Services, keep and maintain accurate books and records, be subject to examinations, and provide written applications for the initial license and to seek approval for changes in control or material changes to their businesses.

3. Professional services.

Small businesses, like all businesses licensed under the proposed regulation, will be required to satisfy an annual audit requirement, which will require the retention of qualified professionals to perform the audit.

4. Compliance costs.

Persons licensed under the proposed rule will be responsible for ensuring that they are in compliance with the regulation, which will impose some costs on their operations. Although the cost of compliance, particularly with regard to anti-money laundering and cyber security, could be significant for small businesses, the overwhelming need for such compliance to protect New York residents outweighs such costs. In addition, very few, if any, small businesses currently engage in the conduct that is subject to regulation under the proposed rule. For small businesses that do not engage in virtual currency business activity, the regulation will impose no adverse impact or increased costs.

5. Economic and technological feasibility.

The Department of Financial Services (the “Department”) believes it will be economically and technologically feasible for small businesses to comply with the requirements of the proposed regulation.

6. Minimizing adverse impact.

To minimize any adverse economic impact of the proposed regulation on small businesses, the Department will adjust small businesses’ capital requirements to reflect the size of their operations. Small businesses generally will have lower capital requirements than large businesses.

7. Small business participation.

The proposed regulation will be published publicly, including on the Department’s website, for notice and comment, which will provide small businesses with the opportunity to participate in the rule making process. Further, prior to drafting this regulation the Department held a two day public hearing and sought input from dozens of virtual currency businesses, venture capital companies, and academics.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas.

Persons subject to the licensing requirements of the proposed regulation could possibly operate anywhere in this state, including rural areas.

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

Persons licensed under the proposed regulation will be required to make quarterly financial reports to the superintendent of Financial Services, keep and maintain accurate books and records, be subject to examinations, and must provide written applications for the initial license and to seek approval for changes in control or material changes to their businesses.

3. Costs.

Persons licensed under the proposed regulation will be responsible for ensuring that they are in compliance with this regulation, which will impose some costs on their operations. The costs are not expected to be any higher for entities in rural areas than for any other entity in the state.

4. Minimizing adverse impact.

The proposed regulation is not expected to have an adverse impact on public or private sector interests in rural areas. This regulation is specifically tailored to the pressing need to regulate virtual currency business activity involving New York or New York residents and is likely to have a positive impact on interests in rural areas by increasing the financial services available to them.

5. Rural area participation.

The proposed regulation will be published publicly, including on the Department's website, for notice and comment, which will provide public and private interests in rural areas with the opportunity to participate in rule making.

Job Impact Statement

A Job Impact Statement is not being submitted with this proposed regulation because it is evident from the subject matter of the regulation that it will not have an adverse impact on jobs and employment opportunities in New York State. The proposed regulation is intended to protect members of the public by imposing a regulatory framework on persons or entities that wish to engage in virtual currency business activity involving the State of New York or New York residents and to provide the market with guidance and clarity with regard to the use of virtual currency. Based on the feedback the Department of Financial Services (the "Department") has received from virtual currency businesses to date, the Department believes that the proposed regulation will have a positive impact on jobs and employment opportunities in New York by allowing for the establishment and growth of legitimate virtual currency businesses.

Department of Health

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

State Aid for Public Health Services: Counties and Cities

I.D. No. HLT-29-14-00012-P

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

Proposed Action: Repeal of Parts 39 and 40; and addition of new Part 40 to Title 10 NYCRR.

Statutory authority: Public Health Law, sections 201, 602, 603, 619, 2201, 2202 and 2276

Subject: State Aid for Public Health Services: Counties and Cities.

Purpose: To modernize certain regulations, including standards of performance for eligible public health services.

Substance of proposed rule (Full text is posted at the following State website: www.health.ny.gov): Article 6 of the Public Health Law (PHL) sets forth the statutory framework for the Departments' State Aid program, which partially reimburses local health departments (LHDs) for eligible expenses related to specified public health services. The objectives of these amendments is to conform the State Aid regulations to recent statutory changes to PHL Article 6; clarify, simplify, and reorganize all of the regulations; and to modernize certain regulations, including standards of performance for eligible public health services.

The Department does not expect the non-conformance amendments to result in any significant increased costs. The proposed regulations were developed with considerable input from New York State Association of County Officials (NYSACHO), through numerous meetings. NYSACHO

has not indicated that these regulations, which aim to reduce administrative burdens on LHDs, will result in any significant increased costs.

The regulations implementing the State Aid program are set forth in 10 NYCRR Part 39 and Subparts 40-1 and 40-2. Part 39 and Subpart 40-1 establish the administrative aspects of State Aid, including the application and payment mechanisms. Subpart 40-2 establishes the standards of performance for eligible public health services.

These regulations repeal Part 39 and Subparts 40-1 and 40-2 in their entirety. New Subparts 40-1 and 40-2 are issued. The relevant provisions of Part 39 are incorporated into a new Subpart 40-1; accordingly, Part 39 is not being reissued.

With this in mind, these regulatory amendments can be organized into three categories:

- Conformance Changes, for changes necessary to conform the regulations to the recent statutory changes to Article 6 of the PHL;

- Non-conformance Changes – Administrative, for changes to the administrative aspects of State Aid, currently set forth in Part 39 and Subpart 40-1, and now provided solely in Subpart 40-1; and

- Non-conformance changes – Standards of Performance, for changes to the performance standards for core public health services, set forth in Subpart 40-2.

The conformance changes can be summarized as follows:

- All references to the "Municipal Public Health Services Plan" (MPHSP) and Fee and Revenue Plan are removed.

- The regulations describing the State Aid Application (SAA) are amended to reflect that the SAA is now comprised of the following sections: an organizational chart and list of the number of employees providing public health services; a proposed budget; a description of how the LHD will provide public health services; an attestation by the chief executive officer of the municipality that sufficient funds have been appropriated to provide public health services; an attestation by the public health commissioner or director that the LHD has exercised due diligence in reviewing the SAA and that the application seeks State Aid only for eligible public health services; a list of public health services provided by the LHD that are not eligible for State Aid; a projection of fees and revenues to be collected for public health services eligible for State Aid and any other information or documents required by the commissioner.

- The regulation describing the duties of the local commissioner of health or public health director is revised to reflect that such official may serve as the head of a merged agency or multiple agencies if approved by the commissioner, or serve as the local commissioner of health or public health director of additional counties when authorized pursuant to section 351 of the PHL.

- The definition of "maintenance of effort"—i.e., the funding level at which an LHD must maintain services—and the calculation of the penalty for failing to comply, have been simplified.

- Subpart 40-2, which provides the standards of performance for public health services required for State Aid eligibility, is updated to include the following six core public health services: Family Health, Communicable Disease Control, Chronic Disease Prevention, Community Health Assessment, Environmental Health, and Emergency Preparedness and Response. In particular, Chronic Disease Prevention and Emergency Preparedness, which had been a subset of "Disease Control", are now distinct core services. Public Health Education, which was a distinct core service, has been eliminated and the activities incorporated into each of the core services.

The non-conformance administrative changes to Subpart 40-1 involve significant simplification, clarification, and reorganization of all related provisions. For example, the existing sections relating to fees and revenues are updated and clarified. The regulations clarify that LHDs must make reasonable efforts to collect fees and revenue. The provisions setting forth the activities that are ineligible for State Aid is moved to Subpart 40-2, reorganized and clarified. These and other administrative changes to Subpart 40-1 are described in more detail in the Regulatory Impact Statement.

The non-conformance changes to the performance standards in Subpart 40-2 can be summarized as follows:

- The Family Health core service is amended to focus services in the following areas: Child Health, Maternal and Infant Health, and Reproductive Health sections.

- The requirements of the Chronic Disease Prevention core service are revised to focus LHDs on working with community partners to implement policy rather than on providing direct patient care.

- In the Communicable Disease Prevention core service, the section relating to General Communicable Disease control is amended to reflect best practices, which include requiring LHDs to provide communications to health care providers, clinics and laboratories on how to decrease the spread of communicable disease. The sections on Sexually Transmitted Diseases and Human Immunodeficiency Virus are consolidated.

- The Community Health Assessment section now requires LHDs to create a Community Health Improvement Plan.

- The requirements of the Environmental Health core service are simplified.
- A new core service, Emergency Preparedness and Response, is added to reflect the LHD's active role in assuring the community is adequately prepared to respond to emergencies.

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

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

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

Regulatory Impact Statement

Statutory Authority:

Article 6 of the Public Health Law (PHL) sets forth the statutory framework for the Departments' State Aid program, which partially reimburses local health departments (LHDs) for eligible expenses related to specified public health services. PHL § § 602(4), 603(1), and 619 authorize the commissioner to promulgate rules and regulations to effectuate the provisions of PHL Article 6. PHL § 619 specifies that such regulations shall include establishing standards of performance for core public health services and for monitoring performance, collecting data, and evaluating the provision of such services.

Legislative Objectives:

PHL Article 6 establishes a program that provides State Aid to LHDs to partially reimburse the cost of eligible public health services.

Needs and Benefits:

The administrative aspects of State Aid, including the application and payment mechanisms, are currently set forth in 10 NYCRR Part 39 and Subpart 40-1. The standards of performance for eligible public health services are set forth in Subpart 40-2. The objectives of these amendments is to conform these regulations to recent statutory changes to PHL Article 6; clarify, simplify, and reorganize all of the regulations; and to modernize certain regulations, including standards of performance for eligible public health services.

In 2013, the Legislature amended PHL Article 6 to simplify the State Aid application and payment process and to modernize the performance standards for State Aid eligibility. The State Aid regulations should be updated to conform to these statutory changes.

Additionally, the State Aid regulations require clarification, reorganization, and modernization. Over time, the regulations concerning the administrative aspects of applying for and receiving State Aid—10 NYCRR Part 39 and Subpart 40-1—have become overly complicated, and certain portions have become obsolete. After examining Part 39 and Subpart 40-1, the Department has determined that these regulations could be greatly simplified by repealing these sections in their entirety and issuing a new Subpart 40-1 with appropriate amendments. Because the relevant provisions of Part 39 would be incorporated into the proposed Subpart 40-1, Part 39 is not being reissued.

Likewise, over time, the standards of performance set forth in Subpart 40-2 have become overly complicated and outdated. These amendments repeal and reissue Subpart 40-2, with appropriate amendments.

Accordingly, this document outlines the proposed regulatory changes in three headings:

- Conformance Changes, for changes necessary to conform the regulations to the recent statutory changes to Article 6 of the PHL;
- Non-conformance Changes – Administrative, for changes to the administrative aspects of State Aid, currently set forth in Part 39 and Subpart 40-1, and now provided solely in Subpart 40-1; and
- Non-conformance changes – Standards of Performance, for changes to the performance standards for core public health services, set forth in Subpart 40-2.

Conformance Changes

In accordance with the 2013 changes to Article 6 of the Public Health Law (L. 2013, ch. 56 [Part E]), the proposed amendments eliminate all references to the Municipal Public Health Services Plan (MPHSP) and to the Fee and Revenue Plan. The State Aid base grant is increased from \$550,000 or 55 cents per capita (whichever is greater), to \$650,000 or 65 cents per capita (whichever is greater). Sections on fees and revenue are clarified to explicitly state that every LHD must make reasonable attempts to collect fees for public health services, and that they must bill for third party insurance reimbursement for clinic health services where available. The definition of "maintenance of effort"—i.e., the funding level at which an LHD must maintain services—and the calculation of the penalty for failing to comply, have been simplified.

Further, the sections describing the State Aid Application (SAA) have been updated to reflect that the SAA is now the document that the LHD must submit to be eligible for State Aid, rather than the SAA combined with the MPHSP. The sections describing the SAA's components are

updated to reflect its new structure: an organizational chart and list of the number of employees providing public health services; a proposed budget; a description of how the LHD will provide public health services; an attestation by the chief executive officer of the municipality that sufficient funds have been appropriated to provide public health services; an attestation by the public health commissioner or director that the LHD has exercised due diligence in reviewing the SAA and that the application seeks State Aid only for eligible public health services; a list of public health services provided by the LHD that are not eligible for State Aid; a projection of fees and revenues to be collected for public health services eligible for State Aid; and any other information or documents required by the commissioner.

The proposed changes also reflect statutory amendments that clarify that the commissioner of health or public health director of a LHD may serve as the head of a merged agency or multiple county agencies, if approved by the commissioner, or serve as the local commissioner of health or public health director of additional counties when authorized pursuant to section 351 of the PHL.

Finally, the list of required core public health services is updated to include: Family Health, Communicable Disease Control, Chronic Disease Prevention, Community Health Assessment, Environmental Health and Emergency Preparedness and Response. More specifically, Chronic Disease Prevention and Emergency Preparedness and Response are added as new core public health services. Health Education is removed as a core public health service, and its requirements incorporated into each of the remaining core services.

Non-conformance Changes – Administrative

10 NYCRR Part 39 (General Provisions Regarding the Payment of State Aid) is repealed, and those provisions that remain relevant are incorporated into Subpart 40-1 (General Provisions). Accordingly, Part 39 is not being reissued. In general, Subpart 40-1 is rewritten so that it provides a clear and concise description of the administrative processes relating to State Aid. This includes many clarifications and updates.

For example, the list of public health services for which the LHD must charge a fee is updated. LHDs already collect fees for these services. Hence, these are not new fees.

