

RULE MAKING ACTIVITIES

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

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

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

Department of Audit and Control

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Meeting and Action of the Real Estate Advisory Committee

I.D. No. AAC-30-14-00028-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 330.3 of Title 2 NYCRR.

Statutory authority: Retirement and Social Security Law, sections 11, 13, 311 and 313

Subject: Meeting and Action of the Real Estate Advisory Committee.

Purpose: To authorize participation and action in a meeting by conference telephone or similar communications equipment.

Text of proposed rule: 330.3 Meeting and action of committee. The committee shall convene periodically upon the call of the Comptroller. A quorum for a meeting shall consist of four members. The committee shall act only upon the affirmative vote of a majority of the members in attendance or of four members, whichever is greater; *provided that members may participate in a meeting and vote on any matter before the committee at such meeting by means of conference telephone or similar communications equipment allowing all persons participating in the meeting to hear each other at the same time and participation by such means shall constitute attendance at such meeting.*

Text of proposed rule and any required statements and analyses may be obtained from: Jamie Elacqua, Office of the State Comptroller, 110 State Street, Albany, NY 12236, (518) 473-4146, email: jelacqua@osc.state.ny.us

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

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

Consensus Rule Making Determination

This is a consensus rulemaking proposed for the sole purpose of authorizing participation by members of the Real Estate Advisory Committee in a meeting and action on any matter before the committee at such meeting by means of conference telephone or similar communications equipment. This amendment relates to participation in a meeting by members of the Real Estate Advisory Committee and it has been determined that no person is likely to object to the adoption of the rule as written.

Department of Civil Service

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-43-13-00003-A

Filing No. 608

Filing Date: 2014-07-11

Effective Date: 2014-07-30

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

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

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

Subject: Jurisdictional Classification.

Purpose: To classify positions in the exempt class.

Text or summary was published in the October 23, 2013 issue of the Register, I.D. No. CVS-43-13-00003-P.

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

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-43-13-00004-A

Filing No. 609

Filing Date: 2014-07-11

Effective Date: 2014-07-30

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

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

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

Subject: Jurisdictional Classification.

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

Text or summary was published in the October 23, 2013 issue of the Register, I.D. No. CVS-43-13-00004-P.

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

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-43-13-00006-A

Filing No. 615

Filing Date: 2014-07-11

Effective Date: 2014-07-30

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

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

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

Subject: Jurisdictional Classification.

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

Text or summary was published in the October 23, 2013 issue of the Register, I.D. No. CVS-43-13-00006-P.

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

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-43-13-00007-A

Filing No. 616

Filing Date: 2014-07-11

Effective Date: 2014-07-30

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

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

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

Subject: Jurisdictional Classification.

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

Text or summary was published in the October 23, 2013 issue of the Register, I.D. No. CVS-43-13-00007-P.

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

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-43-13-00008-A

Filing No. 610

Filing Date: 2014-07-11

Effective Date: 2014-07-30

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

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

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

Subject: Jurisdictional Classification.

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

Text or summary was published in the October 23, 2013 issue of the Register, I.D. No. CVS-43-13-00008-P.

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

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-43-13-00009-A

Filing No. 617

Filing Date: 2014-07-11

Effective Date: 2014-07-30

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

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

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

Subject: Jurisdictional Classification.

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

Text or summary was published in the October 23, 2013 issue of the Register, I.D. No. CVS-43-13-00009-P.

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

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-43-13-00010-A

Filing No. 613

Filing Date: 2014-07-11

Effective Date: 2014-07-30

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

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

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

Subject: Jurisdictional Classification.

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

Text or summary was published in the October 23, 2013 issue of the Register, I.D. No. CVS-43-13-00010-P.

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

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-43-13-00011-A

Filing No. 614

Filing Date: 2014-07-11

Effective Date: 2014-07-30

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

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

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

Subject: Jurisdictional Classification.

Purpose: To delete subheading in exempt and non-competitive classes; classify and delete positions in the exempt and non-competitive classes.

Text or summary was published in the October 23, 2013 issue of the Register, I.D. No. CVS-43-13-00011-P.

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

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-43-13-00012-A

Filing No. 611

Filing Date: 2014-07-11

Effective Date: 2014-07-30

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

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

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

Subject: Jurisdictional Classification.

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

Text or summary was published in the October 23, 2013 issue of the Register, I.D. No. CVS-43-13-00012-P.

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

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-45-13-00007-A

Filing No. 612

Filing Date: 2014-07-11

Effective Date: 2014-07-30

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

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

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

Subject: Jurisdictional Classification.

Purpose: To delete positions from the exempt class.

Text or summary was published in the November 6, 2013 issue of the Register, I.D. No. CVS-45-13-00007-P.

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

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-45-13-00008-A

Filing No. 619

Filing Date: 2014-07-11

Effective Date: 2014-07-30

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

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

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

Subject: Jurisdictional Classification.

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

Text or summary was published in the November 6, 2013 issue of the Register, I.D. No. CVS-45-13-00008-P.

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

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-45-13-00009-A

Filing No. 618

Filing Date: 2014-07-11

Effective Date: 2014-07-30

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

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

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

Subject: Jurisdictional Classification.

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

Text or summary was published in the November 6, 2013 issue of the Register, I.D. No. CVS-45-13-00009-P.

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

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-45-13-00011-A

Filing No. 621

Filing Date: 2014-07-11

Effective Date: 2014-07-30

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

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

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

Subject: Jurisdictional Classification.

Purpose: To classify a position in the exempt class.

Text or summary was published in the November 6, 2013 issue of the Register, I.D. No. CVS-45-13-00011-P.

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

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION**Jurisdictional Classification**

I.D. No. CVS-45-13-00012-A

Filing No. 624

Filing Date: 2014-07-11

Effective Date: 2014-07-30

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

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

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

Subject: Jurisdictional Classification.

Purpose: To classify a position in the exempt class.

Text or summary was published in the November 6, 2013 issue of the Register, I.D. No. CVS-45-13-00012-P.

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

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION**Jurisdictional Classification**

I.D. No. CVS-45-13-00013-A

Filing No. 622

Filing Date: 2014-07-11

Effective Date: 2014-07-30

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

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

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

Subject: Jurisdictional Classification.

Purpose: To classify a position in the exempt class.

Text or summary was published in the November 6, 2013 issue of the Register, I.D. No. CVS-45-13-00013-P.

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

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION**Jurisdictional Classification**

I.D. No. CVS-45-13-00014-A

Filing No. 620

Filing Date: 2014-07-11

Effective Date: 2014-07-30

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

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

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

Subject: Jurisdictional Classification.

Purpose: To classify a position in the exempt class.

Text or summary was published in the November 6, 2013 issue of the Register, I.D. No. CVS-45-13-00014-P.

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

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION**Jurisdictional Classification**

I.D. No. CVS-45-13-00015-A

Filing No. 623

Filing Date: 2014-07-11

Effective Date: 2014-07-30

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

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

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

Subject: Jurisdictional Classification.

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

Text or summary was published in the November 6, 2013 issue of the Register, I.D. No. CVS-45-13-00015-P.

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

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION**Jurisdictional Classification**

I.D. No. CVS-52-13-00004-A

Filing No. 647

Filing Date: 2014-07-15

Effective Date: 2014-07-30

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

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

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

Subject: Jurisdictional Classification.

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

Text or summary was published in the December 24, 2013 issue of the Register, I.D. No. CVS-52-13-00004-P.

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

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION**Jurisdictional Classification**

I.D. No. CVS-52-13-00005-A

Filing No. 646

Filing Date: 2014-07-15

Effective Date: 2014-07-30

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

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

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

Subject: Jurisdictional Classification.

Purpose: To classify a position in the exempt class.
Text or summary was published in the December 24, 2013 issue of the Register, I.D. No. CVS-52-13-00005-P.
Final rule as compared with last published rule: No changes.
Text of rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: jennifer.paul@cs.ny.gov
Assessment of Public Comment
 The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-52-13-00006-A
Filing No. 640
Filing Date: 2014-07-15
Effective Date: 2014-07-30

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:
Action taken: Amendment of Appendix 2 of Title 4 NYCRR.
Statutory authority: Civil Service Law, section 6(1)
Subject: Jurisdictional Classification.
Purpose: To classify a position in the non-competitive class.
Text or summary was published in the December 24, 2013 issue of the Register, I.D. No. CVS-52-13-00006-P.
Final rule as compared with last published rule: No changes.
Text of rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: jennifer.paul@cs.ny.gov
Assessment of Public Comment
 The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-52-13-00007-A
Filing No. 648
Filing Date: 2014-07-15
Effective Date: 2014-07-30

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:
Action taken: Amendment of Appendix 2 of Title 4 NYCRR.
Statutory authority: Civil Service Law, section 6(1)
Subject: Jurisdictional Classification.
Purpose: To delete a position from and classify a position in the non-competitive class.
Text or summary was published in the December 24, 2013 issue of the Register, I.D. No. CVS-52-13-00007-P.
Final rule as compared with last published rule: No changes.
Text of rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: jennifer.paul@cs.ny.gov
Assessment of Public Comment
 The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-52-13-00009-A
Filing No. 644
Filing Date: 2014-07-15
Effective Date: 2014-07-30

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

Action taken: Amendment of Appendix 1 of Title 4 NYCRR.
Statutory authority: Civil Service Law, section 6(1)
Subject: Jurisdictional Classification.
Purpose: To classify positions in the exempt class.
Text or summary was published in the December 24, 2013 issue of the Register, I.D. No. CVS-52-13-00009-P.
Final rule as compared with last published rule: No changes.
Text of rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: jennifer.paul@cs.ny.gov
Assessment of Public Comment
 The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-03-14-00001-A
Filing No. 645
Filing Date: 2014-07-15
Effective Date: 2014-07-30

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:
Action taken: Amendment of Appendix 1 of Title 4 NYCRR.
Statutory authority: Civil Service Law, section 6(1)
Subject: Jurisdictional Classification.
Purpose: To delete a position from and classify a position in the exempt class.
Text or summary was published in the January 22, 2014 issue of the Register, I.D. No. CVS-03-14-00001-P.
Final rule as compared with last published rule: No changes.
Text of rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: jennifer.paul@cs.ny.gov
Assessment of Public Comment
 The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-03-14-00002-A
Filing No. 638
Filing Date: 2014-07-15
Effective Date: 2014-07-30

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:
Action taken: Amendment of Appendix 1 of Title 4 NYCRR.
Statutory authority: Civil Service Law, section 6(1)
Subject: Jurisdictional Classification.
Purpose: To delete subheadings and positions from and classify positions in the exempt class.
Text or summary was published in the January 22, 2014 issue of the Register, I.D. No. CVS-03-14-00002-P.
Final rule as compared with last published rule: No changes.
Text of rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: jennifer.paul@cs.ny.gov
Assessment of Public Comment
 The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-03-14-00003-A

Filing No. 642

Filing Date: 2014-07-15

Effective Date: 2014-07-30

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

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

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

Subject: Jurisdictional Classification.

Purpose: To add a subheading and to classify positions in the exempt class.

Text or summary was published in the January 22, 2014 issue of the Register, I.D. No. CVS-03-14-00003-P.

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

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-03-14-00004-A

Filing No. 641

Filing Date: 2014-07-15

Effective Date: 2014-07-30

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

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

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

Subject: Jurisdictional Classification.

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

Text or summary was published in the January 22, 2014 issue of the Register, I.D. No. CVS-03-14-00004-P.

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

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-03-14-00005-A

Filing No. 639

Filing Date: 2014-07-15

Effective Date: 2014-07-30

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

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

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

Subject: Jurisdictional Classification.

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

Text or summary was published in the January 22, 2014 issue of the Register, I.D. No. CVS-03-14-00005-P.

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

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-03-14-00006-A

Filing No. 643

Filing Date: 2014-07-15

Effective Date: 2014-07-30

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

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

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

Subject: Jurisdictional Classification.

Purpose: To delete positions from the non-competitive class.

Text or summary was published in the January 22, 2014 issue of the Register, I.D. No. CVS-03-14-00006-P.

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

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

Assessment of Public Comment

The agency received no public comment.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-30-14-00001-P

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

Proposed Action: Amendment of Appendix 1 and 2 of Title 4 NYCRR.

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

Subject: Jurisdictional Classification.

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

Text of proposed rule: Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Department of Environmental Conservation, by increasing the number of positions of Special Assistant from 17 to 19; and

Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Environmental Conservation, by deleting therefrom the positions of Remediation Program Development Coordinator (1) and Ski Center Superintendent (1).

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

Data, views or arguments may be submitted to: Ilene Lees, Counsel, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: ilene.lees@cs.ny.gov

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

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-14-00003-P, Issue of January 22, 2014.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-14-00003-P, Issue of January 22, 2014.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-14-00003-P, Issue of January 22, 2014.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-14-00003-P, Issue of January 22, 2014.

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

Jurisdictional Classification

I.D. No. CVS-30-14-00002-P

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

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

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

Subject: Jurisdictional Classification.

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

Text of proposed rule: Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Education Department, by adding thereto the position of øChief Information Security Officer 1 (1).

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

Data, views or arguments may be submitted to: Ilene Lees, Counsel, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: ilene.lees@cs.ny.gov

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

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-14-00003-P, Issue of January 22, 2014.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-14-00003-P, Issue of January 22, 2014.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-14-00003-P, Issue of January 22, 2014.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-14-00003-P, Issue of January 22, 2014.

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

Jurisdictional Classification

I.D. No. CVS-30-14-00003-P

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

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

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

Subject: Jurisdictional Classification.

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

Text of proposed rule: Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Executive Department under the subheading "Division of Homeland Security and Emergency Services," by increasing the number of positions of Deputy State Fire Administrator from 1 to 2; and

Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Executive Department under the subheading "Division of Homeland Security and Emergency Services," by deleting therefrom the positions of Communications Technician 1 (2) and by adding thereto the positions of Communications Specialist (DHSES) (3), øAssistant Director Office of Interoperable and Emergency Communications (1), Assistant Radio Engineer (6) and Radio Engineer 2 (4).

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

Data, views or arguments may be submitted to: Ilene Lees, Counsel, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: ilene.lees@cs.ny.gov

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

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-14-00003-P, Issue of January 22, 2014.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-14-00003-P, Issue of January 22, 2014.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-14-00003-P, Issue of January 22, 2014.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-14-00003-P, Issue of January 22, 2014.

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

Jurisdictional Classification

I.D. No. CVS-30-14-00004-P

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

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

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

Subject: Jurisdictional Classification.

Purpose: To delete and classify positions in the exempt class and to delete and classify positions in the non-competitive class.

Text of proposed rule: Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Department of Corrections and Community Supervision, by deleting therefrom the position of Secretary and in the Executive Department under the subheading "Office of the Governor," by decreasing the number of positions of Program Associate from 9 to 8; and, in the Department of Corrections and Community Supervision under the subheading "State Board of Parole," by adding thereto the position of Secretary and in the Executive Department under the subheading "Division of the Budget," by increasing the number of positions of Program Associate from 5 to 6; and

Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Corrections and Community Supervision under the subheading "State Board of Parole," by deleting therefrom the position of øSecretary 2 (1) and in the Department of Agriculture and Markets, by decreasing the number of positions of øAgricultural Policy Analyst from 2 to 1; and, in the Department of Economic Development, by adding thereto the position of øAgricultural Policy Analyst (1) and in the Department of Corrections and Community

Supervision, by increasing the number of positions of øSecretary 2 from 1 to 2.

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

Data, views or arguments may be submitted to: Ilene Lees, Counsel, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: ilene.lees@cs.ny.gov

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

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-14-00003-P, Issue of January 22, 2014.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-14-00003-P, Issue of January 22, 2014.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-14-00003-P, Issue of January 22, 2014.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-14-00003-P, Issue of January 22, 2014.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-30-14-00005-P

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

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

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

Subject: Jurisdictional Classification.

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

Text of proposed rule: Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the New York State Bridge Authority, by adding thereto the position of øChief Engineer (1).

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

Data, views or arguments may be submitted to: Ilene Lees, Counsel, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: ilene.lees@cs.ny.gov

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

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-14-00003-P, Issue of January 22, 2014.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-14-00003-P, Issue of January 22, 2014.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-14-00003-P, Issue of January 22, 2014.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-14-00003-P, Issue of January 22, 2014.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-30-14-00006-P

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

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

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

Subject: Jurisdictional Classification.

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

Text of proposed rule: Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Executive Department under the subheading "Division of Criminal Justice Services," by adding thereto the position of øLatent Print Laboratory Director (1).

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

Data, views or arguments may be submitted to: Ilene Lees, Counsel, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: ilene.lees@cs.ny.gov

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

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-14-00003-P, Issue of January 22, 2014.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-14-00003-P, Issue of January 22, 2014.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-14-00003-P, Issue of January 22, 2014.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-14-00003-P, Issue of January 22, 2014.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-30-14-00007-P

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

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

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

Subject: Jurisdictional Classification.

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

Text of proposed rule: Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Executive Department under the subheading "Office of Information Technology Services," by deleting therefrom the position of Radio Technician (1).

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

Data, views or arguments may be submitted to: Ilene Lees, Counsel, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: ilene.lees@cs.ny.gov

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

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-14-00003-P, Issue of January 22, 2014.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-14-00003-P, Issue of January 22, 2014.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-14-00003-P, Issue of January 22, 2014.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-14-00003-P, Issue of January 22, 2014.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-30-14-00008-P

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

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

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

Subject: Jurisdictional Classification.

Purpose: To classify a position in the exempt class.

Text of proposed rule: Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Department of Corrections and Community Supervision, by increasing the number of positions of Assistant Commissioner from 13 to 14.

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

Data, views or arguments may be submitted to: Ilene Lees, Counsel, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: ilene.lees@cs.ny.gov

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

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-14-00003-P, Issue of January 22, 2014.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-14-00003-P, Issue of January 22, 2014.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-14-00003-P, Issue of January 22, 2014.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-14-00003-P, Issue of January 22, 2014.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-30-14-00009-P

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

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

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

Subject: Jurisdictional Classification.