The amendments update the regulations concerning reporting of revenue generated from public health services provided by the LHD, but which are not required for State Aid eligibility. The timing of claim submissions is revised, and proposed regulations explicitly state that claims must be submitted using the "cash basis" method of accounting. The proposed regulations specify that claims must be prepared in conformance with the federal publication: "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards." Records supporting claims must be retained for six years.

Non-conformance changes – Standards of Performance

Subpart 40-2 is greatly simplified and modernized. First, the general standards establishing the conditions under which an LHD can contract for public health services are updated. A new provision clarifies the categories of clinic services that are eligible for State Aid. The list of activities that are ineligible for State Aid, formerly part of Subpart 40-1, is now provided in Subpart 40-2. The list is also reorganized and clarified.

The standards of performance for each of the core public health services have been updated as well. Currently, every public health service has associated "performance standards" and "requirements", which are listed in two separate regulatory sections. These amendments consolidate each pair of regulations into a single section.

In sections under the Family Health core services, several existing programs are consolidated into a single section. These changes focus LHDs on assessing family health needs, connecting families with needed services, and working with other health care providers in the community to address gaps in services. Also included is a new section listing Family Health activities eligible for State Aid, but not required as a condition of eligibility, including primary care services, prenatal services, public health home visits associated with eligible services, and reproductive health care and family planning services. The existing provisions concerning lead exposure are moved to the Environmental Health heading.

The eligibility requirements under the Communicable Disease Control core service are modernized. The proposed amendments would require LHDs to provide communications to health care providers, clinics and laboratories on decreasing the spread of communicable disease. The performance standards for HIV and STD services are consolidated and revised. The performance standards concerning Immunization, Tuberculosis, and General Communicable Disease Control are revised.

The eligibility requirements under the Chronic Disease Prevention core service are modernized. For example, the proposed regulations require LHDs to work with community partners to implement policies that support healthy behaviors. The regulations also clarify that direct patient care is not eligible for State Aid.

The eligibility requirements under the Community Health Assessment

core service are updated to include a Community Health Improvement Plan. The Community Health Improvement Plan must describe the actions the LHD will take with its partners to address public health issues in the county.

The eligibility requirements for the Environmental Health core service are reorganized and streamlined for simplicity. Sections concerning those public health services that are a condition of State Aid eligibility, only if the Department has authorized the LHD to perform such services, are grouped together. This includes a new section pertaining to regulation of tanning facilities, for those LHDs authorized to regulate tanning facilities on behalf of the Department.

Finally, the regulations establish standards of performance for the new core service, Emergency Preparedness and Response. The activities in this section were previously considered components of existing core public health services, such as Environmental Health and Communicable Disease Control, but are now located in a single section.

Costs:

The Department does not expect the non-conformance amendments to result in any significant increased costs. The proposed regulations were developed with considerable input from the New York State Association of County Officials (NYSACHO), through numerous meetings. NYSACHO's feedback has been integrated throughout the regulations. NYSACHO has not indicated that these regulations, which aim to reduce administrative burdens on LHDs, will result in any significant increased costs.

Local Government Mandates:

The regulations governing the Department's State Aid program for public health work are not mandates on local governments. However, traditionally every LHD has applied for and received some amount of State Aid, and these regulations place eligibility conditions on those funds.

With respect to the amendments to the administrative regulations governing the State Aid program, overall these regulations represent a reduction in the administrative burden of applying for State Aid. Further, the amendments to the regulations governing the standards of performance for core public health services simplify program requirements and reflect current practices by the majority of LHDs.

Paperwork:

These regulations will decrease the paperwork required for State Aid eligibility because LHDs will no longer be required to submit a Municipal Public Health Services Plan or Fee and Revenue Plan. Although the community health assessment now requires a Community Health Improvement Plan, other components of the community health assessment have been reduced.

Duplication:

No relevant rules or legal requirements of the Federal and State governments duplicate, overlap or conflict with this rule.

Alternatives:

Some of these amendments are required to conform the regulations to recent statutory changes to Article 6 of the PHL. With respect to the non-conformance regulations, the alternative would be to maintain regulations that are overly-complicated, obsolete, and inconsistent with current practice and with the national standards for local health departments established by the Public Health Accreditation Board.

Federal Standards:

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

Compliance Schedule:

The regulations will become effective upon the publication of the Notice of Adoption in the State Register.

Regulatory Flexibility Analysis

Effect on Small Business and Local Governments:

Local government will benefit from the clarification of administrative requirements and from the elimination of documents which are currently required for State Aid eligibility, such as the Municipal Public Health Services Plan (MPHSP) and Fee and Revenue Plan. The proposed regulatory changes do not affect small businesses.

Compliance Requirements:

These regulations apply exclusively to local governments. Accordingly, please refer to the Regulatory Impact Statement for a description of compliance requirements.

Professional Services:

No additional professional services are required to comply with these regulations.

Capital Costs and Annual Costs of Compliance:

The Department does not expect the non-conformance amendments to result in any significant increased costs. The proposed regulations were developed with considerable input from the New York State Association of County Officials (NYSACHO), through numerous meetings. NYSACHO has not indicated that these regulations, which aim to reduce administrative burdens on LHDs, will result in any significant increased costs.

Economic and Technology Feasibility:

The proposed regulatory changes will not impose any new technology requirements or costs, or otherwise pose feasibility concerns.

Minimizing Adverse Impact:

No adverse impacts have been identified.

Small Business and Local Government Participation:

The changes in the current regulations have been reviewed with and had considerable input from NYSACHO, through numerous meetings. NYSACHO's feedback has been integrated throughout the regulations. The proposed regulation changes do not have any effect on small business.

Cure Period:

Chapter 524 of the Laws of 2011 requires agencies to include a "cure period" or other opportunity for ameliorative action to prevent the imposition of penalties on the party or parties subject to enforcement under the proposed regulation. This regulation creates no new penalty or sanction. Hence, no cure period is necessary.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis for these amendments is not being submitted because amendments will not impose any adverse impact or significant reporting, recordkeeping or other compliance requirements on public or private entities in rural areas. There are no professional services, capital, or other compliance costs imposed on public or private entities in rural areas as a result of the proposed amendments.

Job Impact Statement

A Job Impact Statement for these amendments is not being submitted because it is apparent from the nature and purposes of the amendments that they will not have a substantial adverse impact on jobs and/or employment opportunities.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Amendment of Certificate of Need (CON) Applications

I.D. No. HLT-29-14-00013-P

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

Proposed Action: This is a consensus rule making to amend sections 600.3 and 710.5 of Title 10 NYCRR.

Statutory authority: Public Health Law, sections 2801-a(1) and 2802(1)

Subject: Amendment of Certificate of Need (CON) Applications.

Purpose: To eliminate requirement for Public Health & Health Planning Council review of certain types of amendments to CON applications.

Substance of proposed rule (Full text is posted at the following State website: www.health.ny.gov): Sections 600.3 and 710.5 of 10 NYCRR require that amendments to Certificate of Need (CON) applications that have been approved by the Public Health and Health Planning Council (PHHPC) be referred to the PHHPC and the regional Health Systems Agency (HSA), if applicable, for reevaluation and recommendations. An amendment is defined as:

- 1) a change in the method or terms of financing of the approved project in excess of ten percent of the approved project costs, or \$15 million, whichever is less; or
- 2) an increase in the total basic costs of construction of the project greater than \$6 million and in excess of ten percent of approved project costs, whichever is less; or
- 3) a substantial change in the terms of agreement for the land or building involved in the project; or
- 4) a reduction in the scope of the project accounting for 15 percent or more of approved project costs; or
- 5) an increase in the number and/or types of beds or services approved for the project; or
- 6) a change in the site of construction if outside the facility's planning area; or
- 7) a change in the applicant.

The proposed rule changes would delete subparagraphs (1), (2), (3) and (4) of paragraph (c) of section 600.3 and subparagraphs (1), (2), (3) and (4) of paragraph (b) of section 710.5 to remove from the definition of an amendment the above changes in the method or terms of a project's financing, increases in total basic project costs, changes in the terms of agreement for a project's land or building, and reductions in project scope accounting for more than 15 percent of approved costs. Approval of the proposed rule would remove the requirement that the affected changes be referred to the PHHPC (and where applicable, the regional HSA) for reevaluation and recommendation. Removal of the cited provisions would render the affected changes modifications, making them subject only to

prior approval by the Commissioner, as set forth in sections 600.3(f) and 710.1(c)(3).

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

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

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

Consensus Rule Making Determination

Statutory Authority:
Pursuant to the authority vested in the Public Health and Health Planning Council, subject to the approval of the Commissioner of Health, by sections 2801-a(1) and 2802(1) of the Public Health Law, the Department proposes to amend subdivision (b) of Section 600.3 and subdivision (b) of Section 710.5 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York.

Basis:
The proposed rule changes would revise provisions of section 600.3 and section 710.5 that require review by the Public Health and Health Planning Council (PHHPC) of certain changes to Certificate of Need (CON) applications for projects awaiting approval or already approved by the PHHPC but which have not yet proceeded to actual establishment or construction. These amendments to the rules would reduce the processing time for amended CON applications, which would result in cost savings for the applicants and in more timely access to the services to be delivered by established providers. Because of these benefits to hospitals, nursing homes, diagnostic and treatment centers (clinics) and other entities regulated by Article 28 of the Public Health Law, the Department anticipates no objection to the proposed rule changes. On the contrary, representatives of various health care provider associations have expressed support for these changes as part of a larger effort by the Department and the PHHPC to streamline the CON review process.

The Department also anticipates no objection to the technical changes being undertaken in the proposed rules. The first of these changes is to substitute reference to the Public Health and Health Planning Council for the former State Hospital Review and Planning Council and the former Public Health Council in sections 600.3 and 710.5. The second is to change the term “modification” to “revision” in section 600.3 where it refers to applications not yet acted upon by the Council. This is because the term “modification” in 600.3 also refers to applications acted upon by the Council for which subsequent proposed changes do not constitute amendments. The proposed change in terminology would resolve this ambiguity in the use of the term “modification” and do away with the confusion it sometimes causes for applicants in proposing changes to their CON applications, whether before or after Council approval. A third technical amendment would remove the provision in section 600.3 that requires applicants to submit nine copies of any proposed revision of an application. This change reflects the Department’s implementation of an electronic system for the submission and processing of CON applications, which eliminates the costs associated with the paper copies currently required of applicants.

Job Impact Statement

The proposed rules simplify the process for the approval of amendment of approved CON applications for the establishment and construction of hospitals, nursing homes, clinics and other health care facilities subject to Article 28 of the Public Health Law. Because these rules represent only a change in application procedures, they will have no impact on jobs and employment opportunities, in the health care sector or elsewhere.

Office of Mental Health

NOTICE OF ADOPTION

Mental Health Services—General Provisions

I.D. No. OMH-14-14-00015-A

Filing No. 592

Filing Date: 2014-07-07

Effective Date: 2014-07-23

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

Action taken: Amendment of Part 501 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 7.09 and 31.01

Subject: Mental Health Services—General Provisions.

Purpose: To provide clarification with respect to outdated references within Title 14 NYCRR for providers of mental health services.

Text of final rule: Section 501.5 of Title 14 NYCRR is amended to read as follows:

§ 501.5. *Obsolete or Outdated references.*

(a) Commission on Quality of Care and Advocacy for Persons with Disabilities. Effective June 30, 2013, all references to the Commission on Quality of Care and Advocacy for Persons with Disabilities that appear in this Title, as applicable to the Office of Mental Health and facilities under its jurisdiction, shall be deemed to be references to the Justice Center for the Protection of People with Special Needs, established pursuant to Chapter 501 of the Laws of 2012.

(b) *Diagnostic Manuals.* All references in this Title, as applicable to the Office of Mental Health and facilities under its jurisdiction, to the International Classification of Diseases Manual (ICD) that refer to a specific edition shall be deemed to reference the most current version required to be used for coding by the Centers for Medicare and Medicaid Services. All references in this Title, as applicable to the Office of Mental Health and facilities under its jurisdiction, to the Diagnostic and Statistical Manual of Mental Disorders (DSM) that refer to a specific edition shall be deemed to reference the most recent published edition of such manual.

Final rule as compared with last published rule: Nonsubstantive changes were made in section 501.5(b).

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

Revised Job Impact Statement

A job impact statement is not being submitted with this notice because it is evident from the subject matter of the rule that there will be no impact on jobs and employment opportunities. The non-substantive change to the final rule does not alter its intent, which is to provide clarification to providers of mental health services with respect to regulatory references to outdated manuals. The wording change in the final adopted rule further clarifies that the current version of the International Classification of Diseases Manual (ICD) means the most current version required to be used for coding by the Centers for Medicare and Medicaid Services. No public comments were received as a result of this rule making. OMH is merely making this non-substantive change to the final adopted version of the regulation to serve as additional helpful information to providers.

Assessment of Public Comment

The agency received no public comment.

Office for People with Developmental Disabilities

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

HCBS Waiver Community Habilitation Services

I.D. No. PDD-29-14-00005-P

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

Proposed Action: Amendment of sections 635-10.1, 635-10.4(b)(4) and 635-10.5 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 13.07, 13.09(b) and 16.00

Subject: HCBS Waiver Community Habilitation Services.

Purpose: To make revisions to HCBS Waiver Community Habilitation services.

Text of proposed rule: Subdivision 635-10.1(e) is amended as follows:

(e) [Only section 635-10.4(b)(2) and (c)-(f) of this Subpart are applicable to eligible persons receiving waiver community residential habilitation services in facilities operated by providers of services pursuant to Part 671 of this Title.] *The allowable activities for waiver community residential habilitation services provided in accordance with Part 671 of this Title are not subject to the provisions of paragraph 635-10.4(b)(1).*

- Paragraph 635-10.4(b)(4) is amended as follows:

(4) Community habilitation phase II (CH II) services were delivered between October 1, 2012 and September 30, 2013 and are no longer available. CH II services are ... CH II services.)

(Note: rest of paragraph is unchanged.)

- Paragraph 635-10.5(c)(7) is amended as follows:

(7) Billing limits for group day habilitation, [and] supplemental group day habilitation, and prevocational services (see subdivision (e) of this section).

(i) Limit of one full unit or two half units.

(a) This limit applies to an individual who, on a given day:

(1) does not receive supplemental group day habilitation;

and

(2) if the individual lives in an Individualized Residential Alternative (IRA), Community Residence (CR), or family care home (FCH), the individual also does not receive community habilitation (CH) services. [On a given day, for an individual who does not receive supplemental group day habilitation on that day.]

(b) On a given day, a maximum of the following may be reimbursed:

[(a)](1) one full unit of group day habilitation; or

[(b)](2) one full unit of a blended service which includes group day habilitation (a blended service is a combination of day habilitation, prevocational services [(see subdivision (e) of this section)] and/or supported employment services); or

[(c)](3) one full unit of prevocational services; or

(4) any combination of two half units of: group day habilitation, prevocational services or blended services.

(Note: current subparagraphs (ii) and (iii) are deleted.)

(ii) Limit of one and a half units or three half units.

(a) This limit applies to an individual who receives supplemental group day habilitation on a given day.

(b) On a given day, a maximum of the following may be reimbursed:

(1) one full unit of group day habilitation, supplemental group day habilitation, prevocational services or blended services and one half unit of any of these services; or

(2) three half units of any of these services.

(iii) For individuals who live in an IRA, CR or FCH and receive community habilitation on a given day, additional billing limits are described in paragraphs (11) and (12) of subdivision (ab) of this section.

(iv) Where more than one agency delivers services on a given day to the same individual, the total number of units and/or hours of CH services billed for that day by all agencies may not exceed the maximum allowed daily units and/or hours described in subparagraphs (i) [(, (ii) and (iii)] – (iv) of this paragraph.

(v) Exceptions. The following applies only to requests made prior to the effective date of these amendments.

(Note: clauses (a) – (c) are unchanged.)

- Paragraph 635-10.5(e)(9) is amended as follows:

(9) Billing limits for prevocational services, group day habilitation, and supplemental group day habilitation (see subdivision (c) of this section).

(Note: current subparagraphs (i) – (iii) are deleted.)

(i) Limit of one full unit or two half units.

(a) This limit applies to an individual who, on a given day:

(1) does not receive supplemental group day habilitation;

and

(2) if the individual lives in an Individualized Residential Alternative (IRA), Community Residence (CR), or family care home (FCH), the individual also does not receive community habilitation (CH) services.

(b) On a given day, a maximum of the following may be reimbursed:

(1) one full unit of group day habilitation; or

(2) one full unit of a blended service which includes group day habilitation (a blended service is a combination of day habilitation, prevocational services and/or supported employment services); or

(3) one full unit of prevocational services; or

(4) any combination of two half units of: group day habilitation, prevocational services or blended services.

(ii) Limit of one and a half units or three half units.

(a) This limit applies to an individual who receives supplemental group day habilitation on a given day.

(b) On a given day, a maximum of the following may be reimbursed:

(1) one full unit of group day habilitation, supplemental group day habilitation, prevocational services or blended services and one half unit of any of these services; or

(2) three half units of any of these services.

(iii) For individuals who live in an IRA, CR or FCH and receive community habilitation on a given day, additional billing limits are described in paragraphs (11) and (12) of subdivision (ab) of this section.

(iv) On a given day, a maximum of one full unit per individual, either one full unit or two half units, may be reimbursed for supplemental group day habilitation.

(v) Where more than one agency delivers services on a given day to the same individual, the total number of units and/or hours of CH services billed for that day by all agencies may not exceed the maximum allowed daily units and/or hours described in subparagraphs (i) – (iv) of this paragraph.

[(iv)] (vi) Exceptions. The following applies only to requests made prior to the effective date of these amendments.

(Note: clauses (a) – (c) are unchanged)

- Subdivision 635-10.5(ab) is amended as follows

(ab) Hourly community habilitation (CH) services. The following shall apply to CH services (see section 635-10.4(b)(3) of this Subpart).

(1) [Individuals who live in a residence which is operated or certified by OPWDD (including family care homes)] are not eligible to receive CH services.]

Eligibility for CH services.

(i) The following individuals are eligible to receive CH services:

(a) Individuals who do not live in a setting certified or operated by OPWDD (e.g. a private home); and

(b) Individuals who live in the following residences certified by OPWDD: Individualized Residential Alternative (IRA), Community Residence (CR) and Family Care Home (FCH).

(ii) Prior to the effective date of these amendments, no individual who lived in a residence certified or operated by OPWDD (including a family care home) was eligible to receive CH services.

(2) Reimbursement shall be contingent upon prior OPWDD approval of the person's need for CH services. [OPWDD shall approve persons for CH services based on the need for services to protect the health or safety of the person or of his or her caregiver, the compatibility of the individual with available CH services, and the individual's relative need for supports for daily living.]

(i) For all individuals (except for those who live in an Individualized Residential Alternative (IRA), a Community Residence (CR), or a family care home (FCH)), OPWDD shall approve persons for CH services based on the individual's relative need for supports for daily living and the individual's need for community-based activities.

(ii) For individuals who live in an IRA, CR or FCH, OPWDD shall approve persons for CH services based on the individual's need for community-based activities.

(Note: paragraphs (3) – (5) are unchanged.)

(6) In order to be billable, CH services may not be delivered at a site certified by OPWDD or at a site operated by OPWDD which would be required to be certified if it were operated by another provider. Examples of such sites include but are not limited to a certified day habilitation site, a family care home, a supportive or supervised IRA, and a free-standing respite center certified as an IRA. However, an exception to this rule is that CH services are billable if the services are delivered at clinic treatment facilities certified in accordance with Part 679 of this Title (also known as "article 16 clinics") and the services delivered are in accordance with the exception in clause (7)(i)(e) of this subdivision.

(7) Time spent receiving another Medicaid service cannot be counted toward the CH billable service time, except as follows:

(i) If the individual lives in a setting which is not certified or operated by OPWDD (e.g. a private home) or a FCH:

(Note: current subparagraphs (i) – (iv) are renumbered as clauses (a) – (d) and are unchanged. Current subparagraph (v) is renumbered as clause (e) and clauses (v)(a) – (d) are renumbered as subclauses (e)(1) – (4) and are unchanged except for the amendment of subclause (e)(4).)

(4) Notwithstanding any other provision of this subdivision, CH services delivered in accordance with this [subparagraph] clause are billable regardless of location (even if the clinical service is delivered at a facility certified by OPWDD).

(ii) For individuals who live in an IRA or CR:

(a) The individual may concurrently receive hospice and CH services.

(b) Time when the Medicaid service coordination (MSC) service coordinator is conducting the face-to-face MSC visit with the individual may be counted toward the CH billing as long as the CH staff is present. This concurrent billing is allowed in order to promote the coordination of services.

(c) Nursing services may be provided concurrently with CH services, but only in cases where the CH plan describes supports and services that are distinct and separate from the supports and services being provided by the nursing staff.

(8) CH services are not billable while an individual is in a hospital,

nursing home, rehabilitation facility, or [intermediate care facility for persons with developmental disabilities (ICF/DD, see Part 681 of this Title)] ICF/DD. CH services are billable on the day of admission to or discharge from one of these settings so long as the services are not provided in the hospital, nursing home, rehabilitation facility or ICF/DD.

(9) For each continuous service delivery period or session, the CH provider must document:

(i) the service start time and the service stop time [, the ratio of individuals to staff at the time of service delivery, and];

(ii) the provision of at least one service/staff action delivered in accordance with the individual's CH plan;

(iii) for individuals who do not live in an IRA, CR or FCH; the ratio of individuals to staff at the time of service delivery; and

(iv) for individuals who live in an IRA, CR or FCH; whether the CH service is delivered on an individual or group basis.

(10) The unit of service for CH services shall be one hour equaling 60 minutes and is reimbursed in 15 minute increments. When there is a break in the service delivery during a single day, the provider may combine, for billing purposes, the duration of each continuous period of service provision (or session) that is provided during the day. [that has the same individual to staff ratio] In order to be combined, each session must have the same individual to staff ratio (for individuals who do not live in a residence certified by OPWDD). For individuals who live in an IRA, CR or FCH, all sessions being combined must be either "individual" or "group" but the individual to staff ratio in the group CH may vary.

(11) Billing limits for individuals who live in a supervised IRA or supervised CR.

(i) Community habilitation services may only be reimbursed if the services are delivered on weekdays and have a service start time prior to 3:00 p.m.

(ii) CH services may not be reimbursed on a given day that the individual receives:

(a) one full unit of group day habilitation services; or

(b) one full unit of prevocational services; or

(c) one full unit of a blended service (which is a combination of day habilitation and prevocational services); or

(d) any combination of two half units of: group day habilitation, prevocational services or blended services.

(iii) On a given day, a maximum of the following may be reimbursed:

(a) six hours of CH services; or

(b) the combination of:

(1) one half unit of: group day habilitation, prevocational services or blended services; and

(2) four hours of CH services.

(12) Billing limits for individuals who live in a supportive IRA, supportive CR or FCH: On a given day, a maximum of the following may be reimbursed:

(i) eight hours of CH services; or

(ii) the combination of:

(a) one half unit of: group day habilitation services, supplemental group day habilitation services, prevocational services or blended services; and

(b) six hours of CH services; or

(iii) the combination of:

(a) one full unit or two half units of: group day habilitation services, supplemental group day habilitation services, prevocational services or blended services; and

(b) four hours of CH services; or

(iv) the combination of:

(a) one full unit and one half unit or three half units of: group day habilitation services, supplemental group day habilitation services, prevocational services or blended services (one half or one full unit of these must be supplemental group day habilitation services); and

(b) two hours of CH services.

(13) Where more than one agency delivers services on a given day to the same individual who lives in an IRA, CR, or family care home the total number of units and/or hours of CH services billed for that day by all agencies may not exceed the maximum allowed daily units and/or hours described in paragraphs (11) and (12) of this subdivision.

[(11)](14) CH which is self-directed or family-directed. The following requirements apply to CH services which are self-directed or family-directed, and are in addition to [the] all other provisions [of paragraphs (1)-(10)] of this subdivision.

(Note: rest of paragraph is unchanged.)

[(12)](15) Community habilitation fee setting.

(Note: rest of paragraph is unchanged except for the addition of a new clause (iii)(d))

(d) Effective on the effective date of these amendments, the fees for CH delivered to an individual who lives in a CR, IRA or FCH are as follows:

Fee is hourly per person

	Individual	Group
	Serving 1	Serving 2-4
Region I	\$37.05	\$23.16
Region II	\$38.39	\$23.99
Region III	\$37.51	\$23.44

(Note: paragraphs (13) – (15) are renumbered as (16) – (18) and are unchanged.)

• Subdivision 635-10.5(ac) is amended as follows:

(ac) Community habilitation phase II (CH II) services. The following [shall apply] applied to CH II services (see section 635-10.4(b)(4) of this Subpart), which were delivered between October 1, 2012 and September 30, 2013 and are no longer available.

(Note: rest of subdivision is unchanged.)

Text of proposed rule and any required statements and analyses may be obtained from: Regulatory Affairs Unit, OPWDD, 44 Holland Avenue, 3rd Floor, Albany, NY 12229, (518) 474-1830, email: RAU.Unit@opwdd.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.

Additional matter required by statute: Pursuant to the requirements of the State Environmental Quality Review Act, OPWDD, as lead agency, has determined that the action described herein will have no effect on the environment, and an E.I.S. is not needed.

Regulatory Impact Statement

1. Statutory authority:

a. OPWDD has the statutory responsibility to provide and encourage the provision of appropriate programs and services in the area of care, treatment, rehabilitation, education and training of persons with developmental disabilities, as stated in the New York State (NYS) Mental Hygiene Law Section 13.07.

b. OPWDD has the authority to adopt rules and regulations necessary and proper to implement any matter under its jurisdiction as stated in the NYS Mental Hygiene Law Section 13.09(b).

c. OPWDD has the statutory authority to adopt regulations concerning the operation of programs, provision of services and facilities pursuant to the NYS Mental Hygiene Law Section 16.00.

2. Legislative objectives: The proposed amendments further the legislative objectives embodied in sections 13.07, 13.09, and 16.00 of the Mental Hygiene Law. The proposed amendments establish revised standards for the provision of HCBS Waiver Community Habilitation Services.