Purpose: To classify a position in the exempt class.

Text of proposed rule: Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Department of Civil Service, by increasing the number of positions of Special Assistant from 2 to 3.

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

Data, views or arguments may be submitted to: Ilene Lees, Counsel, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: ilene.lees@cs.ny.gov

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

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-14-00003-P, Issue of January 22, 2014.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-14-00003-P, Issue of January 22, 2014.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-14-00003-P, Issue of January 22, 2014.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-14-00003-P, Issue of January 22, 2014.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-30-14-00010-P

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

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

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

Subject: Jurisdictional Classification.

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

Text of proposed rule: Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Financial Services, by decreasing the number of positions of Holocaust Claims Specialist 1 from 3 to 1, Holocaust Claims Specialist 2 from 3 to 2 and Holocaust Claims Specialist 3 from 2 to 1 and by increasing the number of positions of Associate Attorney (Financial Services) from 10 to 14.

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

Data, views or arguments may be submitted to: Ilene Lees, Counsel, NYS

Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: ilene.lees@cs.ny.gov

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

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-14-00003-P, Issue of January 22, 2014.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-14-00003-P, Issue of January 22, 2014.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-14-00003-P, Issue of January 22, 2014.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-14-00003-P, Issue of January 22, 2014.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-30-14-00011-P

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

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

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

Subject: Jurisdictional Classification.

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

Text of proposed rule: Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Education Department, by adding thereto the position of Captain Day Peckinpugh (1).

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

Data, views or arguments may be submitted to: Ilene Lees, Counsel, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: ilene.lees@cs.ny.gov

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

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-14-00003-P, Issue of January 22, 2014.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-14-00003-P, Issue of January 22, 2014.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-14-00003-P, Issue of January 22, 2014.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-14-00003-P, Issue of January 22, 2014.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-30-14-00012-P

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

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

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

Subject: Jurisdictional Classification.

Purpose: To classify a position in the exempt class.

Text of proposed rule: Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Department of Corrections and Community Supervision, by increasing the number of positions of Special Assistant from 3 to 4.

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

Data, views or arguments may be submitted to: Ilene Lees, Counsel, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: ilene.lees@cs.ny.gov

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

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-14-00003-P, Issue of January 22, 2014.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-14-00003-P, Issue of January 22, 2014.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-14-00003-P, Issue of January 22, 2014.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-14-00003-P, Issue of January 22, 2014.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-30-14-00013-P

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

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

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

Subject: Jurisdictional Classification.

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

Text of proposed rule: Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Mental Hygiene under the subheading "Office of Mental Health," by increasing the number of positions of Mental Health Program Manager 1 from 2 to 4.

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

Data, views or arguments may be submitted to: Ilene Lees, Counsel, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: ilene.lees@cs.ny.gov

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

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-14-00003-P, Issue of January 22, 2014.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-14-00003-P, Issue of January 22, 2014.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-14-00003-P, Issue of January 22, 2014.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-14-00003-P, Issue of January 22, 2014.

Department of Corrections and Community Supervision

NOTICE OF ADOPTION

Parole Board Decision-Making

I.D. No. CCS-51-13-00013-A

Filing No. 632

Filing Date: 2014-07-14

Effective Date: 2014-07-30

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

Action taken: Repeal of Part 8001; amendment of sections 8002.1(a), (b), 8002.2(a) and 8002.3 of Title 9 NYCRR.

Statutory authority: Executive Law, sections 259-c(4) and (11)

Subject: Parole Board decision-making.

Purpose: To reduce to regulation the Parole Board's written procedures for parole release decision-making.

Text or summary was published in the December 18, 2013 issue of the Register, I.D. No. CCS-51-13-00013-P.

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

Text of rule and any required statements and analyses may be obtained from: Terrence X. Tracy, Counsel, Board of Parole, Department of Corrections and Community Supervision, A. Harriman State Campus, Bldg. 2, 1220 Washington Avenue, Albany, N.Y. 12226, (518) 473-5671, email: terrence.tracy@dccs.ny.gov

Initial Review of Rule

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

Assessment of Public Comment

Following publication of the Parole Board's proposed rule making on December 18, 2013, in excess of 200 comments were received during the statutory 45 day comment period. The comments came from a wide spectrum of the public, including inmates, families and friends of inmates, offender advocacy organizations, organizations that provide services to inmates following their release to community supervision, bar associations, attorneys, former members of the Board of Parole, members of the New York State Assembly and the general public. More particularly, comments were received from: the New York State Defenders Association; Center for Community Alternatives; Community Services Society; Correctional Association of New York and the Release Aging People in Prison "RAP" Campaign; Hon. Daniel O'Donnell, Chairperson, Assembly Standing Committee on Correction and Hon. Kenneth I. Zebrowski, As-

sembly Chair, Administrative Regulations Review Commission; Solidarity Committee of the Capital District; Prison Action Network; New York State Catholic Conference; The Legal Aid Society of New York; National Lawyers Guild; Riverside Church of New York City, "Ending Parole Abuses – Reuniting Families Campaign"; Lincoln Square Legal Services, Inc.; Lifers and Long Termers Organization of Otisville Correctional Facility; Prisoners Legal Services of New York; Brooklyn Defenders Services; Mental Health Alternatives to Solitary Confinement; New York State Bar Association, Committee on Civil Rights and Criminal Justice Section; The Fortune Society; New York State Prisoner Justice Network; Center for Constitutional Rights; The Association of the Bar of the City of New York; The Legal Action Center; and, The Solidarity Committee of the Capital District. Following its consideration of the comments, the Parole Board determined that no changes to the rules proposed by the December 18, 2013 Notice of Proposed Rule Making were warranted, and accordingly, during a regularly scheduled business meeting held on April 21, 2014 at which a quorum was present, it voted to adopt the rules as proposed. Given the number of comments received, separately addressing the substance of each letter is not practical, particularly given the common themes, observations and suggestions contained in a majority of the comments; accordingly, the substance of the concerns raised will be summarized and addressed separately.

The primary concern was that the rule making fails to comport with section 259-c(4) of the Executive Law. Pursuant to Chapter 62 of the Laws of 2011, Part C, subpart A, § 38-b, section 259-c(4) of the Executive Law was amended so as to require the Board to establish "written procedures for its use in making parole decisions." The amendment to this provision of the Executive Law also provides that "[s]uch procedure shall incorporate risk and needs principles to measure the rehabilitation of persons appearing before the Board, [their] likelihood of success. . . upon release, and assist members of the. . . board. . . in determining which inmates may be released to parole supervision." Executive Law § 259-c(4). By Memorandum dated October 5, 2011, Andrea W. Evans, the former Chairwoman of the Board, provided the Board with the written procedures to be followed under Executive Law § 259-c(4), as amended in 2011. The written procedures of October 5, 2011 instructed the Board as to the factors it remains statutorily obligated to consider under section Executive Law § 259-i(2)(c)(A), and further, advised the Board as to the standards it must apply when assessing the appropriateness for granting an inmate parole. With the Board's anticipated use of the COMPAS risk and needs assessment instrument, the written procedures of October 5, 2011 instructed as to when the Board should use the COMPAS instrument, as well as the transitional accountability plan ("TAP"), when those documents are made available for the Board's use. This rule making memorializes in regulation what is provided for by the written procedures of October 5, 2011. Courts have found that the Board's decision making under the written procedures of October 5, 2011 is consistent with what is called for by Executive Law § 259-c(4) when read in concert with section 259-i(2)(c)(A) of the Executive Law.

The amendments to 9 N.Y.C.R.R. § 8002.3 incorporate the statutory factors set forth in Executive Law § 259-i(2)(c)(A)(i) through (viii) and require the Board consider the same. Included among the factors to be considered is the most recent risk and needs assessment prepared by Department staff. The Board's consideration of the results derived from a completed risk and needs assessment, along with its consideration of an inmate's institutional programming record, disciplinary record and education record, infuses into its decision making process risk and needs principles that measure an inmate's rehabilitation, assess his or her risk to the community if released and assist the Board in assessing the appropriateness for granting parole. The amendments to 9 N.Y.C.R.R. § 8002.3 also require the Board to consider the most current case plan (see Correction Law § 71-a) prepared by the Department. When available for the Board's consideration, this document will provide the Board with information about the inmate's rehabilitative efforts while incarcerated. Accordingly, the Board's procedures properly articulate the factors the Board must consider consistent with the Executive Law. The Board's rule making neither adds to nor removes any of the statutory factors required by the Executive Law.

Apart from the factors to be considered by the Board in the parole decision making process, the procedures properly instruct the Board as to which of the two standards it should apply when assessing the appropriateness for granting parole. See 9 N.Y.C.R.R. § § 8002.1(a) and (b). The 2011 amendments to the Executive Law and the Correction Law in no way altered either of the two standards the Board applies in its decision making. Accordingly, the Board did not revise its proposed rules to provide for standards of review different from what is provided for under the law.

Finally, in accordance with Executive Law § 259-i(2)(a), this rule making properly instructs the Board that its decisions denying parole shall be in writing with the factors and reasons for the decision being set forth in

detail, and not in conclusory terms. In light of the foregoing, the Board regards its present rule making as being fully consistent with sections 259-c(4), 259-i(2)(a) and 259-i(2)(c)(A) of the Executive Law.

To the extent the comments suggest the written procedures specify the amount of weight the Board must ascribe to any one of the statutory factors, the Board does not believe this is warranted under the Executive Law. Courts that have reviewed Board decisions denying parole, have determined that nothing within the 2011 legislation necessitates a departure from the well-settled principle that the Board retains the authority and discretion to place that amount of weight it deems appropriate to any one of the statutory factors it must consider. Given the unique attributes of every inmate appearing before the Board and its need to conduct a case-by-case consideration of each inmate, the Board determined that any changes to its rules in light of this comment were not warranted.

To the extent the comments suggested that the static statutory factors, e.g., crime of conviction or criminal history, not be considered after an inmate has appeared before the Board on numerous occasions, the Board sees no basis for revising its rules. Executive Law § 259-i(2)(c)(A) provides that each time an inmate is considered for the possible grant of parole, that all of the statutory factors be considered. Accordingly, this suggestion is not consistent with what is required under the Executive Law.

Some of the comments suggested that the order in which the statutory factors are listed in the Executive Law reflect a legislative prerogative as to their significance in the parole decision making process. Nothing in the Executive Law supports this comment. Accordingly, no changes were made to the Board's rules in response to this comment.

As for the comments suggesting that the written procedures make an inmate's age a factor to be considered, nothing within the Executive Law calls for age to be a separate factor the Board must consider. Secondly, the documents made available to the Board already indicate the inmate's date of birth. Since the Board already considers this information, this comment was not regarded as warranting any change to the Board's rules.

To the extent the comments express concern about the use of "may" in subsections 11 and 12 of 9 N.Y.C.R.R. section 8002.3, this is regarded as necessary by the Board. First, the legislation calling for the use of case plans became effective September 30, 2011. Accordingly, there are inmates appearing before the Board who were remanded to State custody prior to September 30, 2011 who are not subject to this provision. Where such is the case, the absence of a case plan should not render infirm the Board's decision making under section 259-i(c)(2)(A). Also, the Board already is provided with information about an inmate's programming. In the documents made available to the Board, it is informed of the programs recommended for and either completed or refused by the inmate. The Board is also apprised of the educational and vocational accomplishments the inmate has achieved while incarcerated; in large part, the same information presented through a case plan.

As for a risk and needs assessment, there may be instances where the assessment cannot be accomplished due to matters unique to the inmate, such as severe mental illness. Nevertheless in those instances when an instrument, although appropriate, has not been prepared for the Board's consideration, the Board, consistent with governing case law has been setting aside, and will continue to set aside, decisions denying parole and affording de novo release consideration where the interviewing panel has the benefit of a completed risk and needs assessment. Accordingly, the Board did not see any need to change its proposed rule making in light of these comments.

A number of the comments suggested that the written procedures of the Board obligate it to state in writing what steps the inmate should take to increase his or her likelihood of being granted parole. Nothing within the Executive Law calls for the Board to provide this type of information in its decisions denying parole; accordingly, no revisions of the procedures were made in light of this comment.

Many of the comments suggested that the Board's written procedures create a presumption favoring the grant of parole when the results of a risk and needs assessment indicate a low risk in the measured areas. Nothing in the Executive Law warrants either a presumption of this nature or the Board affording this amount of weight to the results of a completed risk and needs assessment. While the current risk and needs instrument assists the Board in its decision making, the results of the instrument in no way abrogate or diminish the Board's obligation to consider and weigh all of the statutory factors. Courts have determined that the results of a risk and needs instrument consideration constitute one of the many pieces of information the Board must now consider and weigh when making its decision. Like all of the other documents and information the Board considers pursuant to section 259-i(2)(c)(A) of the Executive Law, the Board retains the authority and discretion to place whatever weight that it deems appropriate to the information derived from a completed instrument.

Finally, a number of those who commented on the Board's proposed rule making expressed concern about the repeal of 9 N.Y.C.C.R Part 8001.

The concern was that with the repeal of this part, the Board is positioned to effectively resentence inmates being considered for parole. Chapter 62 of the Laws of 2011, Part C, subpart A, § 38-f repealed Executive Law § 259-i(1). That portion of the former Executive Law, i.e., Executive Law § 259-i(1), focused primarily upon a function that is no longer performed by the Parole Board, i.e., the setting of minimum periods of imprisonment. Inmates now received into State custody on indeterminate sentences have had their minimum sentences set by the courts. Part 8001 were the guidelines the Board used for setting minimum periods of imprisonment. Because the Board is no longer authorized to establish an inmate's minimum period of imprisonment, 9 N.Y.C.R.R. Part 8001 is being repealed in its entirety.

Education Department

EMERGENCY RULE MAKING

Student Promotion/Placement and Permanent Records and Transcripts, and Grades 3-8 State ELA and Mathematics Assessments

I.D. No. EDU-19-14-00005-E

Filing No. 598

Filing Date: 2014-07-09

Effective Date: 2014-07-09

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

Action taken: Amendment of sections 100.2, 100.3 and 100.4; and addition of section 104.3 to Title 8 NYCRR.

Statutory authority: Education Law, sections 101(not subdivided), 207(not subdivided), 208(not subdivided), 209(not subdivided), 210(not subdivided), 215(not subdivided), 305(1), (2), (20), (45), (46), (47), 308(not subdivided), 309(not subdivided) and 3204(3); and L. 2014, ch. 56, part AA, subparts B and C

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

Specific reasons underlying the finding of necessity: The proposed rule is necessary to conform the Commissioner's Regulations to Subparts B and C of Part AA of Chapter 56 of the Laws of 2014, which became effective April 1, 2014.

Part AA, Subpart B of Chapter 56 of the Laws of 2014 adds new subdivisions (45) and (46) to Education Law section 305, which direct the Commissioner to provide that no school district or board of cooperative educational services may place or include on a student's official transcript or maintain in a student's permanent record any individual student score on a State administered standardized English language arts or mathematics assessment for grades three through eight, and that any test results on such assessments sent to parents/persons in parental relation include a clear and conspicuous notice that such results will not be included on the student's official transcript or in the student's permanent record and are being provided for diagnostic purposes. The statute provides that these provisions shall expire and be deemed repealed on December 31, 2018.

Part AA, Subpart C of Chapter 56 of the Laws of 2014 adds a new subdivision (47) to Education Law section 305, which directs the Commissioner to provide that no school district shall make any student promotion or placement decisions based solely or primarily on student performance on the state administered standardized English language arts and mathematics assessments for grades three through eight. However, a school district may consider student performance on such state assessments provided that the school district uses multiple measures in addition to such assessments and that such assessments do not constitute the major factor in such determinations. In addition, the Commissioner shall require every school district to annually notify the parents and persons in parental relation to the students attending such district of the district's grade promotion and placement policy along with an explanation of how such policy was developed. Such notification may be provided on the school district's website, if one exists, or as part of an existing informational document that is provided to parents and persons in parental relation.

The proposed amendment was adopted as an emergency action at the April 28-29, 2014 Regents meeting, effective April 29, 2014, and has now been adopted as a permanent rule at the July 8-9, 2014 Regents meeting. Pursuant to SAPA § 203(1), the earliest effective date of the permanent

rule is July 30, 2014, the date a Notice of Adoption will be published in the State Register. However, the April emergency rule will expire on July 27, 2014, 90 days after its filing with the Department of State on April 29, 2014. A lapse in the rule's effective date could disrupt Emergency action is therefore necessary for the preservation of the general welfare to ensure that the proposed rule adopted by emergency action at the April 2013 Regents meeting, and adopted as a permanent rule at the July 2014 Regents meeting, remains continuously in effect until the effective date of its permanent adoption.

Subject: Student promotion/placement and permanent records and transcripts, and grades 3-8 State ELA and Mathematics assessments.

Purpose: Conform Commissioner's Regulations to Education Law section 305(45), (46) and (47), as added by subparts B and C of part AA of L. 2014, ch. 56

Text of emergency rule: 1. Subdivision (ll) of section 100.2 of the Regulations of the Commissioner is added, effective July 28, 2014, as follows:

(ll) *Grade promotion and placement policy. Each school district shall adopt a grade promotion and placement policy that is consistent with sections 100.3(b)(2)(iv), 100.4(b)(2)(v) and 100.4(e)(6) of this Part, and annually notify the parents and persons in parental relation to the students attending such district of such policy along with an explanation of how the policy was developed. Such notification may be provided on the school district's website, if one exists, or as part of an existing informational document that is provided to parents and persons in parental relation.*

2. Paragraph (2) of subdivision (b) of section 100.3 of the Regulations of the Commissioner is amended, effective July 28, 2014, as follows:

(2) Required assessments.

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

(a) beginning in January 1999, the English language arts elementary assessment and the mathematics elementary assessment shall be administered in grade four and, beginning in the 2005-2006 school year, the English language arts elementary assessments and the mathematics elementary assessment shall be administered in grades three and four; and

(b) beginning in January 2000, the elementary science assessment shall be administered in grade four.