3. Needs and benefits: As part of its ongoing efforts to increase the availability of self-directed services within the system, OPWDD is modifying the HCBS Waiver service, Community Habilitation (CH), to allow individuals residing in certified settings appropriate for HCBS Waiver enrollment to access the service in lieu of traditional day services.

It is expected that this change will allow individuals more service options, and will increase the ability of individuals residing in certified settings appropriate for HCBS Waiver enrollment to receive a highly individualized service and to more readily participate in activities in the community in lieu of more traditional day services. In addition, it is also expected that this change will impact several hundred individuals initially, and may grow over time.

4. Costs:

a. Costs to the Agency and to the State and its local governments:

OPWDD considers that the fiscal effect of these amendments will be minimal. Some individuals who live in IRAs, CRs and family care homes will be newly eligible to receive CH services and may begin to receive CH services – generally in lieu of other Medicaid-funded services in the OPWDD system such as day habilitation or prevocational services. OPWDD therefore expects that the expenditure of Medicaid funds for CH will increase as a result of these amendments, but that there will be a commensurate decrease in expenditures for other Medicaid-funded services. The overall expenditure of Medicaid funds as a result of these amendments is therefore expected to remain roughly equivalent.

For similar reasons, the effect on revenues and costs incurred by OPWDD as a provider of services is expected to be about the same.

Even if Medicaid expenditures changed as a result of these amendments, there would be no impact on local governments. There are no costs to local governments as a result of amendments that change Medicaid expenditures because Chapter 58 of the Laws of 2005 places a cap on the local share of Medicaid costs.

b. Costs to private regulated parties: There are no initial capital costs. As noted above, the amendments are expected to result in an increase in

the provision of CH services and a commensurate decrease in the provision of other Medicaid-funded services. Overall revenue to private regulated parties is expected to remain roughly equivalent.

5. Local government mandates: There are no new requirements imposed by the rule on any county, city, town, village; or school, fire, or other special district.

6. Paperwork: Agencies providing CH services will have to develop a CH service delivery plan for each person new to CH services and will need to document the delivery of the CH services. However, there will be a commensurate decrease in paperwork associated with the receipt of other Medicaid-funded services which will no longer be received by these individuals, which typically have equivalent requirements for Habilitation Plans and for service documentation. In addition, there may be some initial paperwork associated with the need to revise Individualized Service Plans to include the receipt of CH services.

7. Duplication: The proposed amendments do not duplicate any existing State or Federal requirements that are applicable to these services.

8. Alternatives: The regulations contain limits on the receipt of CH services for individuals who reside in residential facilities certified or operated by OPWDD. These provisions limit the number of hours of CH services that may be provided and limit the receipt of day habilitation and prevocational services. OPWDD considered not imposing limits on the receipt of CH services for these individuals. However, since these individuals also receive residential habilitation for significant periods of time, OPWDD decided to impose limits on the receipt of CH services to avoid inappropriate duplication of services.

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

10. Compliance schedule: OPWDD is planning to adopt the proposed amendments effective October 1, 2014.

OPWDD will provide all necessary information, training, and guidance to providers regarding the revisions before they become effective.

Regulatory Flexibility Analysis

1. Effect on small businesses and local governments: These proposed regulatory amendments will apply to agencies which provide HCBS Waiver Community Habilitation (CH) services to persons with developmental disabilities. Most CH services are expected to be delivered by voluntary provider agencies which employ more than 100 people overall and would therefore not be classified as small businesses. Some smaller agencies do, however, employ fewer than 100 employees overall and would, therefore, be considered to be small businesses. OPWDD estimates that approximately 252 provider agencies would be affected by the proposed amendments. OPWDD is unable to estimate the number of these provider agencies which would be considered to be small businesses.

The proposed amendments have been reviewed by OPWDD in light of their impact on these small businesses and on local governments. OPWDD has determined that these amendments will not have any negative effects on these small business providers of CH services.

The amendments to CH services offer another option to participants who live in residential facilities who wish to have their habilitation services available in a variety of community settings. The service is designed to promote independence and community integration by offering skills training and supports which take place only in non-certified settings.

OPWDD expects that the overall provision of services by specific providers will be roughly equivalent. The amendments will therefore have minimal impacts on service providers.

The amendments will have no effect on local governments.

2. Compliance requirements: As noted, for individuals transitioning to CH services, the individual's ISP will need to be revised and a CH service delivery plan developed. In general, the revision of the ISP can take place during the course of regular ISP reviews. The amendments contain minor changes in service documentation requirements for CH services which do not increase overall service documentation requirements. Agencies will also need to monitor the receipt of specified day services and CH services to ensure that an individual's receipt of services does not exceed billing limits specified in the regulation.

3. Professional services: No additional professional services are required as a result of these amendments. The amendments will not add to the professional service needs of local governments.

4. Compliance costs: There may be minor costs to small business providers associated with the revision of ISPs, development of new CH plans and training staff to deliver, document and bill CH services. There are no additional compliance costs to small business providers or local governments associated with the continued compliance with these proposed amendments. As noted above, individuals newly receiving CH services as a result of these amendments are expected to experience a commensurate decrease in the receipt of other Medicaid-funded services with similar requirements for plans and service documentation so that there will be no overall increase in costs for service delivery, documentation or billing.

5. Economic and technological feasibility: The proposed amendments do not impose on regulated parties the use of any new technological processes.

6. Minimizing adverse economic impact: OPWDD has given sufficient advance notice of these amendments so that providers can generally make the necessary changes to the individual's ISP during the regular review process. OPWDD plans to provide sufficient guidance and training to providers to streamline the changes in service delivery that will result from these amendments.

OPWDD has reviewed and considered the approaches for minimizing adverse economic impact as suggested in section 202-b(1) of the State Administrative Procedure Act (SAPA). In the event that small business providers choose to provide CH services to residents of IRAs, CRs and family care homes, the providers must comply with the same requirements as all providers of CH services in order to ensure the provision of quality services and to document the delivery of services to safeguard the expenditure of Medicaid funds. Small business providers of CH services are not required to serve new individuals in the event that they are unable or unwilling to comply with the requirements.

7. Small business and local government participation: OPWDD has reached out to stakeholders regarding the service change, largely in concert with its redesign of the Consolidated Supports and Services that was requested by the Centers for Medicaid and Medicare Services (CMS). OPWDD conducted two statewide informational videoconferences in April, 2014 with individuals and families, as well as a videoconference with agencies affected by the changes to the service and a question and answer session with Provider Association representatives. OPWDD continues to receive input on the eventual design of self directed services, including CH, from stakeholders through stakeholder workgroups meetings which have individual, family, and agency representation.

Rural Area Flexibility Analysis

1. Description of the types and estimation of the number of rural areas in which the rule will apply: OPWDD services are provided in every county in New York State. 43 counties have a population of less than 200,000: Allegany, Cattaraugus, Cayuga, Chautauqua, Chemung, Chenango, Clinton, Columbia, Cortland, Delaware, Essex, Franklin, Fulton, Genesee, Greene, Hamilton, Herkimer, Jefferson, Lewis, Livingston, Madison, Montgomery, Ontario, Orleans, Oswego, Otsego, Putnam, Rensselaer, St. Lawrence, Schenectady, Schoharie, Schuyler, Seneca, Steuben, Sullivan, Tioga, Tompkins, Ulster, Warren, Washington, Wayne, Wyoming and Yates. Additionally, 10 counties with certain townships have a population density of 150 persons or less per square mile: Albany, Broome, Dutchess, Erie, Monroe, Niagara, Oneida, Onondaga, Orange, and Saratoga.

The proposed amendments have been reviewed by OPWDD in light of their impact on rural areas.

The amendments to CH services offer another option to participants who live in residential facilities who wish to have their habilitation services available in a variety of community settings. The service is designed to promote independence and community integration by offering skills training and supports which take place only in non-certified settings.

OPWDD expects that the overall provision of services by specific providers will be roughly equivalent. The amendments will therefore have minimal impacts on service providers in rural areas.

The amendments will have no impact on local governments in rural areas.

2. Compliance requirements: For individuals transitioning to CH services, the individual's ISP will need to be revised and a CH service delivery plan developed. In general, the revision of the ISP can take place during the course of regular ISP reviews. The amendments contain minor changes in service documentation requirements for CH services which do not increase overall service documentation requirements. Agencies will also need to monitor the receipt of specified day services and CH services to ensure that an individual's receipt of services does not exceed billing limits specified in the regulation.

OPWDD expects that the compliance requirements are necessary to ensure the proper use of federal and state public funds and that they are not burdensome as they are consistent with requirements for other HCBS waiver services with which the agencies are very familiar.

The amendments do not impose any compliance requirements on local governments in rural areas.

3. Professional services: There are no additional professional services required as a result of these amendments and the amendments will not add to the professional service needs of local governments.

4. Compliance costs: There may be minor costs to providers in rural areas associated with the revision of ISPs, development of new CH plans and training staff to deliver, document and bill CH services. There are no additional compliance costs to providers of CH services located in rural areas associated with the continued compliance with these proposed amendments. As noted above, individuals newly receiving CH services as

a result of these amendments are expected to experience a commensurate decrease in the receipt of other Medicaid-funded services with similar requirements for plans and service documentation so that there will be no overall increase in costs for service delivery, documentation or billing.

5. Minimizing adverse economic impact: OPWDD has given sufficient advance notice of these amendments so that providers can generally make the necessary changes to the individual's ISP during the regular review process. OPWDD plans to provide sufficient guidance and training to providers to streamline the changes in service delivery that will result from these amendments.

OPWDD has reviewed and considered the approaches for minimizing adverse impact as suggested in 202-bb(2)(b) of the State Administrative Procedure Act (SAPA). In the event that providers in rural areas choose to provide CH services to residents of IRAs, CRs and family care homes, the providers must comply with the same requirements as all providers of CH services in order to ensure the provision of quality services and to document the delivery of services to safeguard the expenditure of Medicaid funds. Providers of CH services in rural areas are not required to serve new individuals in the event that they are unable or unwilling to comply with the requirements.

6. Participation of public and private interests in rural areas: OPWDD has reached out to stakeholders regarding the service change, largely in concert with its redesign of the Consolidated Supports and Services that was requested by the Centers for Medicaid and Medicare Services (CMS). OPWDD conducted two statewide informational videoconferences in April, 2014 with individuals and families, as well as a videoconference with agencies affected by the changes to the service and a question and answer session with Provider Association representatives, including representatives of providers in rural areas. Some of these informational sessions were attended by rural providers of CH services. OPWDD continues to receive input on the eventual design of self directed services, including CH, from stakeholders through stakeholder workgroups meetings which have individual, family, and agency, including rural agency, representation.

Job Impact Statement

OPWDD is not submitting a Job Impact Statement for this proposed rulemaking because this rulemaking will not have a substantial adverse impact on jobs or employment opportunities.

As noted, OPWDD expects the overall provision of services to individuals as a result of these amendments to be roughly equivalent. OPWDD expects that the amendments will result in an increase in CH services and that there will be a commensurate decrease in other services. This means that the overall number of jobs involved with the provision of services will be about the same.

Thus, the proposed amendments will not have any substantial adverse impact on jobs or employment opportunities.

Public Service Commission

NOTICE OF ADOPTION

Approval of Petition of Yorktown Realty Associates, LLC to Submeter Electricity at 3770 Barger Street, Shrub Oak, NY

I.D. No. PSC-28-10-00013-A

Filing Date: 2014-07-08

Effective Date: 2014-07-08

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

Action taken: On 6/26/14, the PSC adopted an order approving the petition of Yorktown Realty Associates, LLC to submeter electricity at Trump Park Residences, 3770 Barger Street, Shrub Oak, NY, located in the territory of Consolidated Edison Company of New York, Inc.

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

Subject: Approval of petition of Yorktown Realty Associates, LLC to submeter electricity at 3770 Barger Street, Shrub Oak, NY.

Purpose: To approve the petition of Yorktown Realty Associates, LLC to submeter electricity at 3770 Barger Street, Shrub Oak, NY.

Substance of final rule: The Commission, on June 26, 2014, adopted an order approving the petition of Yorktown Realty Associates, LLC to submeter electricity at Trump Park Residences, 3770 Barger Street, Shrub Oak, NY, located in the territory of Consolidated Edison Company of New York, Inc., subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(10-E-0300SA1)

NOTICE OF ADOPTION

Authorizing NYSERDA Flexibility in Making Changes to the Main Tier of the Renewable Portfolio Standard

I.D. No. PSC-05-14-00015-A

Filing Date: 2014-07-02

Effective Date: 2014-07-02

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

Action taken: On 6/26/14, the PSC adopted an order approving a petition authorizing the New York State Energy Research and Development Authority (NYSERDA) to modify the Main Tier solicitation contract term.

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

Subject: Authorizing NYSERDA flexibility in making changes to the Main Tier of the Renewable Portfolio Standard.

Purpose: To authorize NYSERDA flexibility in making changes to the Main Tier of the Renewable Portfolio Standard.

Substance of final rule: The Commission, on June 26, 2014, adopted an order approving a petition by Pace Energy and Climate Center, Alliance for Clean Energy New York, Sierra Club, Natural Resources Defense Council, Renewable Energy Long Island, New York League of Conservation Voters, New York Public Interest Research Group, Vote Solar Initiative, Citizens Campaign for the Environment and Environmental Advocates of New York, authorizing the New York State Energy Research and Development Authority to increase the maximum length of Renewable Portfolio Standard Program Main Tier contracts to a term not to exceed 20 years for select types of technologies and facilities, 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.

(03-E-0188SA45)

NOTICE OF ADOPTION

Authorizing NYSERDA to Reallocate 2013 Unencumbered Program Funds to 2014 Budgets

I.D. No. PSC-07-14-00006-A

Filing Date: 2014-07-02

Effective Date: 2014-07-02

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

Action taken: On 6/26/14, the PSC adopted an order approving a petition authorizing the New York State Energy Research and Development Authority (NYSERDA) to reallocate unencumbered funds from the 2013 program funds to 2014 budgets.

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

Subject: Authorizing NYSERDA to reallocate 2013 unencumbered program funds to 2014 budgets.

Purpose: To authorize NYSERDA to reallocate 2013 unencumbered program funds to 2014 budgets.

Substance of final rule: The Commission, on June 26, 2014, adopted an order authorizing the New York State Energy Research and Development Authority to reallocate Renewable Portfolio Standard Program unencumbered 2013 Customer Sited Tier 2013 program funds to 2014 program budgets, 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.

(03-E-0188SA46)

NOTICE OF ADOPTION

Approval of Petition of 172 River Street Assoc., LLC to Submeter Electricity at 172-176 River Street, Troy, NY

I.D. No. PSC-07-14-00010-A

Filing Date: 2014-07-03

Effective Date: 2014-07-03

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

Action taken: On 6/26/14, the PSC adopted an order approving the petition of 172 River Street Assoc., LLC to submeter electricity at 172-176 River Street, Troy, NY, located in the territory of Niagara Mohawk Power Corporation d/b/a National Grid.

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: Approval of petition of 172 River Street Assoc., LLC to submeter electricity at 172-176 River Street, Troy, NY.

Purpose: To approve the petition of 172 River Street Assoc., LLC to submeter electricity at 172-176 River Street, Troy, NY.

Substance of final rule: The Commission, on June 26, 2014, adopted an order approving the petition of 172 River Street Assoc., LLC to submeter electricity at 172-176 River Street, Troy, NY, located in the territory of Niagara Mohawk Power Corporation d/b/a National Grid, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(14-E-0018SA1)

NOTICE OF ADOPTION

Approval of Petition of 855 MRU, LLC to Submeter Electricity at 855 Sixth Avenue, New York, NY

I.D. No. PSC-07-14-00013-A

Filing Date: 2014-07-03

Effective Date: 2014-07-03

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

Action taken: On 6/26/14, the PSC adopted an order approving the petition of 855 MRU, LLC to submeter electricity at 855 Sixth Avenue, New York, NY, located in the territory of Consolidated Edison Company of New York, Inc.

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

Subject: Approval of petition of 855 MRU, LLC to submeter electricity at 855 Sixth Avenue, New York, NY.

Purpose: To approve the petition of 855 MRU, LLC to submeter electricity at 855 Sixth Avenue, New York, NY.

Substance of final rule: The Commission, on June 26, 2014, adopted an order approving the petition of 855 MRU, LLC to submeter electricity at 855 Sixth Avenue, New York, NY, located in the territory of Consolidated Edison Company of New York, Inc., subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(14-E-0024SA1)

NOTICE OF ADOPTION

Approval of Petition of Bridge Land West, LLC to Submeter Electricity at 460 Washington Street, New York, NY

I.D. No. PSC-07-14-00017-A

Filing Date: 2014-07-03

Effective Date: 2014-07-03

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

Action taken: On 6/26/14, the PSC adopted an order approving the petition of Bridge Land West, LLC to submeter electricity at 460 Washington Street, New York, NY, located in the territory of Consolidated Edison Company of New York, Inc.

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

Subject: Approval of petition of Bridge Land West, LLC to submeter electricity at 460 Washington Street, New York, NY.

Purpose: To approve the petition of Bridge Land West, LLC to submeter electricity at 460 Washington Street, New York, NY.

Substance of final rule: The Commission, on June 26, 2014, adopted an order approving the petition of Bridge Land West, LLC to submeter electricity at 460 Washington Street, New York, NY located in the territory of Consolidated Edison Company of New York, Inc., subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(14-E-0032SA1)

NOTICE OF ADOPTION

Approval of Petition of Harmony Prima Lofts, LLC to Submeter Electricity at 1373 Broadway, Albany, NY

I.D. No. PSC-11-14-00008-A

Filing Date: 2014-07-03

Effective Date: 2014-07-03

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

Action taken: On 6/26/14, the PSC adopted an order approving the petition of Harmony Prima Lofts, LLC to submeter electricity at 1373 Broadway, Albany, NY, located in the territory of Niagara Mohawk Power Corporation d/b/a National Grid.

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: Approval of petition of Harmony Prima Lofts, LLC to submeter electricity at 1373 Broadway, Albany, NY.

Purpose: To approve the petition of Bridge Land West, LLC to submeter electricity at 460 Washington Street, New York, NY.

Substance of final rule: The Commission, on June 26, 2014, adopted an order approving the petition of Harmony Prima Lofts, LLC to submeter electricity at 1373 Broadway, Albany, NY, located in the territory of Niagara Mohawk Power Corporation d/b/a National Grid, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(14-E-0053SA1)

NOTICE OF ADOPTION

Approving the Costs for Infrastructure Maintenance and Access be Included in the Rates Charged to All Customer Classes

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

Filing Date: 2014-07-02

Effective Date: 2014-07-02

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

Action taken: On 6/26/14, the PSC adopted an order approving a petition by the Village of Tuckahoe to have cost for infrastructure maintenance and access be included in the rates charged to all customer classes within the Village.

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

Subject: Approving the costs for infrastructure maintenance and access be included in the rates charged to all customer classes.

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

Substance of final rule: The Commission, on June 26, 2014, adopted an order approving a petition by the Village of Tuckahoe to have costs for infrastructure maintenance and access to be included in the rates charged to all customer classes and apportioned among all customers located within the Village of Tuckahoe, 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-0100SA1)

NOTICE OF ADOPTION

Approving the Costs for Infrastructure Maintenance and Access be Included in the Rates Charged to All Customer Classes

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

Filing Date: 2014-07-02

Effective Date: 2014-07-02

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

Action taken: On 6/26/14, the PSC adopted an order approving a petition by the Village of Rye Brook to have cost for infrastructure maintenance and access be included in the rates charged to all customer classes within the Village.

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

Subject: Approving the costs for infrastructure maintenance and access be included in the rates charged to all customer classes.

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

Substance of final rule: The Commission, on June 26, 2014, adopted an order approving a petition by the Village of Rye Brook to have costs for infrastructure maintenance and access to be included in the rates charged to all customer classes and apportioned among all customers located within the Village of Rye Brook, 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-0130SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Load Share Ratio Used to Calculate RNY Load and Non-RNY Load for Standby Customers

I.D. No. PSC-29-14-00006-P

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

Proposed Action: The Commission is considering a tariff filing by Rochester Gas and Electric Corporation proposing revisions to the load share ratio used to calculate the ReCharge New York (RNY) load and non-RNY load for standby customers in PSC No. 19—Electricity.

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

Subject: Load share ratio used to calculate RNY load and non-RNY load for standby customers.

Purpose: To make revisions to modify the load share ratio used to calculate the RNY load and the non-RNY load for standby customers.

Substance of proposed rule: The Commission is considering whether to approve, modify or reject, in whole or in part, a tariff filing by Rochester Gas and Electric Corporation (the Company) to modify the load share ratio used to calculate the ReCharge New York (RNY) load and the non-RNY load for standby customers under Service Classification No. 14 – Standby Service Rate. The Company proposes to specify that for standby customers the maximum metered demand will be used in the load share ratio, which may differ from the monthly billing demand for a customer whose otherwise applicable service class is a time-of-use service. The proposed filing has an effective date of October 6, 2014.

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

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

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

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

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

(11-E-0176SP16)

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

Load Share Ratio Used to Calculate RNY Load and Non-RNY Load for Standby Customers

I.D. No. PSC-29-14-00007-P

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

Proposed Action: The Commission is considering a tariff filing by New York State Electric & Gas Corporation proposing revisions to the load share ratio used to calculate the ReCharge New York (RNY) load and non-RNY load for standby customers in PSC No. 120—Electricity.

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

Subject: Load share ratio used to calculate RNY load and non-RNY load for standby customers.

Purpose: To make revisions to modify the load share ratio used to calculate the RNY load and the non-RNY load for standby customers.

Substance of proposed rule: The Commission is considering whether to approve, modify or reject, in whole or in part, a tariff filing by New York State Electric & Gas Corporation (the Company) to modify the load share ratio used to calculate the ReCharge New York (RNY) load and the non-RNY load for standby customers under Service Classification No. 11 – Standby Service Rate. The Company proposes to specify that for standby customers the maximum metered demand will be used in the load share ratio, which may differ from the monthly billing demand for a customer whose otherwise applicable service class is a time-of-use service. The proposed filing has an effective date of October 6, 2014.

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

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

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

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

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

(11-E-0176SP15)

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

To Consider a Joint Proposal Resolving a Dispute

I.D. No. PSC-29-14-00008-P

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

Proposed Action: The Commission is considering a Joint Proposal filed by Consolidated Edison Company of New York, Inc.; the Marathon Coalition; and Censtar Energy to settle a dispute regarding gas imbalances for the period from January 2014 through March 2014.

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

Subject: To consider a Joint Proposal resolving a dispute.

Purpose: To consider a Joint Proposal that would resolve a dispute regarding gas imbalances.

Substance of proposed rule: On April 16, 2014, the Marathon Energy Coalition, a coalition of energy services companies (ESCOs or Marketers) filed a request for dispute resolution under Section 8(B)(2) of the Public Service Commission's (Commission) Uniform Business Practices. The Marathon Energy Coalition disputed the gas imbalances identified by Consolidated Edison Company of New York, Inc. (Con Edison) for which the Marathon Energy Coalition's members were being billed. On July 2, 2014, Con Edison, the Marathon Energy Coalition and another ESCO, Censtar Energy Corp. (Censtar) filed a Joint Proposal, which sets forth a proposed resolution of the issues raised in the Marathon Energy Coalition's request and related issues concerning the Marketer gas imbalances for the period from January 1, 2014 through March 31, 2014. The proposed resolution applies to all similarly situated Marketers.

The Commission is considering whether to adopt, reject or modify, in whole or in part, the Joint Proposal filed by Con Edison, the Marathon Coalition and Censtar. 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.

(14-G-0138SP1)

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

Proposed Tariff Amendments Filed by the City of Jamestown to Rider No. 5 and Service Classification No. 6

I.D. No. PSC-29-14-00009-P

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

Proposed Action: The Commission is considering whether to grant, deny or modify in whole or in part the proposed tariff amendments filed by the City of Jamestown to Rider No. 5 and Service Classification No. 6. of its electric tariff.

Statutory authority: Public Service Law, sections 65(1), 66(1), (12)(a) and (b)

Subject: The proposed tariff amendments filed by the City of Jamestown to Rider No. 5 and Service Classification No. 6.

Purpose: The proposed tariff amendments filed by the City of Jamestown to Rider No. 5 and Service Classification No. 6.

Substance of proposed rule: The Commission is considering whether to approve, modify or reject, in whole or in part, a tariff filing by the City of Jamestown (Jamestown) to make revisions to Rider No. 5 and Service Classification (SC) No. 6 contained in P.S.C. No. 7 – Electricity. Jamestown proposes to revise Rider No. 5, Line Extension and Obsolete Service Equipment Upgrades, Business Development Recruitment and Retention Assistance to reflect a change from the Economic Development Fund to the Business Development Fund and to add language outlining economic assistance for obsolete service replacements. Jamestown also proposes revisions to the provisions of its Economic Development Service under SC No. 6 – Economic Development Service, Individual Negotiated Contract. The proposed filing has an effective date of October 15, 2014.

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

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

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

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

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

(14-E-0247SP1)

State University of New York

EMERGENCY RULE MAKING

State Basic Financial Assistance for Operating Expenses of Community Colleges Under the Program of SUNY and CUNY

I.D. No. SUN-29-14-00011-E

Filing No. 596

Filing Date: 2014-07-08

Effective Date: 2014-07-08

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

Action taken: Amendment of section 602.8(c) of Title 8 NYCRR.

Statutory authority: Education Law, sections 355(1)(c) and 6304(1)(b); and L. 2014, ch. 53

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

Specific reasons underlying the finding of necessity: The State University of New York finds that immediate adoption of amendments to the Code of Standards and Procedures for the Administration and Operation of Community Colleges (the Code) is necessary for the preservation of the general welfare and that compliance with the requirements of subdivision 1 Section 202 of the State Administrative Procedures Act would be contrary to the public interest. The 2014-2015 Education, Labor and Social Services Budget Bill (the Budget) requires amendments to the existing funding formula for State financial assistance for operating expenses of community colleges of the State and City Universities of New York. The funding formula is to be developed jointly with the City University of New York, subject to the approval of the Director of the Budget. Amendments to the Code on an emergency basis for the 2014-2015 fiscal year are necessary to:

1. provide timely State operating assistance to public community colleges of the State and City Universities of New York;

2. obtain the necessary revenue to maintain essential staffing levels, program quality, and accessibility. Compliance with the provision of subdivision 1 of Section 202(6) of the State Administrative Procedures Act would not be contrary to the public interest. The requirements of subdivision (1) of Section 202(6) of SAPA would not allow implementation of the State fiscal assistance provided in the Budget Bill in time for the 2014-2015 community college fiscal year.