(ii) Students receiving home instruction pursuant to section 100.10 of this Part may take, but shall not be required to take, the State assessments required of public school students.

(iii) In accordance with their individualized education programs, students with disabilities instructed in the alternate academic achievement standards defined in section 100.1(t)(2)(iv) of this Part shall be administered a State alternate assessment to measure their achievement.

(iv) *Notwithstanding the provisions of this section, no school district shall make any student promotion or placement decisions based solely or primarily on student performance on the English language arts elementary assessments and the mathematics elementary assessments administered in grades three and four. However, a school district may consider student performance on such assessments provided the school district uses multiple measures in addition to such assessments and that such assessments do not constitute the major factor in such determinations.*

3. Paragraph (2) of subdivision (b) of section 100.4 of the Regulations of the Commissioner is amended, effective July 28, 2014, as follows:

(2) Required assessments.

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

(ii) beginning with the 2005-06 school year, English language arts and mathematics assessments shall be administered in grades five and six;

(iii) for school years prior to July 1st of the 2010-2011 school year, all students in grade five shall take the social studies elementary assessment;

(iv) students receiving a program of home instruction pursuant to section 100.10 of this Part may take, but shall not be required to take, the State assessments required of public school students;

(v) in accordance with their individualized education programs, students with disabilities instructed in the alternate academic achievement standards defined in section 100.1(t)(2)(iv) of this Part shall be administered a State alternate assessment to measure their achievement;

(vi) beginning September 1, 2000 and continuing up to and including the 2004-2005 school year, fifth grade students who scored at Level 1 of the State designated performance levels on the English language arts elementary assessment and/or the mathematics elementary assessment administered in grade four shall receive at least one semester of academic

intervention services and be retested no later than the completion of grade five. Multiple sources of evaluation, including, but not limited to, a commercial test or other external test of demonstrated technical quality determined by the school district to be a valid and reliable means of evaluating a student's progress in achieving the elementary level State learning standards in English language arts and mathematics, shall be used to retest students in accordance with the district-adopted or district-approved procedure established pursuant to section 100.2(ee) of this Part;

(v) *Notwithstanding the provisions of this section, no school district shall make any student promotion or placement decisions based solely or primarily on student performance on the English language arts assessments and the mathematics assessments administered in grades five and six. However, a school district may consider student performance on such assessments provided the school district uses multiple measures in addition to such assessments and that such assessments do not constitute the major factor in such determinations.*

4. Subdivision (e) of section 100.4 of the Regulations of the Commissioner of Education is amended, effective July 28, 2014, as follows:

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

(1) Beginning with school year 1998-99, the English language arts intermediate assessment shall be administered in grade eight. Beginning with the 2005-2006 school year, English language arts assessments shall be administered in grades seven and eight.

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

(3) The program evaluation test in social studies in grade eight, beginning in May 1989. Beginning with the school year 2000-2001 through the 2009-2010 school year, the social studies intermediate assessment shall replace the program evaluation test and shall be administered in grade eight.

(4) Beginning with the school year 2000-2001, the science intermediate assessment shall be administered in grade eight; provided that students who attend grade eight may take a Regents examination in science in lieu of or in addition to the grade eight science intermediate assessment, in accordance with this section and section 100.18(b)(14) of this Part, and provided further that the science intermediate assessment shall not be administered in grade eight to students who take such assessment in grade seven and are being considered for placement in an accelerated high school-level science course when they are in grade eight pursuant to subdivision (d) of this section.

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

(6) *Notwithstanding the provisions of this section, no school district shall make any student promotion or placement decisions based solely or primarily on student performance on the English language arts assessments and the mathematics assessments administered in grades seven and eight. However, a school district may consider student performance on such assessments provided the school district uses multiple measures in addition to such assessments and that such assessments do not constitute the major factor in such determinations.*

5. Section 104.3 of the Regulations of the Commissioner of Education is added, effective July 28, 2014, as follows:

§ 104.3 *Prohibition on inclusion of individual student scores on State administered standardized English language arts or mathematics assessments for grades three through eight. During the period commencing on April 1, 2014 and expiring on December 31, 2018:*

(a) *no school district or board of cooperative educational services may place or include on a student's official transcript or maintain in a student's permanent record any individual student score on a State administered standardized English language arts or mathematics assessment for grades three through eight, provided that nothing herein shall be construed to interfere with required State or federal reporting or to excuse a school district from maintaining or transferring records of such test scores separately from a student's permanent record, including for purposes of required State or federal reporting; and*

(b) *any test results on a State administered standardized English language arts or mathematics assessment for grades three through eight sent to parents or persons in parental relation to a student shall include a*

clear and conspicuous notice that such results will not be included on the student's official transcript or in the student's permanent record and are being provided to the student and parents for diagnostic purposes.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. EDU-19-14-00005-EP, Issue of May 14, 2014. The emergency rule will expire September 6, 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 continues existence of Education Department, with Board of Regents as its head, and authorizes Regents to appoint Commissioner of Education as Department's Chief Administrative Officer, which is charged with general management and supervision of all public schools and educational work of State.

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

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

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

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

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

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

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

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

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

Part AA, Subpart B of Chapter 56 of the Laws of 2014 added new subdivisions (45) and (46) to Education Law section 305, which direct the Commissioner to provide that no school district or board of cooperative educational services may place or include on a student's official transcript or maintain in a student's permanent record any individual student score on a State administered standardized English language arts or mathematics assessment for grades three through eight, and that any test results on such assessments sent to parents/persons in parental relation include a clear and conspicuous notice that such results will not be included on the student's official transcript or in the student's permanent record and are being provided for diagnostic purposes. The statute provides that these provisions shall expire and be deemed repealed on December 31, 2018.

Part AA, Subpart C of Chapter 56 of the Laws of 2014 added a new subdivision (47) to Education Law section 305, which directs the Commissioner to provide that no school district shall make any student promotion or placement decisions based solely or primarily on student performance on the state administered standardized English language arts and mathematics assessments for grades three through eight. However, a school district may consider student performance on such state assessments provided that the school district uses multiple measures in addition to such assessments and that such assessments do not constitute the major factor in such determinations. In addition, the Commissioner shall require every school district to annually notify the parents and persons in parental

relation to the students attending such district of the district's grade promotion and placement policy along with an explanation of how such policy was developed. Such notification may be provided on the school district's website, if one exists, or as part of an existing informational document that is provided to parents and persons in parental relation.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment is consistent with the above statutory authority and is necessary to conform the Commissioner's Regulations to Chapter 56 of the Laws of 2014.

3. NEEDS AND BENEFITS:

The proposed amendment is necessary to conform the Commissioner's Regulations to Chapter 56 of the Laws of 2014.

4. COSTS:

Cost to the State: none.

Costs to local government: none.

Cost to private regulated parties: none.

Cost to regulating agency for implementation and continued administration of this rule: none.

The proposed amendment is necessary to conform the Commissioner's Regulations to Chapter 56 of the Laws of 2014, and does not impose any additional costs on the State, regulated parties, or the State Education Department, beyond those inherent in the statute.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment is necessary to conform the Commissioner's Regulations to Chapter 56 of the Laws of 2014, and does not impose any additional program, service, duty or responsibility upon local governments beyond those inherent in the statute.

Consistent with the statute, the proposed amendment provides that no school district shall make any student promotion or placement decisions based solely or primarily on student performance on the state administered standardized English language arts and mathematics assessments for grades three through eight. However, a school district may consider student performance on such state assessments provided that the school district uses multiple measures in addition to such assessments and that such assessments do not constitute the major factor in such determinations.

6. PAPERWORK:

The proposed amendment is necessary to conform the Commissioner's Regulations to Chapter 56 of the Laws of 2014, and does not impose any specific recordkeeping, reporting or other paperwork requirements beyond those inherent in the statute.

Consistent with the statute, the proposed amendment requires each school district to adopt a grade promotion and placement policy that is consistent with sections 100.3(b)(2)(iv), 100.4(b)(2)(v) and 100.4(e)(6) of this Commissioner's Regulations, and annually notify the parents and persons in parental relation to the students attending such district of such policy along with an explanation of how the policy was developed. Such notification may be provided on the school district's website, if one exists, or as part of an existing informational document that is provided to parents and persons in parental relation. The proposed amendment also provides, for the period commencing on April 1, 2014 and expiring on December 31, 2018, that no school district or board of cooperative educational services may place or include on a student's official transcript or maintain in a student's permanent record any individual student score on a State administered standardized English language arts or mathematics assessment for grades three through eight, and that any test results on such assessments sent to parents/persons in parental relation include a clear and conspicuous notice that such results will not be included on the student's official transcript or in the student's permanent record and are being provided to the student and parents/persons in parental relation for diagnostic purposes.

7. DUPLICATION:

The proposed amendment does not duplicate existing State or federal requirements. The proposed amendment is necessary to conform the Commissioner's Regulations to Chapter 56 of the Laws of 2014.

8. ALTERNATIVES:

The proposed amendment is necessary to conform the Commissioner's Regulations to Chapter 56 of the Laws of 2014. There were no significant alternatives and none were considered.

9. FEDERAL STANDARDS:

There are no applicable Federal standards.

10. COMPLIANCE SCHEDULE:

It is anticipated parties will be able to achieve compliance with the rule by its effective date. The proposed amendment merely conforms the Commissioner's Regulations to Education Law 305(45), (46) and (47), as added by Part AA, Subparts B and C of Chapter 56 of the Laws of 2014, which became effective on March 31, 2014.

Regulatory Flexibility Analysis

Small Businesses:

The proposed amendment is necessary to conform the Commissioner's Regulations to Education Law 305(45), (46) and (47), as added by Part

AA, Subparts B and C of Chapter 56 of the Laws of 2014. The proposed amendment relates to State learning standards, State assessments, graduation and diploma requirements, and higher levels of student achievement. Because it is evident from the nature of the proposed amendment that it does not affect small businesses, no further measures were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses is not required and one has not been prepared.

Local Governments:

1. EFFECT OF RULE:

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

2. COMPLIANCE REQUIREMENTS:

The proposed amendment is necessary to conform the Commissioner's Regulations to Education Law 305(45), (46) and (47), as added by Part AA, Subparts B and C of Chapter 56 of the Laws of 2014, and does not impose any additional compliance requirements upon school districts beyond those inherent in the statute.

Consistent with the statute, the proposed amendment provides that no school district shall make any student promotion or placement decisions based solely or primarily on student performance on the state administered standardized English language arts and mathematics assessments for grades three through eight. However, a school district may consider student performance on such state assessments provided that the school district uses multiple measures in addition to such assessments and that such assessments do not constitute the major factor in such determinations.

Consistent with the statute, the proposed amendment further requires each school district to adopt a grade promotion and placement policy that is consistent with sections 100.3(b)(2)(iv), 100.4(b)(2)(v) and 100.4(e)(6) of this Commissioner's Regulations, and annually notify the parents and persons in parental relation to the students attending such district of such policy along with an explanation of how the policy was developed. Such notification may be provided on the school district's website, if one exists, or as part of an existing informational document that is provided to parents and persons in parental relation. The proposed amendment imposes no additional professional service requirements.

Consistent with the statute, the proposed amendment also provides, for the period commencing on April 1, 2014 and expiring on December 31, 2018, that no school district or board of cooperative educational services may place or include on a student's official transcript or maintain in a student's permanent record any individual student score on a State administered standardized English language arts or mathematics assessment for grades three through eight, and that any test results on such assessments sent to parents/persons in parental relation include a clear and conspicuous notice that such results will not be included on the student's official transcript or in the student's permanent record and are being provided to the student and parents/persons in parental relation for diagnostic purposes.

3. PROFESSIONAL SERVICES:

The proposed amendment does not impose any additional professional service requirements on school districts.

4. COMPLIANCE COSTS:

The proposed amendment is necessary to conform the Commissioner's Regulations to Chapter 56 of the Laws of 2014, and does not impose any additional costs on school districts beyond those inherent in the statute.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

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

6. MINIMIZING ADVERSE IMPACT:

The proposed amendment merely conforms the Commissioner's Regulations to Chapter 56 of the Laws of 2014, and does not impose any additional compliance requirements or costs on school districts beyond those inherent in the statute.

7. LOCAL GOVERNMENT PARTICIPATION:

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

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

Pursuant to State Administrative Procedure Act section 207(1)(b), the State Education Department proposes that the initial review of this rule shall occur in the fifth calendar year after the year in which the rule is adopted, instead of in the third calendar year. The justification for a five year review period is that the proposed amendment is necessary to implement statutory requirements in Education Law 305(45), (46) and (47), as added by Part AA, Subparts B and C of Chapter 56 of the Laws of 2014, and therefore the substantive provisions of the proposed rule cannot be repealed or modified unless there is a further statutory change. Accordingly, there is no need for a shorter review period. The Department invites public

comment on the proposed five year review period for this rule. Comments should be sent to the agency contact listed in item 16. of the Notice of Emergency Adoption and Proposed Rule Making published herewith, and must be received within 45 days of the State Register publication date of the Notice.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed amendment applies to each of the 695 public school districts in the State, including those located in the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square mile or less.

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

The proposed amendment is necessary to conform the Commissioner's Regulations to Education Law 305(45), (46) and (47), as added by Part AA, Subparts B and C of Chapter 56 of the Laws of 2014, and does not impose any additional compliance requirements upon school districts in rural areas beyond those inherent in the statute.

Consistent with the statute, the proposed amendment provides that no school district shall make any student promotion or placement decisions based solely or primarily on student performance on the state administered standardized English language arts and mathematics assessments for grades three through eight. However, a school district may consider student performance on such state assessments provided that the school district uses multiple measures in addition to such assessments and that such assessments do not constitute the major factor in such determinations.

Consistent with the statute, the proposed amendment requires each school district to adopt a grade promotion and placement policy that is consistent with sections 100.3(b)(2)(iv), 100.4(b)(2)(v) and 100.4(e)(6) of this Commissioner's Regulations, and annually notify the parents and persons in parental relation to the students attending such district of such policy along with an explanation of how the policy was developed. Such notification may be provided on the school district's website, if one exists, or as part of an existing informational document that is provided to parents and persons in parental relation.

Consistent with the statute, the proposed amendment also provides, for the period commencing on April 1, 2014 and expiring on December 31, 2018, that no school district or board of cooperative educational services may place or include on a student's official transcript or maintain in a student's permanent record any individual student score on a State administered standardized English language arts or mathematics assessment for grades three through eight, and that any test results on such assessments sent to parents/persons in parental relation include a clear and conspicuous notice that such results will not be included on the student's official transcript or in the student's permanent record and are being provided to the student and parents/persons in parental relation for diagnostic purposes.

The proposed amendment imposes no additional professional service requirements.

3. COMPLIANCE COSTS:

The proposed amendment is necessary to conform the Commissioner's Regulations to Chapter 56 of the Laws of 2014 and does not impose any additional costs on school districts beyond those inherent in the statute.

4. MINIMIZING ADVERSE IMPACT:

The proposed amendment is merely conforms the Commissioner's Regulations to Chapter 56 of the Laws of 2014, and does not impose any additional compliance requirements or costs on school districts beyond those inherent in the statute. Because the statutory requirement upon which the proposed amendment is based applies to all school districts in the State, it is not possible to establish differing compliance or reporting requirements or timetables or to exempt schools in rural areas from coverage by the proposed amendment.

5. RURAL AREA PARTICIPATION:

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

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

Pursuant to State Administrative Procedure Act section 207(1)(b), the State Education Department proposes that the initial review of this rule shall occur in the fifth calendar year after the year in which the rule is adopted, instead of in the third calendar year. The justification for a five year review period is that the proposed amendment is necessary to implement statutory requirements Education Law 305(45), (46) and (47), as added by Part AA, Subparts B and C of Chapter 56 of the Laws of 2014, and therefore the substantive provisions of the proposed rule cannot be repealed or modified unless there is a further statutory change. Accordingly, there is no need for a shorter review period. The Department invites public comment on the proposed five year review period for this rule. Comments should be sent to the agency contact listed in item 16. of the Notice of Emergency Adoption and Proposed Rule Making published herewith, and

must be received within 45 days of the State Register publication date of the Notice.

Job Impact Statement

The proposed amendment is necessary to conform the Commissioner's Regulations to Education Law 305(45), (46) and (47), as added by Part AA, Subparts B and C of Chapter 56 of the Laws of 2014. The proposed amendment relates to State learning standards, State assessments, graduation and diploma requirements, and higher levels of student achievement, and will not have an adverse impact on jobs or employment opportunities. Because it is evident from the nature of the amendment that it will have a positive impact, or no impact, on jobs or employment opportunities, no further steps were needed to ascertain those facts and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

Assessment of Public Comment

Since publication of a Notice of Emergency Adoption and Proposed Rule Making in the State Register on May 14, 2014, the State Education Department received the following comment.

COMMENT:

The application of the rule's requirements to charter schools unlawfully conflicts with the New York State Education Law, and further undermines charter schools' longstanding autonomy regarding their educational programming.

DEPARTMENT RESPONSE:

The proposed rule is necessary to conform the Commissioner's Regulations to Subparts B and C of Part AA of Chapter 56 of the Laws of 2014, which became effective April 1, 2014. Consistent with the statute, the proposed rule by its terms applies to school districts and boards of cooperative educational services (BOCES). However, it appears that the previously published Regulatory Flexibility Analysis and the Rural Area Flexibility Analysis inadvertently included references to charter schools in their respective analyses. The Department has therefore prepared a Revised Regulatory Flexibility Analysis and Revised Rural Area Flexibility Analysis to delete such references and has submitted them for publication herein with the Notice of Adoption.

EMERGENCY RULE MAKING

Appeals to Commissioner of Education Relating to New York City Charter School Co-Location Sites

I.D. No. EDU-19-14-00006-E

Filing No. 633

Filing Date: 2014-07-14

Effective Date: 2014-07-14

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

Action taken: Amendment of section 276.11 of Title 8 NYCRR.

Statutory authority: Education Law, sections 101(not subdivided), 207(not subdivided), 305(1), (2), 310(1), (4), (6), (7), 311(1)-(4) and 2853(3)(e), as added by L. 2014, ch. 56, part BB, section 5

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

Specific reasons underlying the finding of necessity: On March 31, 2014, Governor Cuomo signed Chapter 56 of the Laws of 2014. Section 5 of Part BB of Chapter 56, which became effective April 1, 2014, added a new paragraph (e) to Education Law § 2853(3) to provide, among other things, for an expedited Education Law § 310 appeal to the Commissioner from the New York City School District's offer or refusal to offer a co-location site upon written request for co-location made by:

- charter schools that are approved by their charter entity pursuant to Article 56 of the Education Law to first commence instruction for the 2014-2015 school year or thereafter; and
- charter schools that require additional space due to an expansion of grade level for the 2014-2015 school year or thereafter, and which are approved by their charter entity pursuant to Article 56 of the Education Law for those grades newly provided.

The proposed amendment enacts technical amendments to § 276.11 of the Commissioner's Regulations to provide for expedited appeals in the above instances pursuant to Education Law §§ 310 and 2853(3)(e).

The proposed amendment was adopted as an emergency action at the April 28-29, 2014 Regents meeting, effective April 29, 2014, and has now been adopted as a permanent rule at the July 8-9, 2014 Regents meeting. Pursuant to SAPA § 203(1), the earliest effective date of the permanent rule is July 30, 2014, the date a Notice of Adoption will be published in

the State Register. However, the April emergency rule will expire on July 27, 2014, 90 days from its filing with the Department of State on April 29, 2014. A lapse in the rule's effective date could disrupt determinations of expedited appeals relating to New York City charter school co-locations brought pursuant to Education Law §§ 310 and 2853(3)(e) as added by § 5 of Part BB of Chapter 56 of the Laws of 2014. Emergency action is therefore necessary for the preservation of the general welfare to ensure that the proposed rule adopted by emergency action at the April 2014 Regents meeting, and adopted as a permanent rule at the July 2014 Regents meeting, remains continuously in effect until the effective date of its permanent adoption.

Subject: Appeals to Commissioner of Education relating to New York City charter school co-location sites.

Purpose: To implement Education Law section 2853(3)(e), as added by L. 2014, ch. 56, part BB, section 5

Text of emergency rule: Paragraph (1) of subdivision (b) of section 276.11 of the Regulations of the Commissioner of Education is amended, effective July 28, 2011, as follows:

(1) The procedures set forth in this section shall apply to:

(i) appeals pursuant to Education Law section 2853(3)(a-5) from: [(i)] (a) final determinations of the board of education to locate or co-locate a charter school within a public school building;

[(ii)] (b) the implementation of, and compliance with, the building usage plan developed pursuant to Education Law section 2853(3)(a-3); and/or

[(iii)] (c) revisions of such a building usage plan, relating to a proposal for the collaborative usage of shared resources and spaces between the charter school and the non-charter schools, on the grounds that such revision fails to meet the equitable access standard set forth in Education Law section 2853(3)(a-3)(2)(B); or

(ii) appeals pursuant to Education Law section 2853(3)(e) from the city school district's offer or failure to offer a co-location site or space in a privately owned or other publicly owned facility upon a written request for co-location made by:

(a) charter schools that are approved by their charter entity pursuant to Article 56 of the Education Law to first commence instruction for the 2014-2015 school year or thereafter; or

(b) charter schools that require additional space due to an expansion of grade level for the 2014-2015 school year or thereafter, and which are approved by their charter entity pursuant to Article 56 of the Education Law for those grades newly provided.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. EDU-19-14-00006-EP, Issue of May 14, 2014. The emergency rule will expire September 11, 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

I. STATUTORY AUTHORITY:

Education Law section 101 continues the existence of the Education Department, with the Board of Regents as its head, and authorizes the Regents to appoint the Commissioner as chief administrative officer of the Department, which is charged with the general management and supervision of public schools and the educational work of the State.

Education Law section 207 authorizes the Regents and Commissioner to adopt rules and regulations implementing State law regarding education.

Education Law section 305(1) designates the Commissioner as chief executive officer of the State system of education and the Regents, and authorizes the Commissioner to enforce laws relating to the educational system and to execute the Regents' educational policies. Section 305(2) authorizes the Commissioner to have general supervision over schools subject to the Education Law.

Education Law section 310 provides that an aggrieved party may appeal by petition to the Commissioner of Education in consequence of certain specified actions by school districts and school officials.

Education Law section 311 authorizes the Commissioner to regulate the practice of appeals to the Commissioner brought pursuant to Education Law section 310.

§ 5 of Part BB of Chapter 56 of the Laws of 2014, which became effective on March 31, 2014, added a new paragraph (e) to Education Law section 2853(3) to provide, among other things, for an expedited Education Law § 310 appeal to the Commissioner for appeals from the New York City School District's offer or refusal to offer a co-location site upon written request for co-location made by:

- charter schools that are approved by their charter entity pursuant to Article 56 of the Education Law to first commence instruction for the 2014-2015 school year or thereafter; and

- charter schools that require additional space due to an expansion of grade level for the 2014-2015 school year or thereafter, and which are approved by their charter entity pursuant to Article 56 of the Education Law for those grades newly provided.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment is consistent with the authority conferred by the above statutes to regulate the practice and procedures to be followed in Education Law section appeals, and is necessary to implement § 5 of Part BB of Chapter 56 of the Laws of 2014 by establishing procedures for expedited appeals relating to New York City charter school co-locations brought pursuant to Education Law §§ 310 and 2853(3)(e).

3. NEEDS AND BENEFITS:

The proposed amendment is necessary to implement § 5 of Part BB of Chapter 56 of the Laws of 2014 by establishing procedures for an expedited Education Law § 310 appeal to the Commissioner for appeals from the New York City School District's offer or refusal to offer a co-location site or space in a privately owned or other publicly owned facility upon written request for co-location made by:

- charter schools that are approved by their charter entity pursuant to Article 56 of the Education Law to first commence instruction for the 2014-2015 school year or thereafter; and
- charter schools that require additional space due to an expansion of grade level for the 2014-2015 school year or thereafter, and which are approved by their charter entity pursuant to Article 56 of the Education Law for those grades newly provided.

The proposed amendment enacts technical amendments to § 276.11 of the Commissioner's Regulations to provide for expedited appeals in the above instances pursuant to Education Law §§ 310 and 2853(3)(e).

4. COSTS:

Cost to the State: None.

Costs to local government: None.

Cost to private regulated parties: None.

Cost to regulating agency for implementation and continued administration of this rule: None.

The proposed amendment is necessary to implement § 5 of Part BB of Chapter 56 of the Laws of 2014 and will not impose any costs on the State or regulated parties beyond those imposed by the statute.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment is necessary to implement § 5 of Part BB of Chapter 56 of the Laws of 2014 and will not impose any additional program, service, duty or responsibility beyond those imposed by the statute.

6. PAPERWORK:

The proposed amendment imposes no additional reporting, forms or other paperwork requirements.

7. DUPLICATION:

The proposed amendment does not duplicate, overlap or conflict with State and Federal rules or requirements, and is necessary to implement § 5 of Part BB of Chapter 56 of the Laws of 2014.

8. ALTERNATIVES:

There were no significant alternatives. The proposed amendment is necessary to implement § 5 of Part BB of Chapter 56 of the Laws of 2014.

9. FEDERAL STANDARDS:

The proposed amendment is necessary to implement § 5 of Part BB of Chapter 56 of the Laws of 2014. There are no applicable standards of the Federal government for the same or similar subject areas.

10. COMPLIANCE SCHEDULE:

It is anticipated that regulated parties will be able to achieve compliance with the provisions of the proposed amendment by its effective date.

Regulatory Flexibility Analysis

Small Businesses:

The proposed amendment relates to appeals to the Commissioner of Education pursuant to Education Law §§ 310 and 2853(3)(e) relating to New York City charter school co-location. The proposed amendment does not impose any adverse economic impact, reporting, recordkeeping or other compliance requirements on small businesses. Because it is evident from the nature of the proposed amendment that it does not affect small businesses, no further measures were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses is not required and one has not been prepared.

Local Governments:

EFFECT OF RULE:

The proposed amendment applies to the City School District of the City of New York.

COMPLIANCE REQUIREMENTS:

The proposed amendment is necessary to implement § 5 of Part BB of Chapter 56 of the Laws of 2014, which became effective on March 31, 2014, and does not impose any additional compliance requirements beyond those imposed by the statute. The proposed amendment establishes procedures for an expedited Education Law § 310 appeal to the Commis-

sioner from the New York City School District's offer or refusal to offer a co-location site or space in a privately owned or other publicly owned facility upon written request for co-location made by:

- charter schools that are approved by their charter entity pursuant to Article 56 of the Education Law to first commence instruction for the 2014-2015 school year or thereafter; and
- charter schools that require additional space due to an expansion of grade level for the 2014-2015 school year or thereafter, and which are approved by their charter entity pursuant to Article 56 of the Education Law for those grades newly provided.

The proposed amendment enacts technical amendments to § 276.11 of the Commissioner's Regulations to provide for expedited appeals in the above instances pursuant to Education Law §§ 310 and 2853(3)(e).

PROFESSIONAL SERVICES:

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

COMPLIANCE COSTS:

The proposed amendment is necessary to implement § 5 of Part BB of Chapter 56 of the Laws of 2014 and will not impose any costs on the State or local governments beyond those imposed by the statute.

ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

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

MINIMIZING ADVERSE IMPACT:

The proposed amendment is necessary to implement § 5 of Part BB of Chapter 56 of the Laws of 2014 and will not impose any compliance requirements or costs on the State or local governments beyond those imposed by the statute. The proposed amendment establishes procedures for an expedited Education Law § 310 appeal to the Commissioner from the New York City School District's offer or refusal to offer a co-location site upon written request for co-location made by:

- charter schools that are approved by their charter entity pursuant to Article 56 of the Education Law to first commence instruction for the 2014-2015 school year or thereafter; and
- charter schools that require additional space due to an expansion of grade level for the 2014-2015 school year or thereafter, and which are approved by their charter entity pursuant to Article 56 of the Education Law for those grades newly provided.

The proposed amendment enacts technical amendments to § 276.11 of the Commissioner's Regulations to provide for expedited appeals in the above instances pursuant to Education Law §§ 310 and 2853(3)(e).

LOCAL GOVERNMENT PARTICIPATION:

A copy of the proposed amendment was provided to the New York City Department of Education for review and comment.

INITIAL REVIEW OF RULE (SAPA § 207):

Pursuant to State Administrative Procedure Act section 207(1)(b), the State Education Department proposes that the initial review of this rule shall occur in the fifth calendar year after the year in which the rule is adopted, instead of in the third calendar year. The justification for a five year review period is that the proposed rule is necessary to implement statutory requirements in Education Law section 2853(3)(e), as added by § 5 of Part BB of Chapter 56 of the Laws of 2014, and therefore the substantive provisions of the proposed rule cannot be repealed or modified unless there is a further statutory change. Accordingly, there is no need for a shorter review period. The Department invites public comment on the proposed five year review period for this rule. Comments should be sent to the agency contact listed in item 10 of the Notice of Proposed Rule Making published herewith, and must be received within 45 days of the State Register publication date of the Notice.

Rural Area Flexibility Analysis

The proposed amendment relates to expedited appeals to the Commissioner of Education pursuant to Education Law §§ 310 and 2853(3)(e) regarding New York City charter school co-locations. The proposed amendment is applicable to the City School District of the City of New York and will not have an adverse impact on rural areas or impose reporting, recordkeeping or other compliance requirements on public or private entities in rural areas. Because it is evident from the nature of the proposed amendment that it does not affect rural areas or public or private entities in rural areas, no further measures were needed to ascertain that fact and none were taken. Accordingly, a rural area flexibility analysis is not required and one has not been prepared.

Job Impact Statement

The proposed amendment is necessary to implement § 5 of Part BB of Chapter 56 of the Laws of 2014, and relates to expedited appeals to the Commissioner of Education pursuant to Education Law §§ 310 and 2853(3)(e) regarding New York City charter school co-locations. The proposed amendment will not have an adverse impact on jobs or employment opportunities. Because it is evident from the nature of the amend-

ment that it will have a positive impact, or no impact, on jobs or employment opportunities, no further steps were needed to ascertain those facts and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

Assessment of Public Comment

The agency received no public comment.

EMERGENCY RULE MAKING

Traditional Standardized Tests Administration

I.D. No. EDU-19-14-00007-E

Filing No. 601

Filing Date: 2014-07-09

Effective Date: 2014-07-09

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

Action taken: Amendment of sections 100.3, 151-1.2 and 151-1.3 of Title 8 NYCRR.

Statutory authority: Education Law, sections 101(not subdivided), 207(not subdivided), 208(not subdivided), 209(not subdivided), 210(not subdivided), 215(not subdivided), 305(1), (2), (20), (44), 308(not subdivided), 309(not subdivided), 3204(3), 3602-e(12), (15); L. 2014, ch. 56, part AA and subpart A

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

Specific reasons underlying the finding of necessity: The proposed amendment is necessary to conform the Commissioner's Regulations to Subpart A of Part AA of Chapter 56 of the Laws of 2014, which became effective April 1, 2014.

Part AA, Subpart A of Chapter 56 of the Laws of 2014, which became effective on April 1, 2014, adds a new subdivision (44) to Education Law section 305, and amends Education Law section 3602-e(15), to direct the Commissioner to prohibit the administration of traditional standardized tests, as defined in regulations issued by the Commissioner, in prekindergarten programs (including Universal Prekindergarten programs), and grades kindergarten through second grade. Consistent with the statute, the proposed amendment prohibits the administration of traditional standardized tests in prekindergarten programs (including Universal Prekindergarten programs), and grades kindergarten through two.

The proposed amendment was adopted as an emergency action at the April 28-29, 2014 Regents meeting, effective April 29, 2014, and has now been adopted as a permanent rule at the July 8-9, 2014 Regents meeting. Pursuant to SAPA § 203(1), the earliest effective date of the permanent rule is July 30, 2014, the date a Notice of Adoption will be published in the State Register. However, the April emergency rule will expire on July 27, 2014, 90 days after its filing with the Department of State on April 29, 2014. A lapse in the rule's effective date could disrupt Emergency action is therefore necessary for the preservation of the general welfare to ensure that the proposed rule adopted by emergency action at the April 2013 Regents meeting, and adopted as a permanent rule at the July 2014 Regents meeting, remains continuously in effect until the effective date of its permanent adoption.

Subject: Traditional standardized tests administration.

Purpose: To prohibit administration of traditional standardized tests in prekindergarten programs and in grades kindergarten through two.

Text of emergency rule: 1. Subdivision (a) of section 100.3 of the Regulations of the Commissioner of Education is amended, effective July 28, 2014, as follows:

(a) Prekindergarten and kindergarten programs operated by public schools and voluntarily registered nonpublic schools.

(1) . . .

(2) . . .

(3) . . .

(4) . . .

(5) *Prohibition on administration of traditional standardized tests.*

(i) *For purposes of this subdivision, "traditional standardized test" 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 tests are those that require the student (and not the examiner/assessor) to directly use a "bubble" answer sheet. Traditional standardized tests 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).

(ii) *Notwithstanding the provisions of this subdivision, no school district or voluntarily registered nonpublic school shall administer traditional standardized tests in pre-kindergarten and kindergarten programs; provided that nothing herein shall prohibit assessments in which students perform real-world tasks that demonstrate application of knowledge and skills or assessments that are otherwise required to be administered by federal law.*

2. Paragraph (2) of subdivision (b) of section 100.3 of the Regulations of the Commissioner of Education is amended, effective July 28, 2014, as follows:

(2) Required assessments.

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

(a) . . .

(b) . . .

(ii) . . .

(iii) . . .

(iv) . . .

(v) *Prohibition on administration of traditional standardized tests.*

(a) *For purposes of this subdivision, "traditional standardized test" 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 tests are those that require the student (and not the examiner/assessor) to directly use a "bubble" answer sheet. Traditional standardized tests 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).*

(b) *Notwithstanding the provisions of this subdivision, no school district or voluntarily registered nonpublic school shall administer traditional standardized tests in grades one and two; provided that nothing herein shall prohibit assessments in which students perform real-world tasks that demonstrate application of knowledge and skills or assessments that are otherwise required to be administered by federal law.*

3. Section 151-1.2 of the Regulations of the Commissioner of Education is amended, effective July 28, 2014, as follows:

§ 151-1.2 Definitions.

As used in this Subpart:

(a) . . .

(b) . . .

(c) . . .

(d) . . .

(e) *"Traditional standardized test" 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 tests are those that require the student (and not the examiner/assessor) to directly use a "bubble" answer sheet. Traditional standardized tests 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).*

4. Subdivision (b) of section 151-1.3 of the Regulations of the Commissioner of Education is amended, effective July 28, 2014, as follows:

(b) Assessments, monitoring and reporting.

(1) . . .

(2) . . .

(3) . . .

(4) *Prohibition on administration of traditional standardized tests. Notwithstanding the provisions of this subdivision, no school district shall administer traditional standardized tests in a pre-kindergarten program; provided that nothing herein shall prohibit assessments in which students perform real-world tasks that demonstrate application of knowledge and skills or assessments that are otherwise required to be administered by federal law.*

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a

permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. EDU-19-14-00007-EP, Issue of May 14, 2014. The emergency rule will expire September 6, 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 continues the existence of the Education Department, with the Board of Regents at its head, and authorizes the Regents to appoint the Commissioner of Education as the chief administrative officer of the Department, which is charged with the general management and supervision of public schools and the educational work of the State.

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

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

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

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

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

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

Education Law section 3602-e(12) authorizes the Regents and the Commissioner to adopt regulations to implement the provisions of that section, relating to universal prekindergarten programs.

Section 1 of Subpart A of Part AA of Chapter 56 of the Laws of 2014 amended Education Law section 3602-e(15) to direct the Commissioner to prohibit the administration of traditional standardized tests, as defined in regulations issued by the Commissioner, in universal prekindergarten programs.