Subject: State basic financial assistance for operating expenses of community colleges under the program of SUNY and CUNY.

Purpose: Modify limitations formula for basic State financial assistance for operating expenses & conform to Ed Law and Budget Bill.

Text of emergency rule: Subdivision (c) of section 602.8 of said Title 8 is amended to read as follows, subject to the approval of the Director of the Budget (brackets denote old material to be deleted; underlining denote new material to be added):

(c) Basic State financial assistance.

(1) Full opportunity colleges. The basic State financial assistance for community colleges, implementing approved full opportunity programs, shall be the lowest of the following:

(i) two-fifths (40%) of the net operating budget of the college, or campus of a multiple campus college, as approved by the State University trustees;

(ii) two-fifths (40%) of the net operating costs of the college, or campus of a multiple campus college; or

(iii) for the current college fiscal year the total of the following:

(a) the budgeted or actual number (whichever is less) of full-time equivalent students enrolled in programs eligible for State financial assistance multiplied by [\$2,675] ~~\$2,497~~; and

(b) up to one-half (50%) of rental costs for physical space.

(2) Non-full opportunity colleges. The basic State financial assistance for community colleges not implementing approved full opportunity programs shall be the lowest of the following:

(i) one-third (33%) of the net operating budget of the college, or campus of a multiple campus college, as approved by the State University trustees;

(ii) one-third (33%) of the net operating costs of the college, or campus of a multiple campus college; or

(iii) for the college fiscal year current, the total of the following:

(a) the budgeted or actual number (whichever is less) of full-time equivalent students enrolled in programs eligible for State financial assistance multiplied by [\$2,230] ~~\$2,081~~; and

(b) up to one-half (50%) of rental cost for physical space.

(3) Notwithstanding the provisions of paragraphs (1) and (2) of this subdivision, a community college or a new campus of a multiple campus community college in the process of formation shall be eligible for basic State financial assistance in the amount of one-third of the net operating budget or one-third of the net operating costs, whichever is the lesser, for those colleges not implementing an approved full opportunity program plan, or two-fifths of the net operating budget or two-fifths of the net operating costs, whichever is the lesser, for those colleges implementing an approved full opportunity program, during the organization year and the first two fiscal years in which students are enrolled.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire October 5, 2014.

Text of rule and any required statements and analyses may be obtained from: Lisa S. Campo, State University of New York, State University Plaza, Albany, New York 12246, (518) 320-1400, email: Lisa.Campo@SUNY.edu

Regulatory Impact Statement

This is a technical amendment to implement the provisions of the 2014-2015 Budget Bill. The amendment provides for the provision of State financial assistance for operating expenses of community colleges operating under the program of the State University of New York and the City University of New York.

Regulatory Flexibility Analysis

This is a technical amendment to implement the provisions of the 2014-2015 Budget Bill. The amendment provides for the provision of State financial assistance for operating expenses of community colleges operating under the program of the State University of New York and the City University of New York. It will have no impact on small businesses and local governments.

Rural Area Flexibility Analysis

This is a technical amendment to implement the provisions of the 2014-2015 Budget Bill. The amendment provides for the provision of State financial assistance for operating expenses of community colleges operating under the program of the State University of New York and the City University of New York. This rule making will have no impact on rural areas or the recordkeeping or other compliance requirements on public or private entities in rural areas.

Job Impact Statement

No job impact statement is submitted with this notice because the adoption of this rule does not impose any adverse economic impact on existing jobs, employment opportunities, or self-employment. This rule making governs the financing of community colleges operating under the program of the State University and will not have any adverse impact on the number of jobs or employment opportunities in the state.

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

State University of New York Tuition and Fees Schedule

I.D. No. SUN-29-14-00004-EP

Filing No. 594

Filing Date: 2014-07-08

Effective Date: 2014-07-08

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

Proposed Action: Amendment of section 302.1(b) of Title 8 NYCRR.

Statutory authority: Education Law, sections 355(2)(b) and (h)

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

Specific reasons underlying the finding of necessity: Amendment of these regulations needs to proceed on an emergency basis because tuition increases are intended to be effective for the Fall 2014 semester. Billing for these new tuition rates occurs during the summer of 2014; therefore, notice of the new rates needs to occur as soon as possible.

Subject: State University of New York Tuition and Fees Schedule.

Purpose: To amend the Tuition and Fees Schedule to increase tuition for students in all programs in the State University of New York.

Text of emergency/proposed rule: Section 302.1. Tuition and fees at State-operated units of State University.

(b) Tuition charges as listed in the following table for categories of students, terms and programs, and as modified, amplified or explained in footnotes 1 through 9 are effective with the [2013] 2014 fall term and thereafter.

	Charge per Semester		Charge per Semester credit hour ¹	
	New York State residents	Out-of-State residents	New York State residents	Out-of-State residents
(1) Students enrolled in degree-granting undergraduate programs leading to an associate degree and non-degree granting programs of at least one regular academic term in duration which have been approved as eligible for Tuition Assistance Program Awards	[\$2,935] \$3,085	[\$7,660] \$7,910	[\$245] \$257	[\$638] \$659
		\$4,870 ²	[\$245 ⁴] \$257 ⁶	\$406 ²
		[\$5,020 ³] \$5,170 ³		[\$418 ³] \$431 ³
		[\$4,870 ²] \$5,320 ⁴		[\$406 ²] \$443 ⁴
		\$7,660 ⁵		\$638 ⁵
				[\$245 ⁴] \$257 ⁶
(2) Students enrolled in degree-granting undergraduate programs leading to a baccalaureate degree and non-degree granting programs of at least one regular academic term in duration which have been approved as eligible for Tuition Assistance Program Awards	[\$2,935] \$3,085	[\$7,660] \$7,910	[\$245] \$257	[\$638] \$659
		[\$8,905 ⁵] \$9,795 ⁷		[\$742 ⁵] \$816 ⁷
		[\$8,095 ⁶] \$8,905 ⁸		[\$675 ⁶] \$742 ⁸
		[\$4,405 ⁷] \$4,630 ⁹		[\$367 ⁷] \$386 ⁹
(3) Students enrolled in graduate programs (other than Masters of Business Administration, Architecture, Social Work or Physician Assistant) leading to a Master's, Doctor's or equivalent degree	[\$4,935] \$5,185	[\$9,175] \$10,095	[\$411] \$432	[\$765] \$841
		[\$7,405 ⁷] \$7,780 ⁹		[\$617 ⁷] \$648 ⁹
(4) Students enrolled in a graduate program leading to a Masters of Business Administration (MBA)	[\$6,065] \$6,610	[\$10,075] \$11,085	[\$505] \$551	[\$840] \$924

(5) Students enrolled in a graduate program leading to a Masters of Architecture	[\$5,470] \$5,960	[\$9,175] \$10,095	[\$456] \$497	[\$765] \$841
(6) Students enrolled in a graduate program leading to a Masters of Social Work	[\$5,450] \$5,940	[\$9,175] \$10,095	[\$454] \$495	[\$765] \$841
(7) Students enrolled in the professional program of pharmacy	[\$11,305] \$11,870	[\$21,920] \$23,015	[\$942] \$989	[\$1,827] \$1,918
(8) Students enrolled in the professional program of law	[\$10,985] \$11,975	[\$19,020] \$20,920	[\$915] \$998	[\$1,585] \$1,743
(9) Students enrolled in the professional program of medicine	[\$16,095] \$17,545	[\$28,690] \$30,125	[\$1,341] \$1,462	[\$2,391] \$2,510
(10) Students enrolled in the professional program of dentistry	[\$13,870] \$15,120	\$31,475	[\$1,156] \$1,260	\$2,623
(11) Students enrolled in the professional programs of physical therapy and doctor of nursing practice	[\$9,775] \$10,655	[\$17,720] \$19,490	[\$815] \$888	[\$1,477] \$1,624
(12) Students enrolled in the professional program of optometry	[\$10,945] \$12,040	[\$20,440] \$21,870	[\$912] \$1,003	[\$1,703] \$1,823
(13) Students enrolled in the professional program of physician assistant	[\$5,415] \$5,900	[\$10,005] \$12,005	[\$451] \$492	[\$834] \$1,000

¹ The Chancellor shall determine the equivalent of a credit hour.

² In accordance with Chapter 309 of the Laws of 1996, and enabling action by the Board of Trustees, the Colleges of Technology at Alfred, Canton, Cobleskill, Delhi and Morrisville are authorized to charge a lower rate for non-resident students enrolled in degree-granting programs leading to an associate degree or in non-degree granting programs. This reduced rate does not apply to those students in degree-granting programs leading to a baccalaureate degree. Alfred [and Morrisville are] is authorized to charge the rate noted effective with the fall [2013] 2014 term.

³ In accordance with Chapter 309 of the Laws of 1996, and enabling action by the Board of Trustees, the Colleges of Technology at Alfred, Canton, Cobleskill, Delhi and Morrisville are authorized to charge a lower rate for non-resident students enrolled in degree-granting programs leading to an associate degree or in non-degree granting programs. This reduced rate does not apply to those students enrolled in degree-granting programs leading to a baccalaureate degree. Canton and Delhi are authorized to charge the rate noted effective with the fall [2013] 2014 term.

⁴ In accordance with Chapter 309 of the Laws of 1996, and enabling action by the Board of Trustees, the Colleges of Technology at Alfred, Canton, Cobleskill, Delhi and Morrisville are authorized to charge [a] this lower rate for [special students (part-time)] non-resident students enrolled in degree-granting programs leading to an associate degree or in non-degree granting programs[, and taking classes at off-campus locations or during the summer or winter intercessions]. This reduced rate does not apply to those students enrolled in degree-granting programs leading to a baccalaureate degree. Morrisville is authorized to charge the rate noted effective with the fall 2014 term.

⁵ In accordance with [the NY-SUNY 2020 Challenge Grant Program Act, the University Centers at Buffalo and Stony Brook are authorized to charge this rate for non-resident undergraduate students.] Chapter 309 of the Laws of 1996, and enabling action by the Board of Trustees, the Colleges of Technology at Alfred, Canton, Cobleskill, Delhi and Morrisville are authorized to charge a lower rate for non-resident students enrolled in degree-granting programs leading to an associate degree or

in non-degree granting programs. This reduced rate does not apply to those students enrolled in degree-granting programs leading to a baccalaureate degree. Cobleskill is authorized to charge the rate noted effective with the fall 2014 term.

- ⁶ In accordance with [the NY-SUNY 2020 Challenge Grant Program Act, the University Center at Binghamton and the University Center at Albany are authorized to charge this rate for non-resident undergraduate students.] Chapter 309 of the Laws of 1996, and enabling action by the Board of Trustees, the Colleges of Technology at Alfred, Canton, Cobleskill, Delhi and Morrisville are authorized to charge this lower rate for special students (part-time) enrolled in degree-granting programs leading to an associate degree or in non-degree granting programs, and taking classes at off-campus locations or during the summer or winter intercessions. This reduced rate does not apply to those students enrolled in degree-granting programs leading to a baccalaureate degree.
- ⁷ [As authorized by the Board of Trustees (2010-081), Maritime College is authorized to charge up to this rate for non-resident students from states considered to be in-region (Alabama, Connecticut, Delaware, Florida, Georgia, Louisiana, Mississippi, Maryland, New Jersey, North Carolina, Pennsylvania, Rhode Island, South Carolina, Virginia, and Washington D.C.).] In accordance with the NY-SUNY 2020 Challenge Grant Program Act, the University Centers at Buffalo and Stony Brook are authorized to charge this rate for non-resident undergraduate students.
- ⁸ In accordance with the NY-SUNY 2020 Challenge Grant Program Act, the University Centers at Binghamton and Albany are authorized to charge this rate for non-resident undergraduate students.
- ⁹ As authorized by the Board of Trustees (2010-081), Maritime College is authorized to charge up to this rate for non-resident students from states considered to be in-region (Alabama, Connecticut, Delaware, Florida, Georgia, Louisiana, Mississippi, Maryland, New Jersey, North Carolina, Pennsylvania, Rhode Island, South Carolina, Virginia, and Washington D.C.).

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 October 5, 2014.

Text of rule and any required statements and analyses may be obtained from: Lisa S. Campo, State University of New York, State University Plaza, S-325, 353 Broadway, Albany, NY (518) 320-1400, email: Lisa.Campo@SUNY.edu

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: Education Law, Sections 355(2)(b) and 355(2)(h). Section 355(2)(b) authorizes the State University Trustees to make and amend rules and regulations for the governance of the State University and institutions therein. Section 355(2)(h) authorizes the State University Trustees to regulate the admission of students, tuition charges and other fees and charges, curricula and all other matters pertaining to the operation and administration of each State-operated institution of the University.

2. Legislative Objectives: The present measure will provide essential financial support for the operations of the State University of New York, in accordance with the NY-SUNY 2020 Challenge Grant Program Act, Chapter 260, Laws of 2011.

3. Needs and Benefits: The present measure establishes a series of tuition increases in the degree programs of the State University of New York.

Undergraduate Programs

- As authorized by the NY-SUNY 2020 Challenge Grant Program Act, resident undergraduate tuition would increase by \$300 (5.1%) to \$6,170.