Section 2 of Subpart A of Part AA of Chapter 56 of the Laws of 2014 added a new Education Law section 305(44) to direct the Commissioner to prohibit the administration of traditional standardized tests, as defined in regulations issued by the Commissioner, in prekindergarten programs and in grades kindergarten through second grade.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment is consistent with the above statutory authority and is necessary to conform the Commissioner's Regulations to Chapter 56 of the Laws of 2014.

3. NEEDS AND BENEFITS:

On March 31, 2014, Governor Cuomo signed Chapter 56 of the Laws of 2014. Chapter 56 enacts into law major components of legislation necessary to implement the education, labor, housing, and family assistance budget for the 2014-2015 state fiscal year.

Part AA, Subpart A of Chapter 56 of the Laws of 2014 adds a new subdivision (44) to Education Law section 305, and amends Education Law section 3602-e(15), to direct the Commissioner to prohibit the administration of traditional standardized tests, as defined in regulations issued by the Commissioner, in prekindergarten programs (including universal prekindergarten programs) and in grades kindergarten through two. Consistent with the statute, the proposed amendment provides that no school district or voluntarily registered nonpublic school shall administer traditional standardized tests in pre-kindergarten programs (including universal prekindergarten programs) and in grades kindergarten through grade two; provided that nothing herein shall prohibit assessments in which students perform real-world tasks that demonstrate application of knowledge and skills or assessments that are otherwise required to be administered by federal law.

4. COSTS:

Cost to the State: none.

Costs to local government: none.

Cost to private regulated parties: none.

Cost to regulating agency for implementation and continued administration of this rule: none.

The proposed amendment is necessary to conform the Commissioner's Regulations to Chapter 56 of the Laws of 2014, and does not impose any additional costs on the State, regulated parties, or the State Education Department.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment is necessary to conform the Commissioner's Regulations to Chapter 56 of the Laws of 2014, and does not impose any additional program, service, duty or responsibility upon local governments. Consistent with the statute, the proposed amendment provides that no school district or voluntarily registered nonpublic school shall administer traditional standardized tests in pre-kindergarten programs (including universal prekindergarten programs) and in grades kindergarten through grade two; provided that nothing herein shall prohibit assessments in which students perform real-world tasks that demonstrate application of knowledge and skills or assessments that are otherwise required to be administered by federal law.

6. PAPERWORK:

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

7. DUPLICATION:

The proposed amendment does not duplicate existing State or federal requirements. The proposed amendment is necessary to conform the Commissioner's Regulations to Chapter 56 of the Laws of 2014.

8. ALTERNATIVES:

The proposed amendment is necessary to conform the Commissioner's Regulations to Chapter 56 of the Laws of 2014. There were no significant alternatives and none were considered.

9. FEDERAL STANDARDS:

There are no applicable Federal standards.

10. COMPLIANCE SCHEDULE:

It is anticipated regulated parties will be able to achieve compliance with the rule by its effective date. The proposed amendment merely conforms the Commissioner's Regulations to Subpart A of Part AA of Chapter 56 of the Laws of 2014, which became effective on March 31, 2014.

Regulatory Flexibility Analysis

Small Businesses:

The proposed amendment is necessary to conform the Commissioner's Regulations to Chapter 56 of the Laws of 2014, relating to a prohibition on the administration of traditional standardized tests in prekindergarten programs (including universal prekindergarten programs) and in grades kindergarten through grade two. The proposed amendment relates to State learning standards, State assessments, graduation and diploma requirements, and higher levels of student achievement. Because it is evident from the nature of the proposed amendment that it does not affect small businesses, no further measures were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses is not required and one has not been prepared.

Local Governments:

1. EFFECT OF RULE:

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

2. COMPLIANCE REQUIREMENTS:

The proposed amendment is necessary to conform the Commissioner's Regulations to Chapter 56 of the Laws of 2014, and does not impose any additional compliance requirements on local governments. Subpart A of Part AA of Chapter 56 of the Laws of 2014 adds a new Education Law section 305(44), and amends Education Law section 3602-e(15), to direct the Commissioner to prohibit the administration of traditional standardized tests, as defined in regulations issued by the Commissioner, in pre-kindergarten programs (including universal prekindergarten programs) and in grades kindergarten through grade two. Consistent with the statute, the proposed amendment provides that no school district or voluntarily registered nonpublic school shall administer traditional standardized tests in pre-kindergarten programs (including universal prekindergarten programs) and in grades kindergarten through grade two; provided that nothing herein shall prohibit assessments in which students perform real-world tasks that demonstrate application of knowledge and skills or assessments that are otherwise required to be administered by federal law.

3. PROFESSIONAL SERVICES:

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

4. COMPLIANCE COSTS:

The proposed amendment is necessary to conform the Commissioner's Regulations to Chapter 56 of the Laws of 2014, and does not impose any additional costs on school districts or charter schools.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The rule imposes no costs or technological requirements on school districts or charter schools.

6. MINIMIZING ADVERSE IMPACT:

The proposed amendment merely conforms the Commissioner's Regulations to Chapter 56 of the Laws of 2014, and does not impose any additional compliance requirements or costs on school districts or charter schools. Consistent with the statute, the proposed amendment provides that no school district or voluntarily registered nonpublic school shall administer traditional standardized tests in pre-kindergarten programs (including universal prekindergarten programs) and in grades kindergarten through grade two; provided that nothing herein shall prohibit assessments in which students perform real-world tasks that demonstrate application of knowledge and skills or assessments that are otherwise required to be administered by federal law.

7. LOCAL GOVERNMENT PARTICIPATION:

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

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

Pursuant to State Administrative Procedure Act section 207(1)(b), the State Education Department proposes that the initial review of this rule shall occur in the fifth calendar year after the year in which the rule is adopted, instead of in the third calendar year. The justification for a five year review period is that the proposed amendment is necessary to implement statutory requirements in Education Law section 3602-e(15) as amended by section 1 of Subpart A of Part AA of Chapter 56 of the Laws of 2014, and Education Law 305(44) as added by section 2 of Subpart A of Part AA of Chapter 56 of the Laws of 2014, and therefore the substantive provisions of the proposed rule cannot be repealed or modified unless there is a further statutory change. Accordingly, there is no need for a shorter review period. The Department invites public comment on the proposed five year review period for this rule. Comments should be sent to the agency contact listed in item 16. of the Notice of Emergency Adoption and Proposed Rule Making published herewith, and must be received within 45 days of the State Register publication date of the Notice.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

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

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

The proposed amendment is necessary to conform the Commissioner's Regulations to Chapter 56 of the Laws of 2014, and does not impose any additional compliance requirements on school districts or charter schools in rural areas. Subpart A of Part AA of Chapter 56 of the Laws of 2014 adds a new Education Law section 305(44) and amends Education Law section 3602-e(15) to direct the Commissioner to prohibit the administration of traditional standardized tests, as defined in regulations issued by the Commissioner, in prekindergarten programs (including universal prekindergarten programs) and in grades kindergarten through grade two. Consistent with the statute, the proposed amendment provides that no school district or voluntarily registered nonpublic school shall administer traditional standardized tests in pre-kindergarten programs (including universal prekindergarten programs) and in grades kindergarten through grade two; provided that nothing herein shall prohibit assessments in which students perform real-world tasks that demonstrate application of knowledge and skills or assessments that are otherwise required to be administered by federal law.

The proposed amendment imposes no additional professional service requirements.

3. COMPLIANCE COSTS:

The proposed amendment is necessary to conform the Commissioner's Regulations to Chapter 56 of the Laws of 2014, and does not impose any additional costs on school districts or charter schools in rural areas.

4. MINIMIZING ADVERSE IMPACT:

The proposed amendment is merely conforms the Commissioner's Regulations to Chapter 56 of the Laws of 2014, and does not impose any additional compliance requirements or costs on school districts or charter

schools in rural areas. Because the statutory requirement upon which the proposed amendment is based applies to all school districts in the State and to charter schools authorized to issue Regents diplomas, it is not possible to establish differing compliance or reporting requirements or timetables or to exempt schools in rural areas from coverage by the proposed amendment.

5. RURAL AREA PARTICIPATION:

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

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

Pursuant to State Administrative Procedure Act section 207(1)(b), the State Education Department proposes that the initial review of this rule shall occur in the fifth calendar year after the year in which the rule is adopted, instead of in the third calendar year. The justification for a five year review period is that the proposed amendment is necessary to implement statutory requirements in Education Law section 3602-e(15), as amended by section 1 of Subpart A of Part AA of Chapter 56 of the Laws of 2014, and Education Law 305(44), as added by section 2 of Subpart A of Part AA of Chapter 56 of the Laws of 2014, and therefore the substantive provisions of the proposed rule cannot be repealed or modified unless there is a further statutory change. Accordingly, there is no need for a shorter review period. The Department invites public comment on the proposed five year review period for this rule. Comments should be sent to the agency contact listed in item 16. of the Notice of Emergency Adoption and Proposed Rule Making published herewith, and must be received within 45 days of the State Register publication date of the Notice.

Job Impact Statement

The proposed amendment is necessary to conform the Commissioner's Regulations to Chapter 56 of the Laws of 2014, relating to a prohibition on the administration of traditional standardized tests in prekindergarten programs (including universal prekindergarten programs) and in grades kindergarten through grade two. The proposed amendment relates to State learning standards, State assessments, graduation and diploma requirements, and higher levels of student achievement, and will not have an adverse impact on jobs or employment opportunities. Because it is evident from the nature of the amendment that it will have a positive impact, or no impact, on jobs or employment opportunities, no further steps were needed to ascertain those facts and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

Assessment of Public Comment

Since publication of a Notice of Emergency Adoption and Proposed Rule Making in the State Register on May 14, 2014, the State Education Department received the following comment.

1. COMMENT:

Extending the applicability of the proposed rule to charter schools unlawfully conflicts with the New York Education Law and threatens charter schools' ability to make decisions regarding their own educational programming.

DEPARTMENT RESPONSE:

The regulatory language does not address charter schools directly—it imposes the requirements on school districts and registered nonpublic schools. However, Education Law § 2854(1)(b) states that “a charter school shall meet the same health and safety, civil rights, and student assessment requirements applicable to other public schools. . . [emphasis supplied].”

The proposed rule is necessary to conform the Commissioner's Regulations to Subpart A of Part AA of Chapter 56 of the Laws of 2014, which became effective April 1, 2014, and which adds a new subdivision (44) to Education Law section 305, and amends Education Law section 3602-e(15) to direct the Commissioner to prohibit the administration of traditional standardized tests, as defined in regulations issued by the Commissioner, in prekindergarten programs (including Universal Prekindergarten programs), and in grades kindergarten through second grade.

Consistent with the statute, the proposed rule prohibits the administration of traditional standardized tests in prekindergarten programs (including Universal Prekindergarten programs), and in grades kindergarten through two, and accordingly is “a student assessment requirement applicable to other public schools” and as such the proposed rule is also applicable to charter schools pursuant to Education Law § 2854(1)(b).

2. COMMENT:

The definition of “traditional standardized test” is ambiguous and overbroad. First, it is not clear how standardized tests are differentiated from “performance assessments,” which are expressly permitted under the proposed rule. Second, this definition is unnecessarily overbroad, and will have the detrimental effect of limiting charter schools' flexibility and autonomy regarding internal assessments used to identify learning gaps in student achievement. SED should revise the proposed rule to clarify that the definition of “traditional standardized test” is limited to the annual New York State math and English language arts assessments.

DEPARTMENT RESPONSE:

The proposed rule is necessary to conform the Commissioner’s Regulations to Subpart A of Part AA of Chapter 56 of the Laws of 2014, which became effective April 1, 2014, and which adds a new subdivision (44) to Education Law section 305, and amends Education Law section 3602-e(15) to direct the Commissioner to prohibit the administration of traditional standardized tests, as defined in regulations issued by the Commissioner, in prekindergarten programs (including Universal Prekindergarten programs), and in grades kindergarten through second grade.

The Department does not believe the definition of “traditional standardized tests” in the regulation is overly broad. On the contrary, the same definition can be found in section 30-2.2 of the Rules of the Board of Regents, which relates to Annual Professional Performance Reviews of teachers and building principals pursuant to Education Law § 3012-c, and is needed to provide a consistent, uniform definition that meets statutory requirements.

Moreover, Subpart A of Part AA of Chapter 56 of the Laws of 2014 specifically exempts “assessments in which students perform real-world tasks that demonstrate application of knowledge and skills” from the definition of traditional standardized assessments. Therefore, the exclusion of performance assessments in the regulation from the definition of traditional standardized assessment is consistent with the statute.

**EMERGENCY
RULE MAKING**

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

I.D. No. EDU-19-14-00008-E

Filing No. 600

Filing Date: 2014-07-09

Effective Date: 2014-07-09

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

Action taken: Amendment of section 100.18(i) and (j) of Title 8 NYCRR.

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

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

Specific reasons underlying the finding of necessity: At its February 2014 meeting, the Board of Regents directed the State Education Department (SED) to submit a an ESEA Flexibility Waiver Renewal Request to the United States Department of Education (USDE) to amend the provisions of the approved ESEA Flexibility Waiver Request related to making adequate yearly progress (AYP); removal criteria for Priority Schools, Focus Districts and Focus Schools; and the methodology used to determine elementary-middle level English language arts and mathematics annual measurable objectives (AMOs).

On April 22, 2014, the USDE approved SED’s request to reset the AMOs. USDE review of the remainder of the State’s Waiver Renewal application is still pending. In addition, the USDE informed SED that the proposed amendment of section 100.18(i)(2) to allow certain Focus Schools to be removed from accountability designation without requiring that the removed schools be replaced by other schools, would not be considered to be an amendment to SED’s approved ESEA Flexibility Waiver such that USDE approval would be required.

Consistent with the approved Waiver Renewal Request, the proposed amendment amends paragraph 100.18(j) of the Commissioner’s Regulations to revise elementary and middle level AMOs to reflect the results from 2012-13 school year assessments that were based on Common Core Learning Standards aligned to college- and career-readiness.

Consistent with discussions between USDE and SED staff, the proposed amendment would also amend paragraph 100.18(i)(2) to allow certain Focus Schools to be removed from accountability designation without requiring that the removed schools be replaced by other schools.

The proposed amendment was adopted as an emergency action at the April 28-29, 2014 Regents meeting, effective April 29, 2014, and has now been adopted as a permanent rule at the July 8-9, 2014 Regents meeting. Pursuant to SAPA § 203(1), the earliest effective date of the permanent rule is July 30, 2014, the date a Notice of Adoption will be published in the State Register. However, the April emergency rule will expire on July 27, 2014, 90 days after its filing with the Department of State on April 29, 2014. A lapse in the rule’s effective date could disrupt Emergency action is therefore necessary for the preservation of the general welfare to ensure

that the proposed rule adopted by emergency action at the April 2013 Regents meeting, and adopted as a permanent rule at the July 2014 Regents meeting, remains continuously in effect until the effective date of its permanent adoption.

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

Purpose: To partially implement New York State’s ESEA Flexibility Waiver Renewal with respect to Annual Measurable Objectives (AMOs).

Text of emergency rule: 1. Paragraph (2) of subdivision (i) of section 100.18 of the Regulations of the Commissioner of Education is amended, effective July 28, 2014, as follows:

(2) Removal of focus district and focus school designation.

(i) . . .

(ii) . . .

(iii) . . .

(iv) *If the school district does not meet the criteria for removal but one or more of its focus schools meet the criteria for removal, the school district must, for each focus school it petitions for removal of focus designation, identify school(s) not currently identified as priority or focus to replace the school(s) meeting the criteria for removal, except that a school district is not required to:*

(a) *designate additional new focus schools to replace focus schools meeting the criteria for removal if by so doing the number of focus schools in the district would exceed the number of focus schools that the Commissioner requires a school district to identify pursuant to paragraph (5) of subdivision (g) of this section; or*

(b) *designate a school as a focus school that meets the criteria for focus school removal pursuant to subdivision (i) of this section in order to replace a focus school meeting the criteria for removal.*

(v) *Notwithstanding the provisions of subparagraph (iv) of this paragraph, a school district must identify at least one school as focus school if the school district does not meet the criteria for removal but all of its priority and focus schools meet the criteria for removal.*

[(iv)] (vi) Removal of focus charter school designation.

(a) . . .

(b) . . .

2. Subdivision (j) of section 100.18 of the Regulations of the Commissioner is amended, effective July 28, 2014, as follows:

(j) Public school, school district and charter school performance criteria. Each school district and school accountability group shall be subject to the performance criteria specified below:

(1) Elementary/middle-level English language arts and mathematics, and high school English language arts and mathematics requirements. An annual measurable objective is a performance index set by the commissioner for 2010-11 school year results for each accountability group and that increases annually in equal increments so as to reduce by half the gap between the performance index for each accountability group in the 2010-11 school year and reach a goal of a performance index of 200 by the 2016-17 school year; *except that, beginning with the 2012-13 school year and thereafter, for each accountability group in elementary/middle-level English language arts and mathematics, an annual measurable objective is a performance index set by the commissioner for the 2012-13 school year that increases annually in equal increments so as to reduce by half the gap by the 2016-2017 school year between the performance index of each accountability group in the 2012-13 school year and a performance index of 147.*

(2) . . .

(3) . . .

(4) . . .

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. EDU-19-14-00008-EP, Issue of May 14, 2014. The emergency rule will expire September 6, 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 continues existence of Education Department, with Board of Regents as its head, and authorizes Regents to appoint Commissioner of Education as Department’s Chief Administrative Officer, which is charged with general management and supervision of all public schools and educational work of State.

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

Education Law section 208 authorizes the Regents to establish examina-

tions as to attainments in learning and to award and confer suitable certificates, diplomas and degrees on persons who satisfactorily meet the requirements prescribed.

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

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

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

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

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

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

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

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

2. LEGISLATIVE OBJECTIVES:

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

3. NEEDS AND BENEFITS:

The proposed amendment is necessary to partially implement New York State's approved Elementary and Secondary Education Act (ESEA) Flexibility Waiver Renewal Request relating to the methodology for determining Annual Measurable Objectives for school district/school accountability purposes.

At its February 2014 meeting, the Board of Regents directed the State Education Department (SED) to submit a an ESEA Flexibility Waiver Renewal Request to the United States Department of Education (USDE) to amend the provisions of the State's approved ESEA Flexibility Waiver Request related to making adequate yearly progress (AYP); removal criteria for Priority Schools, Focus Districts and Focus Schools; and the methodology used to determine elementary-middle level English language arts and mathematics annual measurable objectives (AMOs).

On April 22, 2014, the USDE approved SED's request to reset the AMOs. USDE review of the remainder of the State's Waiver Renewal application is still pending. In addition, the USDE informed SED that the proposed amendment of section 100.18(i)(2) to allow certain Focus Schools to be removed from accountability designation without requiring that the removed schools be replaced by other schools, would not be considered to be an amendment to SED's approved ESEA Flexibility Waiver such that USDE approval would be required.

Consistent with the approved Waiver Renewal Request, the proposed amendment amends paragraph 100.18(j) of the Commissioner's Regulations to revise elementary and middle level AMOs to reflect the results from 2012-13 school year assessments that were based on Common Core Learning Standards aligned to college- and career-readiness.

Consistent with discussions between USDE and SED staff, the proposed amendment would also amend paragraph 100.18(i)(2) to allow certain Focus Schools to be removed from accountability designation without requiring that the removed schools be replaced by other schools.

4. COSTS:

Cost to the State: none.

Costs to local government: none.

Cost to private regulated parties: none.

Cost to regulating agency for implementation and continued administration of this rule: none.

The proposed amendment does not impose any direct costs on the State, local governments, private regulated parties or the State Education

Department. It is anticipated that any indirect costs associated with the proposed amendment will be minimal and capable of being absorbed using existing staff and resources.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment relates to State and Federal standards for public school and school district accountability and will not impose any additional program, service, duty or responsibility upon local governments.

If a school district does not meet the criteria for removal but one or more of its focus schools meet the criteria for removal, the school district must, for each focus school it petitions for removal of focus designation, identify school(s) not currently identified as priority or focus to replace the school(s) meeting the criteria for removal, except that a school district is not required to:

(a) designate additional new focus schools to replace focus schools meeting the criteria for removal if by so doing the number of focus schools in the district would exceed the number of focus schools that the Commissioner requires a school district to identify pursuant to 100.18(g)(5); or

(b) designate a school as focus that meets the criteria for focus school removal pursuant to 100.18(i) in order to replace a focus school meeting the criteria for removal.

Notwithstanding the above, a school district must identify at least one school as focus school if the school district does not meet the criteria for removal but all of its priority and focus schools meet the criteria for removal.

6. PAPERWORK:

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

7. DUPLICATION:

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

8. ALTERNATIVES:

There were no significant alternatives and none were considered. The proposed amendment is necessary to partially implement New York State's approved ESEA Flexibility Waiver Renewal Request relating to the methodology for determining Annual Measurable Objectives for school district/school accountability purposes. The State and local educational agencies (LEAs) are required to comply with the ESEA as a condition to their receipt of federal funds under Title I of the ESEA Act of 1965, as amended.

9. FEDERAL STANDARDS:

The proposed amendment is necessary to partially implement New York State's approved ESEA Flexibility Waiver Renewal Request relating to the methodology for determining Annual Measurable Objectives for school district/school accountability purposes. The State Education Department used USDE provided guidance provided by the United States Education Department in drafting the amendments to 100.18(i) and (j).

10. COMPLIANCE SCHEDULE:

It is anticipated regulated parties will be able to achieve compliance with the proposed rule by its effective date. Furthermore, the Department intends to take steps to provide sufficient notice of the proposed amendment to ensure that school districts and students are made aware of the rule changes. The Department will also take steps to share a variety of resources to school districts to provide guidance with implementation.

Regulatory Flexibility Analysis

Small Businesses:

The proposed amendment relates to public school and school district accountability and is necessary to partially implement New York State's approved ESEA Waiver Renewal Request relating to the methodology for determining Annual Measurable Objectives for purposes of school district/school accountability. The State and local educational agencies (LEAs) are required to comply with the ESEA as a condition to their receipt of federal funds under Title I of the ESEA Act of 1965, as amended.

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

Local Governments:

1. EFFECT OF RULE:

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

2. COMPLIANCE REQUIREMENTS:

The proposed amendment is necessary to partially implement New York State's approved ESEA Flexibility Waiver Renewal Request relating to the methodology for calculation of Annual Measurable Objectives (AMOs) for purposes of school district/school accountability.

Consistent with the approved Waiver Renewal Request, the proposed amendment amends paragraph 100.18(j) of the Commissioner's Regulations to revise elementary and middle level AMOs to reflect the results from 2012-13 school year assessments that were based on Common Core Learning Standards aligned to college- and career-readiness.

Consistent with discussions between United States Department of Education (USDE) and SED staff, the proposed amendment would also amend paragraph 100.18(i)(2) to allow certain Focus Schools to be removed from accountability designation without requiring that the removed schools be replaced by other schools.

If a school district does not meet the criteria for removal but one or more of its focus schools meet the criteria for removal, the school district must, for each focus school it petitions for removal of focus designation, identify school(s) not currently identified as priority or focus to replace the school(s) meeting the criteria for removal, except that a school district is not required to:

(a) designate additional new focus schools to replace focus schools meeting the criteria for removal if by so doing the number of focus schools in the district would exceed the number of focus schools that the Commissioner requires a school district to identify pursuant to 100.18(g)(5); or

(b) designate a school as focus that meets the criteria for focus school removal pursuant to 100.18(i) in order to replace a focus school meeting the criteria for removal.

Notwithstanding the above, a school district must identify at least one school as focus school if the school district does not meet the criteria for removal but all of its priority and focus schools meet the criteria for removal.

3. PROFESSIONAL SERVICES:

The proposed amendment imposes no additional professional services requirements.

4. COMPLIANCE COSTS:

The proposed amendment does not impose any direct costs on school districts or charter schools. It is anticipated that any indirect costs associated with the proposed amendment will be minimal and capable of being absorbed using existing staff and resources.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

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

6. MINIMIZING ADVERSE IMPACT:

The proposed amendment relates to public school and school district accountability and is necessary to partially implement New York State's approved Elementary and Secondary Education Act (ESEA) Waiver Renewal Request relating to the methodology for calculation of Annual Measurable Objectives for purposes of school district/school accountability. The State and local educational agencies (LEAs) are required to comply with the ESEA as a condition to their receipt of federal funds under Title I of the Elementary and Secondary Education Act of 1965, as amended.

Consistent with the approved Waiver Renewal Request, the proposed amendment amends paragraph 100.18(j) of the Commissioner's Regulations to revise elementary and middle level AMOs to reflect the results from 2012-13 school year assessments that were based on Common Core Learning Standards aligned to college- and career-readiness.

Consistent with discussions between USDE and SED staff, the proposed amendment would also amend paragraph 100.18(i)(2) to allow certain Focus Schools to be removed from accountability designation without requiring that the removed schools be replaced by other schools.

The rule has been carefully drafted to meet specific federal and State requirements. The Department intends to take steps to provide sufficient notice of the proposed amendment to ensure that school districts and students are made aware of the rule changes. The Department will also take steps to share a variety of resources to school districts to provide guidance with implementation.

7. LOCAL GOVERNMENT PARTICIPATION:

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

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

Pursuant to State Administrative Procedure Act section 207(1)(b), the State Education Department proposes that the initial review of this rule shall occur in the fifth calendar year after the year in which the rule is adopted, instead of in the third calendar year. The justification for a five year review period is that the proposed amendment is necessary to partially implement New York State's approved ESEA Waiver Renewal Request relating to the methodology for determining Annual Measurable Objectives for purposes of school district/school accountability. Accordingly, there is no need for a shorter review period.

The Department invites public comment on the proposed five year

review period for this rule. Comments should be sent to the agency contact listed in item 16. of the Notice of Emergency Adoption and Proposed Rule Making published herewith, and must be received within 45 days of the State Register publication date of the Notice.

Rural Area Flexibility Analysis

1. TYPE AND ESTIMATED NUMBER OF RURAL AREAS:

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

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

The proposed amendment is necessary to partially implement New York State's approved ESEA Flexibility Waiver Renewal Request relating to the methodology for calculation of Annual Measurable Objectives (AMOs) for purposes of school district/school accountability.

Consistent with the approved Waiver Renewal Request, the proposed amendment amends paragraph 100.18(j) of the Commissioner's Regulations to revise elementary and middle level AMOs to reflect the results from 2012-13 school year assessments that were based on Common Core Learning Standards aligned to college- and career-readiness.

Consistent with discussions between United States Department of Education (USDE) and SED staff, the proposed amendment would also amend paragraph 100.18(i)(2) to allow certain Focus Schools to be removed from accountability designation without requiring that the removed schools be replaced by other schools.

If a school district does not meet the criteria for removal but one or more of its focus schools meet the criteria for removal, the school district must, for each focus school it petitions for removal of focus designation, identify school(s) not currently identified as priority or focus to replace the school(s) meeting the criteria for removal, except that a school district is not required to:

(a) designate additional new focus schools to replace focus schools meeting the criteria for removal if by so doing the number of focus schools in the district would exceed the number of focus schools that the Commissioner requires a school district to identify pursuant to 100.18(g)(5); or

(b) designate a school as focus that meets the criteria for focus school removal pursuant to 100.18(i) in order to replace a focus school meeting the criteria for removal.

Notwithstanding the above, a school district must identify at least one school as focus school if the school district does not meet the criteria for removal but all of its priority and focus schools meet the criteria for removal.

The proposed amendment imposes no additional professional service requirements.

3. COMPLIANCE COSTS:

The proposed amendment does not impose any direct costs on school districts or charter schools in rural areas. It is anticipated that any indirect costs associated with the proposed amendment will be minimal and capable of being absorbed using existing staff and resources.

4. MINIMIZING ADVERSE IMPACT:

The proposed amendment relates to public school and school district accountability and is necessary to partially implement New York State's approved Elementary and Secondary Education Act (ESEA) Waiver Renewal Request relating to the methodology for calculation of Annual Measurable Objectives for purposes of school district/school accountability. The State and local educational agencies (LEAs) are required to comply with the ESEA as a condition to their receipt of federal funds under Title I of the Elementary and Secondary Education Act of 1965, as amended.

Consistent with the approved Waiver Renewal Request, the proposed amendment amends paragraph 100.18(j) of the Commissioner's Regulations to revise elementary and middle level AMOs to reflect the results from 2012-13 school year assessments that were based on Common Core Learning Standards aligned to college- and career-readiness.

Consistent with discussions between USDE and SED staff, the proposed amendment would also amend paragraph 100.18(i)(2) to allow certain Focus Schools to be removed from accountability designation without requiring that the removed schools be replaced by other schools.

The rule has been carefully drafted to meet specific federal and State requirements. Since these requirements apply to all local educational agencies in the State that receive ESEA funds, it is not possible to adopt different standards for school districts and charter schools in rural areas. The Department intends to take steps to provide sufficient notice of the proposed amendment to ensure that school districts and students are made aware of the rule changes. The Department will also take steps to share a variety of resources to school districts to provide guidance with implementation.

5. RURAL AREA PARTICIPATION:

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

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

Pursuant to State Administrative Procedure Act section 207(1)(b), the State Education Department proposes that the initial review of this rule shall occur in the fifth calendar year after the year in which the rule is adopted, instead of in the third calendar year. The justification for a five year review period is that the proposed amendment is necessary to implement to partially implement New York State's approved ESEA Waiver Renewal Request relating to the methodology for determining Annual Measurable Objectives for purposes of school district/school accountability. Accordingly, there is no need for a shorter review period.

The Department invites public comment on the proposed five year review period for this rule. Comments should be sent to the agency contact listed in item 16. of the Notice of Emergency Adoption and Proposed Rule Making published herewith, and must be received within 45 days of the State Register publication date of the Notice.

Job Impact Statement

The proposed amendment relates to public school and school district accountability and is necessary to partially implement New York State's approved Elementary and Secondary Education Act (ESEA) Waiver Renewal Request relating to the methodology for determining Annual Measurable Objectives for purposes of school district/school accountability. The State and local educational agencies (LEAs) are required to comply with the ESEA as a condition to their receipt of federal funds under Title I of the ESEA Act of 1965, as amended.

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

Assessment of Public Comment

The agency received no public comment

NOTICE OF ADOPTION**Annual Professional Performance Reviews (APPR)**

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

Filing No. 604

Filing Date: 2014-07-09

Effective Date: 2014-07-30

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

Subject: Annual Professional Performance Reviews (APPR).

Purpose: To implement chapter 56 of the Laws of 2014.

Text or summary was published in the February 26, 2014 issue of the Register, I.D. No. EDU-08-14-00023-EP.

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

Revised rule making(s) were previously published in the State Register on March 26, 2014 and May 14, 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

Initial Review of Rule

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

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION**Teacher Education Preparation Programs and Clinically Rich Graduate Level Teacher Preparation Pilot Programs**

I.D. No. EDU-10-14-00013-A

Filing No. 603

Filing Date: 2014-07-09

Effective Date: 2014-07-30

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

Action taken: Amendment of section 52.21 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207(not subdivided), 210(not subdivided), 305(1), (2), 3001(2), 3004(1), 3006(1)(b) and 3009(1)(b)

Subject: Teacher Education Preparation Programs and Clinically Rich Graduate Level Teacher Preparation Pilot Programs.

Purpose: To provide teaching candidates with the option of completing a single teaching placement instead of two 20 day placements in a registered teacher education program if certain conditions are met.

Text or summary was published in the March 12, 2014 issue of the Register, I.D. No. EDU-10-14-00013-P.

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

Revised rule making(s) were previously published in the State Register on May 28, 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

Initial Review of Rule

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

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION**Distinguished Educators**

I.D. No. EDU-18-14-00005-A

Filing No. 605

Filing Date: 2014-07-09

Effective Date: 2014-07-30

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

Action taken: Amendment of section 100.17 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207, 305(1), (2), (20), 211-b(1-5) and 211-c(1-8)

Subject: Distinguished Educators.

Purpose: To modify criteria for appointment, roles, responsibilities, protocols and procedures for distinguished educators to ensure that they are better able carry-out their statutory responsibilities and functions to assist low performing schools pursuant to Education Law sections 211-b and 211-c.

Text of final rule: Subdivisions (c), (d), and (f) of section 100.17 of the Regulations of the Commissioner of Education are amended, effective July 30, 2014, as follows:

(c) Appointment. (1) . . .

(2) From the applications submitted pursuant to paragraph (1) of this subdivision, the Board of Regents delegates to the commissioner the authority pursuant to Education Law § 211-c(1) to designate a pool of eligible individuals to serve as distinguished educators. Individuals [in the pool] shall serve [a maximum of] *in the pool* for three years, provided that an individual's service in the pool may be renewed [for an additional year] *annually* upon submission of evidence of ongoing professional development.

(3) From the pool of distinguished educators designated pursuant to

paragraph (2) of this subdivision, the commissioner shall appoint distinguished educators who have expressed their willingness to assist low performing districts in improving their academic performance, pursuant to the following:

(i) The commissioner may appoint [a distinguished educator as a consultant] *one or more distinguished educators as consultants* to a school district [or] *and/or assign such distinguished educator(s) to school(s) within such district:*

(a) when such district has one or more schools designated as a priority school or focus school pursuant to section 100.18(g) of this Part and/or identified as persistently lowest achieving and placed under registration review pursuant to section 100.2(p)(9) and (10) of this Part, and [are at risk of closure for failure to make satisfactory progress under Federal and State accountability standards] *failed to achieve adequate yearly progress for four or more years; and/or*

(b) as a member of a joint intervention team pursuant to Education Law section 211-b(2)(b) and as provided in section 100.18(g)(2)(v) and (l)(2) of this Part.

(ii) The distinguished educator shall be appointed for a one-year term and, upon satisfactory *annual* evaluation pursuant to subdivision (g) of this section, may be reappointed for one *or more* additional *one-* year terms.

- (iii) . . .
- (iv) . . .
- (v) . . .

(d) Roles and responsibilities.

- (1) . . .

(2) School districts.

(i) The school district to which a distinguished educator is appointed shall cooperate fully with an appointed distinguished educator. *Such cooperation shall include, but not be limited, to:*

(a) *providing the distinguished educator with a space to work and a district email address to be used for official correspondence;*

(b) *placing on the district website, reports of the distinguished educator and contact information for the distinguished educator;*

(c) *providing the distinguished educator with an opportunity to present a report to the board of education at least quarterly on the implementation of the improvement efforts of the district and/or any schools to which a distinguished educator is assigned; and*

(d) *promptly scheduling meetings with district personnel as requested by the distinguished educator.*

- (ii) . . .
- (iii) . . .
- (iv) . . .
- (v) . . .
- (vi) . . .

(f) Reporting requirements. Within [45] *forty-five (45)* days of appointment to the school district, a distinguished educator *and the district* shall *work collaboratively* to develop an action plan outlining [his/her] *the* goals and objectives for the district *and the distinguished educator* for the ensuing school year [and shall also submit such action plan to the commissioner or his or her designee for approval]. *The plan shall include, but not be limited to, an outline of the goals and objectives the district is responsible for achieving and the technical assistance the distinguished educator will provide in order to support the district in achieving its goals and objectives. The distinguished educator shall submit such action plan to the commissioner or his or her designee for approval.* Upon approval, the distinguished educator shall provide a copy of the action plan to the school district. The distinguished educator shall also submit quarterly reports to the commissioner or his or her designee in a form prescribed by the commissioner.

Final rule as compared with last published rule: Nonsubstantive changes were made in section 100.17(c)(3).

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

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

Since publication of a Notice of Proposed Rule Making in the State Register on May 7, 2014, nonsubstantial revisions were made to section 100.17(c)(i) and (ii) to correct certain underlining and bracketing errors.

The above revisions do not require any changes to the previously published Regulatory Impact Statement, Regulatory Flexibility Analysis and Rural Area Flexibility Analysis.