- As authorized by the NY-SUNY 2020 Challenge Grant Program Act, and pursuant to the approval which has been granted by the Governor and Chancellor of a long term economic and academic plan submitted by each University Center, non-resident undergraduate tuition for students at the University Centers would increase by 10%, resulting in an increase of \$1,780 (to \$19,590) for non-resident students at the University Centers at Buffalo and Stony Brook; and an increase of \$1,620 (to \$17,810) at the University Centers at Albany and Binghamton.

- The standard non-resident undergraduate tuition would be increased by \$500 (3.3%) to \$15,820 for all undergraduate students at the Comprehensive Colleges, Environmental Science and Forestry, Downstate Health Science Center, Upstate Health Science Center, Farmingdale, SUNYIT, Maritime, and for students enrolled at baccalaureate programs at Alfred, Canton, Cobleskill, Delhi, and Morrisville.

- Non-resident undergraduate tuition for students enrolled in an associate's degree or non-degree granting program at the College of Technology at Canton or the College of Technology at Delhi, would increase by \$300 (3%), to \$10,340; and for students enrolled at the College of Technology at Morrisville, the rate would increase by \$900 (9.2%), to \$10,640.

- Non-resident undergraduate tuition would not increase for students enrolled in an associate's degree or non-degree granting program at the College of Technology at Alfred, remaining at \$9,740, or for students enrolled at the College of Technology at Cobleskill, remaining at \$15,320.

- Maritime College is authorized to charge a differential rate, not to exceed \$9,260 (an increase of 5.1%), for non-resident students who are from a state defined as in-region (Alabama, Connecticut, Delaware, Florida, Georgia, Louisiana, Mississippi, Maryland, New Jersey, North Carolina, Pennsylvania, Rhode Island, South Carolina, Virginia, and Washington D.C.) Students not from one of the states identified pay the standard non-resident rate.

Graduate Programs

- For students enrolled in graduate programs not separately identified, the standard tuition would increase by \$500 (5.1%) for resident students, to \$10,370, and by \$1,840 (10%) for non-resident students, to \$20,190.

- For students enrolled in programs leading to a Master's in Business Administration degree, tuition would increase by \$1,090 (9%) to \$13,220 for resident students, and by \$2,020 (10%) to \$22,170 for non-resident students.

- For students enrolled in programs leading to a Master's in Architecture degree, tuition would increase by \$980 (9%) to \$11,920 for resident students, and by \$1,840 (10%) to \$20,190 for non-resident students.

- For students enrolled in programs leading to a Master's in Social Work degree, tuition would increase by \$980 (9%) to \$11,880 for resident students, and by \$1,840 (10%) to \$20,190 for non-resident students.

- Tuition for the Physicians' Assistant graduate master's program at Stony Brook and Upstate would increase by \$970 (9%) to \$11,800 for resident students, and by \$4,000 (20%) to \$24,010 for non-resident students.

- Maritime College is authorized to charge a differential rate, not to exceed \$15,560 (an increase of 5.1%), for non-resident students who are from a state defined as in-region (Alabama, Connecticut, Delaware, Florida, Georgia, Louisiana, Mississippi, Maryland, New Jersey, North Carolina, Pennsylvania, Rhode Island, South Carolina, Virginia, and Washington D.C.) Students not from one of the states identified pay the standard non-resident rate.

Professional Programs

- For students enrolled in the medical professional program at the four Health Science Centers, tuition would increase by \$2,900 (9%) to \$35,090 for residents and by \$2,870 (5%) to \$60,250 for non-residents.

- Tuition for the dental professional program at the Universities at Stony Brook and Buffalo would increase by \$2,500 (9%) to \$30,240 for residents. Tuition for non-resident students would not increase, remaining at \$62,950.

- Tuition for the optometry program at the College of Optometry would increase by \$2,190 (10%) to \$24,080 for residents and by \$2,860 (7%) to \$43,740 for non-residents.

- The tuition at the Law School of the University at Buffalo would be increased by \$1,980 (9%) to \$23,950 for resident students and by \$3,800 (10%) to \$41,840 for non-resident students.

- The tuition for the School of Pharmacy professional program at the University at Buffalo would increase by \$1,130 (5%) to \$23,740 for resident students and by \$2,190 (5%) to \$46,030 for non-resident students.

- Tuition for the Doctor of Physical Therapy and Doctor of Nursing Practice programs would increase by \$1,760 (9%) to \$21,310 for residents and by \$3,540 (10%) to \$38,980 for non-resident students.

Even with the recommended increases, the tuition charged at the State-operated campuses of State University of New York is still competitive when compared to peer institutions in other university systems.

The tuition rates were last increased in the Fall 2013.

4. Costs: Students enrolled in these programs of the State University of New York will be required to pay additional tuition ranging from \$300 per year for resident associate degrees to \$4,000 for non-resident students enrolled in the Physicians' Assistant graduate master's program at Stony Brook and Upstate. In setting the new tuition schedule, the State University has examined its appropriation levels, the prevailing tuition rates charged by other public universities and the status of various State and Federal student financial aid programs.

5. Local Government Mandates: There are no local government mandates. The amendment does not affect students enrolled in the community colleges operating under the program of the State University of New York.

6. Paperwork: No parties will experience any new reporting responsibilities. State University of New York publications and documents containing notices regarding costs of attendance will need to be revised to reflect these changes.

7. Duplication: None.

8. Alternatives: Delays in tuition increases as well as higher increases were considered, however, there is no acceptable alternative to the proposed increases. The revenue from these tuition increases is necessary in order for the University to maintain quality of instruction and essential services to students, especially given the high cost professional programs.

9. Federal Standards: None.

10. Compliance Schedule: The amendment to the tuition schedule will go into effect for the Fall 2014 semester.

Regulatory Flexibility Analysis

No regulatory flexibility analysis is submitted with this notice because the proposed rule does not impose any requirements on small businesses and local governments. This proposed rule making will not impose any adverse economic impact on small businesses and local governments or impose any reporting, recordkeeping or other compliance requirements on small businesses and local governments.

Rural Area Flexibility Analysis

No rural area flexibility analysis is submitted with this notice because the proposed rule does not impose any requirements on rural areas. The rule will not impose any adverse economic impact on rural areas or impose any reporting, recordkeeping, professional services or other compliance requirements on rural areas.

Job Impact Statement

No job impact statement is submitted with this notice because the proposed rule does not impose any adverse economic impact on existing jobs, employment opportunities, or self-employment. This regulation governs tuition charges for State University of New York and will not have any adverse impact on the number of jobs or employment.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

State Basic Financial Assistance for Operating Expenses of Community Colleges Under the Program of SUNY and CUNY

I.D. No. SUN-29-14-00010-P

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

Proposed Action: This is a consensus rule making to amend section 602.8(c) of Title 8 NYCRR.

Statutory authority: Education Law, sections 355(1)(c) and 6304(1)(b); and L. 2014, ch. 53

Subject: State basic financial assistance for operating expenses of community colleges under the program of SUNY and CUNY.

Purpose: To modify limitations formula for basic State Financial assistance and conform to the Education Law and the 2014-15 Budget Bill.

Text of proposed rule: Subdivision (c) of section 602.8 of said Title 8 is amended to read as follows, subject to the approval of the Director of the Budget (brackets denote old material to be deleted; underlining denote new material to be added):

(c) Basic State financial assistance.

(1) Full opportunity colleges. The basic State financial assistance for community colleges, implementing approved full opportunity programs, shall be the lowest of the following:

(i) two-fifths (40%) of the net operating budget of the college, or campus of a multiple campus college, as approved by the State University trustees;

(ii) two-fifths (40%) of the net operating costs of the college, or campus of a multiple campus college; or

(iii) for the current college fiscal year the total of the following:

(a) the budgeted or actual number (whichever is less) of full-time equivalent students enrolled in programs eligible for State financial assistance multiplied by [\$2,675] \$2,497; and

(b) up to one-half (50%) of rental costs for physical space.

(2) Non-full opportunity colleges. The basic State financial assistance for community colleges not implementing approved full opportunity programs shall be the lowest of the following:

(i) one-third (33%) of the net operating budget of the college, or campus of a multiple campus college, as approved by the State University trustees;

(ii) one-third (33%) of the net operating costs of the college, or campus of a multiple campus college; or

(iii) for the college fiscal year current, the total of the following:

(a) the budgeted or actual number (whichever is less) of full-time equivalent students enrolled in programs eligible for State financial assistance multiplied by [\$2,230] \$2,081; and

(b) up to one-half (50%) of rental cost for physical space.

(3) Notwithstanding the provisions of paragraphs (1) and (2) of this subdivision, a community college or a new campus of a multiple campus community college in the process of formation shall be eligible for basic State financial assistance in the amount of one-third of the net operating budget or one-third of the net operating costs, whichever is the lesser, for those colleges not implementing an approved full opportunity program plan, or two-fifths of the net operating budget or two-fifths of the net operating costs, whichever is the lesser, for those colleges implementing an approved full opportunity program, during the organization year and the first two fiscal years in which students are enrolled.

Text of proposed rule and any required statements and analyses may be obtained from: Lisa S. Campo, State University of New York, State University Plaza, Albany, NY 12246, (518) 320-1400, email: Lisa.Campo@SUNY.edu

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

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

Consensus Rule Making Determination

The State University of New York has determined that no person is likely to object to this rule as written because it provides timely State operating assistance to public community colleges of the State and City Universities of New York and adopts amendments to the tuition regulations for community colleges under the program of the State University of New York for the 2014-2015 fiscal year.

Job Impact Statement

No job impact statement is submitted with this notice because the adoption of this rule does not impose any adverse economic impact on existing jobs, employment opportunities, or self-employment. This rule making governs the financing of community colleges operating under the program of the State University and will not have any adverse impact on the number of jobs or employment opportunities in the state.

Office of Temporary and Disability Assistance

REVISED RULE MAKING NO HEARING(S) SCHEDULED

State Supplement Program (SSP)

I.D. No. TDA-14-14-00014-RP

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

Proposed Action: Repeal of Part 398; and addition of new Part 398 and section 358-5.12 to Title 18 NYCRR.

Statutory authority: Social Services Law, sections 20(3)(d), 22(3)(f), (4), (8), 207, 211 and 212

Subject: State Supplement Program (SSP).

Purpose: To set forth the process for OTDA's administration of the SSP and allow for telephone hearings to challenge SSP determinations.

Substance of revised rule: The proposed regulations will repeal Part 398 of Title 18 NYCRR and add a new Part 398 in relation to Supplemental Security Income Additional State Payments.

Subpart 398-1 provides the scope and the purpose of the rule, which is to provide the framework for the State Supplement Program (SSP).

Subpart 398-2 contains definitions for the terms used in this Part.

Subpart 398-3 sets forth the eligibility requirements and the benefit levels for the State Supplemental Personal Needs Allowance (SSPNA).

Subpart 398-4 sets forth the eligibility requirements and the payment provisions for SSP benefits. The subpart also contains provisions for designated representatives to act on behalf of recipients of SSP benefits.

Subpart 398-5 governs initial and continuing eligibility for SSP benefits and the applicants' and recipients' responsibility to furnish information.

Subpart 398-6 sets forth the reporting responsibilities of applicants and recipients of SSP or SSPNA.

Subpart 398-7 provides the ramifications for failing or refusing to comply, without good cause, with the requirements for SSP or SSPNA.

Subpart 398-8 sets forth the Office of Temporary and Disability Assi-

stance's (OTDA's) responsibility to issue notices of action for SSP or SSPNA.

Subpart 398-9 addresses the replacement of lost or stolen benefits.

Subpart 398-10 provides that applicants and recipients have the right to request an administrative fair hearing to appeal an OTDA action pertaining to SSP or SSPNA.

Subparts 398-11 and 398-12 address the recovery of overpayments and equivalent benefits of SSP or SSPNA. Subpart 398-11 also addresses the correction of underpayments of SSP or SSPNA.

Subparts 398-13 and 398-14 set forth OTDA's responsibilities concerning the confidentiality, the retention and the maintenance of SSP and SSPNA records.

The proposed regulations also will add a new section 358-5.12 to Title 18 NYCRR to allow for telephone hearings to challenge SSP or SSPNA determinations.

A copy of the full text of the regulatory proposal is available on OTDA's website at www.otda.ny.gov/legal.

Revised rule compared with proposed rule: Substantial revisions were made in sections 398-2.1, 398-5.2, 398-7.1, 398-12.3, 358-5.12 and Subparts 398-3, 398-4, 398-9, 398-10, 398-11.

Text of revised proposed rule and any required statements and analyses may be obtained from Jeanine S. Behuniak, New York State Office of Temporary and Disability Assistance, 40 North Pearl Street, 16C, Albany, New York 12243-0001, (518) 474-9779, email: Jeanine.Behuniak@otda.ny.gov

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

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

Revised Regulatory Impact Statement

1. Statutory Authority:

Social Services Law (SSL) § 20(3)(d) authorizes the Office of Temporary and Disability Assistance (OTDA) to promulgate regulations to carry out its powers and duties.

SSL § 22(3)(f) provides that persons entitled to a fair hearing include applicants for and recipients of State-administered additional State payments for eligible aged, blind and disabled persons.