Revised Job Impact Statement

Since publication of a Notice of Proposed Rule Making in the State Register on May 7, 2014, nonsubstantial revisions were made to section 100.17(c)(i) and (ii) to correct certain underlining and bracketing errors.

The proposed amendment, as so revised, modifies criteria for appointment, roles, responsibilities, protocols and procedures of Distinguished Educators appointed to a school district or charter school pursuant to Education Law sections 211-b or 211-c. The revised proposed amendment will not have a substantial adverse impact on job or employment opportunities. Because it is evident from the nature and purpose of the revised proposed amendment that it will have no impact on jobs or employment opportunities, no further measures were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

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

Since publication of a Notice of Proposed Rule Making in the State Register on May 7, 2014, the State Education Department received the following comment:

COMMENT:

The Conference of Big 5 School Districts and Assemblyman Sean M. Ryan submitted comments objecting to the provisions in the proposed rule that permit the appointment of multiple distinguished educators to specific schools, as beyond the statutory authority afforded in Education Law § 211-c, which speaks only to the appointment of a distinguished educator to a school district and not to a specific school. In addition, both the Conference and Assemblyman Ryan shared concerns over the fiscal burdens that could result from multiple distinguished educator appointments to a single district.

DEPARTMENT RESPONSE:

The Department disagrees with the comments and believes that the statute permits the appointment of multiple distinguished educators as well as the assignment of such appointed distinguished educators to specific schools. In addition, the Department believes that because districts that meet the criteria for appointment of distinguished educators receive additional funding, such as Contract for Excellence and Section 1003(a) and (g) Title I School Improvement Grants, to support their school improvement efforts, the appointment of a distinguished educator does not place an undue fiscal burden upon the district. No change in the regulation is necessary.

NOTICE OF ADOPTION

Parental Consent for the Initial Provision of Special Education Services/Programs to a Student with a Disability for July/August

I.D. No. EDU-18-14-00006-A

Filing No. 606

Filing Date: 2014-07-09

Effective Date: 2014-07-30

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

Action taken: Amendment of section 200.5 of Title 8 NYCRR.

Statutory authority: Education Law, sections 101(not subdivided), 207(not subdivided), 305(1), (2), (20), 4402(2), 4403(3); L. 2014, ch. 56, part A, section 16-a

Subject: Parental consent for the initial provision of special education services/programs to a student with a disability for July/August.

Purpose: To conform the Commissioner’s Regulations to section 16-a of part A of chapter 56 of the Laws of 2014.

Text or summary was published in the May 7, 2014 issue of the Register, I.D. No. EDU-18-14-00006-P.

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

Text of rule and any required statements and analyses may be obtained from: 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

Initial Review of Rule

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

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

Assessment of Public Comment

Since publication of a Notice of Proposed Rule Making in the State Register on May 7, 2014, the State Education Department (SED) received the following comments on the proposed amendment.

1. COMMENT:

Fully support the proposed amendment. Current requirement appears to be repetitive since consent is received prior to the initial provision of special education services, which includes summer services. Applaud SED's efforts to create higher standards for the quality of special education services for students by eliminating redundancy and promoting efficiency in the parental consent process. Eliminating the duplicative consent requirement (initial provision of special education services and initial provision of summer services) will reduce confusion for parents and remove any delay in providing services to students.

DEPARTMENT RESPONSE:

Federal and State law and regulations will continue to require that parental consent be obtained prior to the initial provision of special education services, including whenever July/August services are recommended at the time the student first receives special education. Minimizing the instances when consent from parents must be obtained will provide some relief from procedural compliance requirements. Pursuant to Chapter 56 of the Laws of 2014, which has been in effect since March 31, 2014, school districts are no longer required to obtain parental consent for the initial provision of special education services and programs during the months of July and August.

2. COMMENT:

Ensure that a template of expected detailed records of attempts is provided to the school districts and Committees on Special Education so there is a uniform way to document the results of those attempts.

DEPARTMENT RESPONSE:

Consistent with Section 16-a of Chapter 56, the proposed amendment eliminates the requirement for school districts to obtain parental consent prior to the initial provision of special education during the months of July and August and, therefore, eliminates the requirement for districts to document attempts to obtain such consent. However, parental consent will continue to be required prior to the first time a student is provided special education services. Documentation of reasonable efforts to obtain consent for the initial provision of special education, as well as for initial evaluations and reevaluations, must be maintained by the school district. Documentation must include a record of the school district's attempts to obtain consent such as detailed records of telephone calls made or attempted and the results of those calls, copies of any correspondence sent to the parents and any responses received, and detailed records of visits made to the parent's home or place of employment and the results of those visits. SED believes that districts are in the best position to determine what documentation and records are needed to demonstrate the attempts that were made to obtain parental consent.

NOTICE OF ADOPTION

Student Promotion/placement and Permanent Records and Transcripts, and Grades 3-8 State ELA and Mathematics Assessments

I.D. No. EDU-19-14-00005-A

Filing No. 597

Filing Date: 2014-07-09

Effective Date: 2014-07-30

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

Action taken: Amendment of sections 100.2, 100.3 and 100.4; and addition of section 104.3 to Title 8 NYCRR.

Statutory authority: Education Law, sections 101(not subdivided), 207(not subdivided), 208(not subdivided), 209(not subdivided), 210(not subdivided), 215(not subdivided), 305(1), (2), (20), (45), (46), (47), 308(not subdivided), 309(not subdivided) and 3204(3); L. 2014, ch. 56, part AA, subparts B and C

Subject: Student promotion/placement and permanent records and transcripts, and grades 3-8 State ELA and Mathematics assessments.

Purpose: Conform Commissioner's Regulations to Education Law section 305(45), (46) and (47), as added by subparts B and C of part AA of L. 2014, ch. 56.

Text or summary was published in the May 14, 2014 issue of the Register, I.D. No. EDU-19-14-00005-EP.

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

Text of rule and any required statements and analyses may be obtained from: 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

Revised Regulatory Flexibility Analysis

Small Businesses:

The proposed amendment is necessary to conform the Commissioner's

Regulations to Education Law 305(45), (46) and (47), as added by Part AA, Subparts B and C of Chapter 56 of the Laws of 2014. The proposed amendment relates to State learning standards, State assessments, graduation and diploma requirements, and higher levels of student achievement. Because it is evident from the nature of the proposed amendment that it does not affect small businesses, no further measures were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses is not required and one has not been prepared.

Local Governments:

1. EFFECT OF RULE:

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

2. COMPLIANCE REQUIREMENTS:

The proposed amendment is necessary to conform the Commissioner's Regulations to Education Law 305(45), (46) and (47), as added by Part AA, Subparts B and C of Chapter 56 of the Laws of 2014, and does not impose any additional compliance requirements upon school districts beyond those inherent in the statute.

Consistent with the statute, the proposed amendment provides that no school district shall make any student promotion or placement decisions based solely or primarily on student performance on the state administered standardized English language arts and mathematics assessments for grades three through eight. However, a school district may consider student performance on such state assessments provided that the school district uses multiple measures in addition to such assessments and that such assessments do not constitute the major factor in such determinations.

Consistent with the statute, the proposed amendment further requires each school district to adopt a grade promotion and placement policy that is consistent with sections 100.3(b)(2)(iv), 100.4(b)(2)(v) and 100.4(e)(6) of this Commissioner's Regulations, and annually notify the parents and persons in parental relation to the students attending such district of such policy along with an explanation of how the policy was developed. Such notification may be provided on the school district's website, if one exists, or as part of an existing informational document that is provided to parents and persons in parental relation. The proposed amendment imposes no additional professional service requirements.

Consistent with the statute, the proposed amendment also provides, for the period commencing on April 1, 2014 and expiring on December 31, 2018, that no school district or board of cooperative educational services may place or include on a student's official transcript or maintain in a student's permanent record any individual student score on a State administered standardized English language arts or mathematics assessment for grades three through eight, and that any test results on such assessments sent to parents/persons in parental relation include a clear and conspicuous notice that such results will not be included on the student's official transcript or in the student's permanent record and are being provided to the student and parents/persons in parental relation for diagnostic purposes.

3. PROFESSIONAL SERVICES:

The proposed amendment does not impose any additional professional service requirements on school districts.

4. COMPLIANCE COSTS:

The proposed amendment is necessary to conform the Commissioner's Regulations to Chapter 56 of the Laws of 2014, and does not impose any additional costs on school districts beyond those inherent in the statute.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

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

6. MINIMIZING ADVERSE IMPACT:

The proposed amendment merely conforms the Commissioner's Regulations to Chapter 56 of the Laws of 2014, and does not impose any additional compliance requirements or costs on school districts beyond those inherent in the statute.

7. LOCAL GOVERNMENT PARTICIPATION:

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

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

Pursuant to State Administrative Procedure Act section 207(1)(b), the State Education Department proposes that the initial review of this rule shall occur in the fifth calendar year after the year in which the rule is adopted, instead of in the third calendar year. The justification for a five year review period is that the proposed amendment is necessary to implement statutory requirements in Education Law 305(45), (46) and (47), as added by Part AA, Subparts B and C of Chapter 56 of the Laws of 2014, and therefore the substantive provisions of the proposed rule cannot be repealed or modified unless there is a further statutory change. Accordingly,

there is no need for a shorter review period. The Department invites public comment on the proposed five year review period for this rule. Comments should be sent to the agency contact listed in item 16. of the Notice of Emergency Adoption and Proposed Rule Making published herewith, and must be received within 45 days of the State Register publication date of the Notice.

Revised Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed amendment applies to each of the 695 public school districts in the State, including those located in the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square mile or less.

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

The proposed amendment is necessary to conform the Commissioner's Regulations to Education Law 305(45), (46) and (47), as added by Part AA, Subparts B and C of Chapter 56 of the Laws of 2014, and does not impose any additional compliance requirements upon school districts in rural areas beyond those inherent in the statute.

Consistent with the statute, the proposed amendment provides that no school district shall make any student promotion or placement decisions based solely or primarily on student performance on the state administered standardized English language arts and mathematics assessments for grades three through eight. However, a school district may consider student performance on such state assessments provided that the school district uses multiple measures in addition to such assessments and that such assessments do not constitute the major factor in such determinations.

Consistent with the statute, the proposed amendment requires each school district to adopt a grade promotion and placement policy that is consistent with sections 100.3(b)(2)(iv), 100.4(b)(2)(v) and 100.4(e)(6) of this Commissioner's Regulations, and annually notify the parents and persons in parental relation to the students attending such district of such policy along with an explanation of how the policy was developed. Such notification may be provided on the school district's website, if one exists, or as part of an existing informational document that is provided to parents and persons in parental relation.

Consistent with the statute, the proposed amendment also provides, for the period commencing on April 1, 2014 and expiring on December 31, 2018, that no school district or board of cooperative educational services may place or include on a student's official transcript or maintain in a student's permanent record any individual student score on a State administered standardized English language arts or mathematics assessment for grades three through eight, and that any test results on such assessments sent to parents/persons in parental relation include a clear and conspicuous notice that such results will not be included on the student's official transcript or in the student's permanent record and are being provided to the student and parents/persons in parental relation for diagnostic purposes.

The proposed amendment imposes no additional professional service requirements.

3. COMPLIANCE COSTS:

The proposed amendment is necessary to conform the Commissioner's Regulations to Chapter 56 of the Laws of 2014 and does not impose any additional costs on school districts beyond those inherent in the statute.

4. MINIMIZING ADVERSE IMPACT:

The proposed amendment is merely conforms the Commissioner's Regulations to Chapter 56 of the Laws of 2014, and does not impose any additional compliance requirements or costs on school districts beyond those inherent in the statute. Because the statutory requirement upon which the proposed amendment is based applies to all school districts in the State, it is not possible to establish differing compliance or reporting requirements or timetables or to exempt schools in rural areas from coverage by the proposed amendment.

5. RURAL AREA PARTICIPATION:

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

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

Pursuant to State Administrative Procedure Act section 207(1)(b), the State Education Department proposes that the initial review of this rule shall occur in the fifth calendar year after the year in which the rule is adopted, instead of in the third calendar year. The justification for a five year review period is that the proposed amendment is necessary to implement statutory requirements Education Law 305(45), (46) and (47), as added by Part AA, Subparts B and C of Chapter 56 of the Laws of 2014, and therefore the substantive provisions of the proposed rule cannot be repealed or modified unless there is a further statutory change. Accordingly, there is no need for a shorter review period. The Department invites public comment on the proposed five year review period for this rule. Comments should be sent to the agency contact listed in item 16. of the Notice of

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

Initial Review of Rule

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

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

Assessment of Public Comment

Since publication of a Notice of Emergency Adoption and Proposed Rule Making in the State Register on May 14, 2014, the State Education Department received the following comment.

COMMENT:

The application of the rule's requirements to charter schools unlawfully conflicts with the New York State Education Law, and further undermines charter schools' longstanding autonomy regarding their educational programming.

DEPARTMENT RESPONSE:

The proposed rule is necessary to conform the Commissioner's Regulations to Subparts B and C of Part AA of Chapter 56 of the Laws of 2014, which became effective April 1, 2014. Consistent with the statute, the proposed rule by its terms applies to school districts and boards of cooperative educational services (BOCES). However, it appears that the previously published Regulatory Flexibility Analysis and the Rural Area Flexibility Analysis inadvertently included references to charter schools in their respective analyses. The Department has therefore prepared a Revised Regulatory Flexibility Analysis and Revised Rural Area Flexibility Analysis to delete such references and has submitted them for publication herein with the Notice of Adoption.

NOTICE OF ADOPTION

Appeals to Commissioner of Education Relating to New York City Charter School Co-Location Sites

I.D. No. EDU-19-14-00006-A

Filing No. 634

Filing Date: 2014-07-14

Effective Date: 2014-07-30

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

Action taken: Amendment of section 276.11 of Title 8 NYCRR.

Statutory authority: Education Law, sections 101(not subdivided), 207(not subdivided), 305(1), (2), 310(1), (4), (6), (7), 311(1)-(4) and 2853(3)(e), as added by L. 2014, ch. 56, part BB, section 5

Subject: Appeals to Commissioner of Education relating to New York City charter school co-location sites.

Purpose: To implement Education Law, section 2853(3)(e), as added by L. 2014, ch. 56, part BB, section 5

Text of final rule: Paragraph (1) of subdivision (b) of section 276.11 of the Regulations of the Commissioner of Education is amended, effective July 30, 2011, as follows:

(1) The procedures set forth in this section shall apply to:

(i) appeals pursuant to Education Law section 2853(3)(a-5) from:
[(i)] (a) final determinations of the board of education to locate or co-locate a charter school within a public school building;

[(ii)] (b) the implementation of, and compliance with, the building usage plan developed pursuant to Education Law section 2853(3)(a-3); and/or

[(iii)] (c) revisions of such a building usage plan, relating to a proposal for the collaborative usage of shared resources and spaces between the charter school and the non-charter schools, on the grounds that such revision fails to meet the equitable access standard set forth in Education Law section 2853(3)(a-3)(2)(B); or

(ii) appeals pursuant to Education Law section 2853(3)(e) from the city school district's offer or failure to offer a co-location site or space in a privately owned or other publicly owned facility upon a written request for co-location made by:

(a) charter schools that are approved by their charter entity pursuant to Article 56 of the Education Law to first commence instruction for the 2014-2015 school year or thereafter; or

(b) charter schools that require additional space due to an

expansion of grade level for the 2014-2015 school year or thereafter, and which are approved by their charter entity pursuant to Article 56 of the Education Law for those grades newly provided.

Final rule as compared with last published rule: Nonsubstantive changes were made in section 276.11(b)(1).

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

Revised Regulatory Impact Statement

Since publication of a Notice of Emergency Adoption and Proposed Rule Making in the State Register on May 14, 2014, a nonsubstantial revision has been made to the proposed amendment as follows:

Section 276.11(b)(1)(ii) has been revised to clarify, consistent with Education Law § 2853(3)(e), the amendment's applicability to appeals from the New York City School District's offer or failure to offer a co-location site "or space in a privately owned or other publicly owned facility."

The above revision requires that the Needs and Benefits section of the previously published Regulatory Impact Statement be revised to read as follows:

3. NEEDS AND BENEFITS:

The proposed amendment is necessary to implement § 5 of Part BB of Chapter 56 of the Laws of 2014 by establishing procedures for an expedited Education Law § 310 appeal to the Commissioner for appeals from the New York City School District's offer or refusal to offer a co-location site or space in a privately owned or other publicly owned facility upon written request for co-location made by:

- charter schools that are approved by their charter entity pursuant to Article 56 of the Education Law to first commence instruction for the 2014-2015 school year or thereafter; and
- charter schools that require additional space due to an expansion of grade level for the 2014-2015 school year or thereafter, and which are approved by their charter entity pursuant to Article 56 of the Education Law for those grades newly provided.

The proposed amendment enacts technical amendments to § 276.11 of the Commissioner's Regulations to provide for expedited appeals in the above instances pursuant to Education Law §§ 310 and 2853(3)(e).

Revised Regulatory Flexibility Analysis

Since publication of a Notice of Emergency Adoption and Proposed Rule Making in the State Register on May 14, 2014, a nonsubstantial revision has been made to the proposed amendment as described in the Revised Regulatory Impact Statement submitted herewith.

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

COMPLIANCE REQUIREMENTS:

The proposed amendment is necessary to implement § 5 of Part BB of Chapter 56 of the Laws of 2014, which became effective on March 31, 2014, and does not impose any additional compliance requirements beyond those imposed by the statute. The proposed amendment establishes procedures for an expedited Education Law § 310 appeal to the Commissioner from the New York City School District's offer or refusal to offer a co-location site or space in a privately owned or other publicly owned facility upon written request for co-location made by:

- charter schools that are approved by their charter entity pursuant to Article 56 of the Education Law to first commence instruction for the 2014-2015 school year or thereafter; and
- charter schools that require additional space due to an expansion of grade level for the 2014-2015 school year or thereafter, and which are approved by their charter entity pursuant to Article 56 of the Education Law for those grades newly provided.