SSL § 22(4) establishes that, with limited exceptions, all appeals to OTDA's Office of Administrative Hearings "must be requested within sixty days after the date of the action or failure to act complained of."

SSL § 22(8) requires OTDA to promulgate regulations, not inconsistent with federal and State law, as may be necessary to administer its fair hearings process.

SSL § 207 establishes a Statewide program of additional State payments for eligible aged, blind and disabled persons.

Additional State payments for eligible aged, blind and disabled persons are currently made pursuant to an agreement for the federal administration of the State Supplement Program under SSL § 211. Subdivision 2 of that section provides that such agreement "shall contain conditions of eligibility for such additional state payments, including the requirement of current residence and amounts of earned or unearned income to be disregarded in determining eligibility, in accordance with the provisions of this title, regulations of the department and federal law and regulations."

SSL § 211(4) authorizes termination of the federal agreement with the approval of the New York State Director of the Budget.

SSL § 212 provides that OTDA shall be responsible for providing such additional State payments to eligible residents of New York if there is no agreement in effect with the Social Security Administration (SSA) for federal administration and shall take all "actions necessary to effectuate the provisions of this title."

2. Legislative Objectives:

It was the intent of the Legislature in enacting SSL §§ 20(3)(d), 207, 211 and 212 that OTDA establish rules, regulations and policies to effectuate the purposes of the State Supplement Program, which will administer Supplemental Security Income (SSI) State supplement payments. Also SSL §§ 20(3)(d) and 22(8) enable OTDA to establish rules in order to ensure that the due process rights of applicants and recipients are adequately protected during OTDA's fair hearings process.

3. Needs and Benefits:

In 1972, Congress enacted the federal SSI program to provide payments to aged, blind and disabled individuals and couples based on uniform federal eligibility standards and a national base payment level. The program replaced the former programs of Old Age Assistance, Aid to the Blind, and Aid to the Disabled, which were State and federal matching programs with payments based on standards of need that varied widely among the states.

The federal SSI standards did not account for variations in living costs from one state to another, and in some cases provided less assistance than the previous programs. Consequently, the SSI program required States to maintain the levels of payment for individuals and couples who were

recipients of Old Age Assistance, Assistance to the Blind, Aid to the Disabled, or the combined program of Aid to the Aged, Blind and Disabled Persons as of December 31, 1973. In addition to this mandatory supplement, the SSI program allowed a mechanism for states to provide additional optional payments to supplement the basic federal SSI payment.

New York State chose to establish such an optional program of supplemental State payments. There are two kinds of additional State payments: the State Supplement Payment and the State Supplemental Personal Needs Allowance (SSPNA).

Federal law allows the State to contract with the SSA to administer its additional State payments. If there is no agreement in effect for federal administration of the additional State payments, then the Commissioner of OTDA is responsible for the administration of such payments.

The proposed regulations will add a new Part to Title 18 NYCRR setting forth the process for OTDA's administration of the State Supplement Program. The proposed regulations provide the initial and continuing eligibility requirements for additional State payments. They set forth the reporting responsibilities of applicants and recipients of the State Supplement Program benefits and the ramifications if they fail to comply with the requirements. The proposed regulations address the issuance of notices of action and provide for administrative fair hearings. They also address when OTDA will replace additional State payments for recipients and when underpayments of such benefits will be corrected. Conversely, the proposed regulations also provide when OTDA will recover overpayments and equivalent benefits from recipients. Lastly, the proposed regulations address OTDA's administrative responsibilities including confidentiality and document retention requirements. This new Part will provide the framework for OTDA's administration of the State Supplement Program.

The proposed regulations also will add a new section 358-5.12 to Title 18 NYCRR allowing telephone hearings for applicants and recipients of additional State payments. The telephone hearings not only will accord these applicants and recipients all of the due process rights of in-person fair hearings, but also the telephone hearings will allow them to participate in the hearings process from their homes or another location that is convenient for them.

4. Costs:

Pursuant to the SSI program, states were permitted to enter into agreements with the SSA under which the latter would act on behalf of the states to determine eligibility for the additional State payments and add them to the federal payment. New York contracts with the SSA to administer its additional State payments, and the SSA currently determines eligibility for New York's mandatory and optional payments, charging the State an administrative fee to cover processing and issuance costs.

In 1993, the SSA began assessing a processing fee of \$1.67 per check per month. By October 2003, the processing fee had increased to \$8.77 per check per month and is subject to continued increases based on the Consumer Price Index. Based on projected costs, OTDA determined that it is no longer cost-effective to pay the SSA to administer its additional State payments. Assuming responsibility for the administration and issuance of the additional State payments will result in both immediate and long-term savings to the State.

It is projected that the fee will increase to \$11.96 by State Fiscal Year 2015-16. State enabling legislation was enacted in SFY 2012-13 to effectuate termination of the federal agreement and provide for State administration of State Supplement Program payments. It is expected that there will be \$90 million in full annual savings from State administration of these payments.

In addition, New York will not incur costs as a result of the proposed telephone hearings. OTDA already has the necessary hardware to conduct the telephone hearings, and the hearings will be held by hearings officers who are currently employed by OTDA.

5. Local Government Mandates:

The proposed regulations will not impose mandates on social services districts. The State Supplement Program will be administered entirely by State staff.

6. Paperwork:

The social services districts will not need to complete any reporting requirements, including forms or other paperwork, as a result of the rule.

7. Duplication:

The proposed regulations do not duplicate, overlap or conflict with any existing federal or State statutes or regulations.

8. Alternatives:

There are no significant alternatives to consider because the proposed regulations are consistent with federal and State statutes and regulations.

9. Federal Standards:

The proposed regulations do not exceed federal minimum standards for the same or similar subject areas.

10. Compliance Schedule:

It is anticipated that OTDA will be in compliance with the proposed regulations on their effective date of October 1, 2014.

Revised Regulatory Flexibility Analysis

The Office of Temporary and Disability Assistance has determined that changes made to the last published rule do not necessitate revision to the previously published Regulatory Flexibility Analysis for Small Businesses and Local Governments. The changes will not impose a substantial adverse economic impact or any reporting, recordkeeping or other compliance requirements on small businesses or local governments.

Revised Rural Area Flexibility Analysis

The Office of Temporary and Disability Assistance has determined that changes made to the last published rule do not necessitate revision to the previously published Rural Area Flexibility Analysis for this proposal. The changes will not impose a substantial adverse impact or any reporting, recordkeeping or other compliance requirements on public or private entities in rural areas.

Revised Job Impact Statement

The Office of Temporary and Disability Assistance has determined that changes made to the last published rule do not necessitate revision to the previously published statement in lieu of a Job Impact Statement for this proposal. There continues to be no adverse impact on jobs and employment opportunities in either the public or private sector in New York State as a result of the proposal.

Assessment of Public Comment

The Office of Temporary and Disability Assistance (OTDA) received comments from five entities or organizations on the proposed regulations. All of the comments have been reviewed and duly considered in the Assessment of Public Comment.

Definitions

Comments advocated that changes should be made to some of the definitions set forth in 18 NYCRR § 398-2.1. In response to comments, OTDA substantively revised the definitions for “countable resources,” “earned income,” “temporary absence” and “unearned income,” and added proposed definitions for “good cause” and “parental control.” OTDA did not agree with the comment that the definition of “designated representative” should be removed. However, revisions have been made to the proposed language in the “Designated Representatives” section, 18 NYCRR § 398-4.7, to provide further clarification in response to the comments.

State Supplemental Personal Needs Allowance (SSPNA)

Comments supported the provision that an application for SSI is also considered an application for SSPNA.

In response to comments, OTDA has revised the proposed SSPNA language to clarify when eligibility is established for SSPNA and when such benefits will begin. OTDA also clarified that the federal SSI eligibility decisions are binding for SSPNA purposes. OTDA did not revise the proposal in response to a claim that if an individual is SSI eligible, other countable income should not preclude the receipt of SSPNA. OTDA’s proposed language regarding this issue reflects the provisions as written in the current regulation at 18 NYCRR § 398.2.

State Supplement Program (SSP)

In response to comments, OTDA has revised the text of the proposed regulations to clarify the residency provisions and to clarify that the federal SSI eligibility decision is binding for SSP purposes. OTDA also made revisions to the “living alone” provisions in 18 NYCRR § 398-4.5 (a).

Initial and Continuing Eligibility

In response to comments, OTDA has revised language in the proposed regulations regarding the method by which initial and continuing eligibility for SSP will be determined. After due consideration, OTDA declines to adopt and/or otherwise incorporate by reference language from the SSA Policy Operational Manual as regards procedures associated with the reporting of information. Instead, OTDA will be providing both current and new recipients with specific information on reporting changes. In addition, OTDA is conducting outreach with stakeholders, including SSA, to ensure that reporting requirements and processes are communicated before the transition to the State administration occurs. OTDA agrees that providing a high level of customer support is a priority of OTDA’s new process.

Failure or Refusal to Comply

After reviewing comments related to “good cause,” OTDA has added a definition of good cause to 18 NYCRR § 398-2.1 and made revisions to the “failure or refusal to comply” provisions in 18 NYCRR § 398-7.1.

Notice Requirements

A comment supported OTDA’s intention to produce notices in alternate formats for the visually impaired. Another comment stressed the importance of meaningful notices and expressed hope that notices would be made available for review. While OTDA agrees that notices must be meaningful, issues related to the advance review of notices are outside the scope of the proposed rule and are not being addressed in the assessment.

Replacement of Benefits

Comments advocated that regulations addressing Emergency Assis-

tance to Adults (EAA) be added to the proposed SSP regulations in order to facilitate the replacement of benefits through EAA. OTDA has reviewed this recommendation, and finds that current EAA regulations adequately address the circumstances where a client would seek to replace lost or stolen benefits. Accordingly, the Office has added language clarifying that lost or stolen cash would not be replaced with “SSP” or “SSPNA” benefits.

Comments encouraged the expansion of the SSP Bureau role to accept and process requests for EAA benefits. However, at present, the scope of the SSP Bureau is limited to handling SSP or SSPNA eligibility and benefits. Consequently, OTDA declines the suggestion.

Overpayments and Underpayments

Comments were received encouraging OTDA to adopt SSA rules regarding overpayments and recoveries. OTDA reviewed the comments and has modified some of the proposed regulatory language regarding the handling of overpayments. OTDA plans to provide guidance in such regards.

Administrative Fair Hearings**Requests for Fair Hearings:**

Comments took issue with the proposed section governing requests for fair hearings. The comments urged additional time to request a fair hearing. After duly reviewing this matter, OTDA does not agree with the comments. The 60-day timeframe set forth in the proposed regulation is consistent with Social Services Law § 22(4)(a) and 18 NYCRR § 358-3.5(b)(1).

Comments requested that OTDA revise the section governing requests for fair hearings to include an explanation of its “good cause” standard to excuse an applicant’s or a recipient’s late request for a hearing. After reviewing this issue, OTDA declines to incorporate the requested changes in 18 NYCRR Part 358 and will instead continue to apply its current practices of determining good cause on a case-by-case basis.

Right to Aid Continuing:

Comments raised issues with the section governing the right to aid continuing. After duly considering this matter, OTDA maintains that proposed aid continuing provisions set forth in 18 NYCRR § 398-10.2 are consistent with those in 18 NYCRR § 358-3.6, which governs the State fair hearings process at issue.

Telephone Hearings

Comments asserted that telephone hearings may have value in some circumstances, but they should not become standard procedure. The comments requested clarification of OTDA’s intent. After reviewing these comments, OTDA has revised the proposed telephone hearings section.

A comment advocated that the regulations must address where the case records will be maintained, how files will be accessed, and how the appellant will review his or her file before the hearing. After duly reviewing these issues, OTDA has determined that safeguards are or will be in place to protect the applicant’s or the recipient’s interests regarding access to his or her records.

A comment also claimed that the regulations must address how evidence will be submitted during the course of a telephone hearing. Once again, OTDA has determined that safeguards are or will be in place to protect the applicant’s or the recipient’s interests regarding fair hearing procedures.

Comments were received suggesting that the rights of class members in the Varshavsky litigation must be protected and urging that the proposed telephone hearings regulation be amended and/or withdrawn until class counsel and OTDA staff can confer. After duly reviewing these comments, OTDA has determined that the proposed regulations should not be withdrawn. Recipients of SSPNA and SSP are not defined as class members within the Varshavsky litigation.

A comment asserted that if a desk review process is going to be implemented, it should be set forth in regulation. At this time, OTDA is not planning to implement a desk review process; consequently, the recommended change does not need to be made.

Comments were received offering suggestions to make the process for requesting fair hearings as easy as possible for SSP applicants and recipients. While OTDA has reviewed the recommendations expressed in these comments, such issues are outside the scope of the proposed rule and will not be addressed in the assessment.

Miscellaneous Issues

Comments were received encouraging OTDA to promulgate regulations consistent with SSA rules, processes, and policy guidance. While OTDA is making efforts to do this, the State administration of SSP does require differing processes and procedures in certain respects.

A comment also addressed the administration of the New York State Nutrition Improvement Project (NYSNIP). While the comments regarding NYSNIP are outside the scope of these regulations, OTDA will proceed with all due diligence in coordinating the impact, where possible, that the State’s administration of SSP will have on other programs.

The full Assessment of Public Comments is available on the OTDA website at www.otda.ny.gov/legal.