The proposed amendment enacts technical amendments to § 276.11 of the Commissioner's Regulations to provide for expedited appeals in the above instances pursuant to Education Law §§ 310 and 2853(3)(e).

MINIMIZING ADVERSE IMPACT:

The proposed amendment is necessary to implement § 5 of Part BB of Chapter 56 of the Laws of 2014 and will not impose any compliance requirements or costs on the State or local governments beyond those imposed by the statute. The proposed amendment is establishes procedures for an expedited Education Law § 310 appeal to the Commissioner from the New York City School District's offer or refusal to offer a co-location site or space in a privately owned or other publicly owned facility upon written request for co-location made by:

- charter schools that are approved by their charter entity pursuant to Article 56 of the Education Law to first commence instruction for the 2014-2015 school year or thereafter; and
- charter schools that require additional space due to an expansion of grade level for the 2014-2015 school year or thereafter, and which are ap-

proved by their charter entity pursuant to Article 56 of the Education Law for those grades newly provided.

The proposed amendment enacts technical amendments to § 276.11 of the Commissioner's Regulations to provide for expedited appeals in the above instances pursuant to Education Law §§ 310 and 2853(3)(e).

Revised Rural Area Flexibility Analysis

Since publication of a Notice of Emergency Adoption and Proposed Rule Making in the State Register on May 14, 2014, a nonsubstantial revision has been made to the proposed amendment as described in the Revised Regulatory Impact Statement submitted herewith.

The proposed amendment, as so revised, relates to expedited appeals to the Commissioner of Education pursuant to Education Law §§ 310 and 2853(3)(e) regarding New York City charter school co-locations. The revised proposed amendment is applicable to the City School District of the City of New York and will not have an adverse impact on rural areas or impose reporting, recordkeeping or other compliance requirements on public or private entities in rural areas. Because it is evident from the nature of the revised proposed amendment that it does not affect rural areas or public or private entities in rural areas, no further measures were needed to ascertain that fact and none were taken. Accordingly, a rural area flexibility analysis is not required and one has not been prepared.

Revised Job Impact Statement

Since publication of a Notice of Emergency Adoption and Proposed Rule Making in the State Register on May 14, 2014, a nonsubstantial revision has been made to the proposed amendment as described in the Revised Regulatory Impact Statement submitted herewith.

The proposed amendment, as so revised, is necessary to implement § 5 of Part BB of Chapter 56 of the Laws of 2014, and relates to expedited appeals to the Commissioner of Education pursuant to Education Law §§ 310 and 2853(3)(e) regarding New York City charter school co-locations. The revised proposed amendment will not have an adverse impact on jobs or employment opportunities. Because it is evident from the nature of the revised proposed amendment that it will have a positive impact, or no impact, on jobs or employment opportunities, no further steps were needed to ascertain those facts and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

Initial Review of Rule

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

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Traditional Standardized Tests Administration

I.D. No. EDU-19-14-00007-A

Filing No. 602

Filing Date: 2014-07-09

Effective Date: 2014-07-30

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

Action taken: Amendment of sections 100.3, 151-1.2 and 151-1.3 of Title 8 NYCRR.

Statutory authority: Education Law, sections 101(not subdivided), 207(not subdivided), 208(not subdivided), 209(not subdivided), 210(not subdivided), 215(not subdivided), 305(1), (2), (20), (44), 308(not subdivided), 309(not subdivided), 3204(3), 3602-e(12) and (15); L. 2014, ch. 56, part AA, subpart A

Subject: Traditional standardized tests administration.

Purpose: To prohibit administration of traditional standardized tests in prekindergarten programs and in grades kindergarten through two.

Text or summary was published in the May 14, 2014 issue of the Register, I.D. No. EDU-19-14-00007-EP.

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

Text of rule and any required statements and analyses may be obtained from: 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

Initial Review of Rule

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

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

Assessment of Public Comment

Since publication of a Notice of Emergency Adoption and Proposed Rule Making in the State Register on May 14, 2014, the State Education Department received the following comment.

1. COMMENT:

Extending the applicability of the proposed rule to charter schools unlawfully conflicts with the New York Education Law and threatens charter schools' ability to make decisions regarding their own educational programming.

DEPARTMENT RESPONSE:

The regulatory language does not address charter schools directly—it imposes the requirements on school districts and registered nonpublic schools. However, Education Law § 2854(1)(b) states that “a charter school shall meet the same health and safety, civil rights, and student assessment requirements applicable to other public schools. . . [emphasis supplied].”

The proposed rule is necessary to conform the Commissioner’s Regulations to Subpart A of Part AA of Chapter 56 of the Laws of 2014, which became effective April 1, 2014, and which adds a new subdivision (44) to Education Law section 305, and amends Education Law section 3602-e(15) to direct the Commissioner to prohibit the administration of traditional standardized tests, as defined in regulations issued by the Commissioner, in prekindergarten programs (including Universal Prekindergarten programs), and in grades kindergarten through second grade.

Consistent with the statute, the proposed rule prohibits the administration of traditional standardized tests in prekindergarten programs (including Universal Prekindergarten programs), and in grades kindergarten through two, and accordingly is “a student assessment requirement applicable to other public schools” and as such the proposed rule is also applicable to charter schools pursuant to Education Law § 2854(1)(b).

2. COMMENT:

The definition of “traditional standardized test” is ambiguous and overbroad. First, it is not clear how standardized tests are differentiated from “performance assessments,” which are expressly permitted under the proposed rule. Second, this definition is unnecessarily overbroad, and will have the detrimental effect of limiting charter schools’ flexibility and autonomy regarding internal assessments used to identify learning gaps in student achievement. SED should revise the proposed rule to clarify that the definition of “traditional standardized test” is limited to the annual New York State math and English language arts assessments.

DEPARTMENT RESPONSE:

The proposed rule is necessary to conform the Commissioner’s Regulations to Subpart A of Part AA of Chapter 56 of the Laws of 2014, which became effective April 1, 2014, and which adds a new subdivision (44) to Education Law section 305, and amends Education Law section 3602-e(15) to direct the Commissioner to prohibit the administration of traditional standardized tests, as defined in regulations issued by the Commissioner, in prekindergarten programs (including Universal Prekindergarten programs), and in grades kindergarten through second grade.

The Department does not believe the definition of “traditional standardized tests” in the regulation is overly broad. On the contrary, the same definition can be found in section 30-2.2 of the Rules of the Board of Regents, which relates to Annual Professional Performance Reviews of teachers and building principals pursuant to Education Law § 3012-c, and is needed to provide a consistent, uniform definition that meets statutory requirements.

Moreover, Subpart A of Part AA of Chapter 56 of the Laws of 2014 specifically exempts “assessments in which students perform real-world tasks that demonstrate application of knowledge and skills” from the definition of traditional standardized assessments. Therefore, the exclusion of performance assessments in the regulation from the definition of traditional standardized assessment is consistent with the statute.

NOTICE OF ADOPTION

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

I.D. No. EDU-19-14-00008-A

Filing No. 599

Filing Date: 2014-07-09

Effective Date: 2014-07-30

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

Action taken: Amendment of section 100.18(i) and (j) of Title 8 NYCRR.

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

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

Purpose: To partially implement New York State’s ESEA Flexibility Waiver Renewal with respect to Annual Measurable Objectives (AMOs).

Text or summary was published in the May 14, 2014 issue of the Register, I.D. No. EDU-19-14-00008-EP.

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

Text of rule and any required statements and analyses may be obtained from: 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

Initial Review of Rule

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

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF EXPIRATION

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

Regents Research Paper

I.D. No.	Proposed	Expiration Date
EDU-28-13-00011-RP	July 10, 2013	July 10, 2014

Department of Financial Services

**EMERGENCY
RULE MAKING**

Provider Requirements for Insurance Reimbursement of Applied Behavior Analysis

I.D. No. DFS-30-14-00014-E

Filing No. 630

Filing Date: 2014-07-14

Effective Date: 2014-07-14

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

Action taken: Addition of Part 440 (Regulation 201) to Title 11 NYCRR.

Statutory authority: Financial Services Law, sections 202 and 302; Insurance Law, sections 301, 1109, 1124, 3216, 3221, 4303, and 4709; Public Health Law, section 4406

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

Specific reasons underlying the finding of necessity: Chapters 595 and 596 of the Laws of 2011 require all policies and contracts subject to sections 3216(i)(25), 3221(l)(17) and 4303(ee) of the Insurance Law that are issued, renewed, modified, altered or amended on or after November 1, 2012, to provide coverage for autism spectrum disorder (“ASD”), including behavioral health treatment in the form of applied behavior analysis (“ABA”).

Chapters 595 and 596 of the Laws of 2011 also require that the Superintendent of Financial Services (the “Superintendent”), in consultation with the Commissioners of Health and Education, promulgate regulations that establish standards of professionalism, supervision and relevant experience for individuals who provide or supervise behavioral health treatment in the form of ABA.

In response to the statutory directive, the Superintendent seeks to promulgate new 11 NYCRR 440 (Insurance Regulation 201). The Superintendent, in consultation with the Commissioners of Health and Education, has determined that 11 NYCRR 440 will require that behavior analysts and assistant behavior analysts who work under the supervision of behavior analysts, meet the necessary minimum standards of education, training and relevant experience to ensure that individuals with ASD receive ABA services from qualified providers.

This rule also is necessary to ensure that insurers and health maintenance organizations (“HMOs”) establish adequate provider networks and provider credentialing requirements that comply with this rule so that those entities may effectively provide insurance coverage for critical ABA therapy to those individuals diagnosed with ASDs, and for whom out-of-pocket costs for those services are prohibitively expensive.

In light of the foregoing, it is critical that this new 11 NYCRR 440 be adopted as promptly as possible, and that the rule be promulgated on an emergency basis for the furtherance of the public health and general welfare.

Subject: Provider Requirements for Insurance Reimbursement of Applied Behavior Analysis.

Purpose: Establish standards of professionalism, supervision, and relevant experience for providers of Applied Behavior Analysis.

Text of emergency rule: Section 440.0 Purpose.

The purpose of this Part is to establish standards of professionalism, supervision, and relevant experience for individuals who provide or supervise the provision of behavioral health treatment in the form of applied behavior analysis, for insurance coverage pursuant to Insurance Law sections 3216(i)(25), 3221(l)(17) and 4303(ee).

Section 440.1 Definitions.

For purposes of this Part:

(a) Applied behavior analysis or ABA means the design, implementation, and evaluation of environmental modifications, using behavioral stimuli and consequences, to produce socially significant improvement in human behavior, including the use of direct observation, measurement, and functional analysis of the relationship between environment and behavior.

(b) ABA aide means an individual who meets at least one of the following requirements:

(1) a high school diploma or its equivalent; and

(i) two years of full-time direct, supervised work experience providing services to children with disabilities; or

(ii) current matriculation in a degree program that is an approved professional preparation program for licensure in psychology, early childhood development, early childhood education, speech language pathology, special or elementary education, or in a degree program necessary for a license, registration, or certification in a profession designated as qualified personnel in 10 NYCRR 69-4.1(ak);

(2) an associate’s degree or higher level degree in a profession listed in Education Law Title VIII or in teaching;

(3) certification as a teaching assistant; or

(4) the minimum qualifications set forth in 10 NYCRR 69-4.25(e).

(c) Assistant behavior analyst means:

(1) an individual who is certified as an assistant behavior analyst pursuant to a behavior analyst certification board to provide behavioral health treatment under the supervision of a behavior analyst; or

(2) an ABA aide who meets the education, experience and supervision requirements for assistant behavior analysts as set forth in this Part.

(d) Applied behavior analysis provider or ABA provider means:

(1) an assistant behavior analyst who directly provides ABA pursuant to an ABA treatment plan to an individual diagnosed with autism spectrum disorder;

(2) a behavior analyst who directly provides or supervises an assistant behavior analyst in the provision of ABA; or

(3) a licensed provider.

(e) Autism spectrum disorder or ASD shall have the meaning ascribed by Insurance Law section 3216(i)(25)(C)(i).

(f) Behavior analyst means an individual who is certified as a behavior analyst pursuant to a behavior analyst certification board.

(g) Behavior analyst certification board means:

(1) the Behavior Analyst Certification Board, Inc., a nonprofit corporation established to meet professional credentialing needs identified by behavior analysts, governments, and consumers of behavior analysis services; or

(2) any other entity, acceptable to the superintendent, in consultation with the Commissioners of Health and Education, that has a certification or approval process for behavior analysts.

(h) Behavioral health treatment means, when prescribed or ordered for an individual diagnosed with ASD by a licensed physician or licensed psychologist, counseling and treatment programs when provided by a licensed provider, and ABA when provided or supervised by a behavior analyst, that are necessary to develop, maintain, or restore, to the maximum extent practicable, the functioning of an individual. A treatment program includes an ABA treatment plan developed by a licensed provider and delivered by an ABA provider.

(i) Licensed provider means an individual licensed or certified to practice psychiatry, psychology, clinical social work, or another related profession pursuant to Education Law Title VIII.

Section 440.2 Supervision of assistant behavior analysts.

(a) An assistant behavior analyst must be supervised by a behavior analyst.

(b) A behavior analyst who supervises and oversees the provision of ABA by assistant behavior analysts shall meet the following minimum education, training and experience requirements:

(1) documented completion of a minimum of 20 hours of continuing education or 12 credits of matriculated or non-matriculated relevant coursework in behavioral interventions, including at a minimum the following content areas:

(i) basic principles, processes, and concepts of behavior analysis;

(ii) clinical application of ABA, including behavior assessment, selecting intervention outcomes and strategies, behavior change procedures and systems support, data collection and analyses to measure and monitor progress, including measurement of behavior and displaying and interpreting data; and

(iii) ethical issues related to the delivery of behavior interventions using ABA techniques; and

(2) a minimum of two years of documented full-time professional supervised work experience providing behavior interventions using ABA to individuals with ASD for whom such services have been proven effective in peer-reviewed, scientific research. The experience must include at a minimum:

(i) performing behavior assessments;

(ii) developing and evaluating individualized ABA services;

(iii) employing an array of scientifically validated, behavior analytic procedures, including discrete trial intervention, modeling, incidental teaching, and other naturalistic teaching methods, activity-embedded instruction, task analysis, and chaining;

(iv) using ABA methods in one-to-one intervention, small and large group intervention, and in transitions across those situations;

(v) using behavior change procedures and systems supports;

(vi) measuring behavior and displaying and interpreting behavior data;

(vii) conducting functional assessments (including functional analyses) of challenging behavior and selecting the specific assessment methods that are best suited to the behavior and the context; and

(viii) assessing, monitoring, documenting, evaluating, and modifying ABA techniques as necessary to promote the progress of the individual receiving ABA.

(c) A behavior analyst who supervises and oversees the provision of ABA by assistant behavior analysts shall be responsible for:

(1) developing individual ABA plans in collaboration with, as appropriate, the parents or caregivers of the individual receiving ABA, as well as assistant behavior analysts or licensed providers;

(2) directing the implementation of the individual ABA plans and the ongoing monitoring, systematic measurement, data collection, and documentation of the progress of the individual receiving ABA;

(3) modifying the individual ABA plans as necessary to promote progress toward goals, generalization of learning, and where applicable, transitioning of the individual receiving ABA across service delivery environments and settings;

(4) providing assistance, training, and support as needed by the parents or caregivers of the individual receiving ABA, as applicable, to assist them in follow-through specified in the individual’s ABA plan and to enhance development, behavior, and functioning;

(5) supervising assistant behavior analysts, including:

(i) a minimum of six hours per month in the first three months of employment of an assistant behavior analyst, and a minimum of four hours

per month thereafter, of direct on-site observation of each assistant behavior analyst assigned to the individual receiving ABA; and

(ii) a minimum of two hours per month of indirect supervision of an assistant behavior analyst assigned to an individual receiving ABA, in a group or individual format, including:

(a) weekly review and signed approval of the record of the individual receiving ABA, progress notes and data, correspondence, and evaluation of written reports;

(b) participation in telephone conferences with the assistant behavior analyst and, as appropriate, the parent or caregiver of the individual receiving ABA;

(c) ensuring proper documentation of the intervention provided and the response of the individual receiving ABA;

(d) ensuring that the assistant behavior analyst follows the modifications in the plan of the individual receiving ABA; and

(e) other supervision and support that the assistant behavior analyst needs to successfully implement the ABA plan of the individual receiving ABA; and

(6) convening a minimum of two team meetings per month with the assistant behavior analyst, as well as other providers, as appropriate, who are delivering services to the individual receiving ABA to review the progress, identify problems or concerns, and modify intervention strategies as necessary to enhance the development, behavior, and functioning of the individual receiving ABA.

Section 440.3 Qualifications for assistant behavior analysts.

An assistant behavior analyst, in addition to the other requirements set forth in this Part, shall meet the following minimum qualifications:

(a) Prior to the provision of any services to any individual without direct, on-site supervision, completion of a child abuse and neglect identification and reporting workshop and a minimum of 20 hours of training or in-service in behavior interventions using ABA techniques within the past five years, including at a minimum:

(1) basic principles of behavior analysis;

(2) the application of these principles in behavior intervention, including collection of data as needed for monitoring progress;

(3) ethical issues related to the delivery of applied behavior interventions; and

(4) overview of autism and pervasive developmental disorder; and

(b) Completion of a minimum of ten hours of additional training or in-service annually in topics pertaining to ABA and ASD.

Section 440.4 Duties of assistant behavior analysts.

Under the supervision and direction of a behavior analyst in accordance with this Part, an assistant behavior analyst shall:

(a) assist in the recording and collection of data needed to monitor progress;

(b) participate in required team meetings; and

(c) complete any other activities as directed by his or her supervisor and as necessary to assist in the implementation of an individual ABA plan.

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 11, 2014

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

Regulatory Impact Statement

1. Statutory authority: Financial Services Law sections 202 and 302, Insurance Law sections 301, 1109, 1124, 3216, 3221, 4303, and 4709, and Public Health Law section 4406.

Section 301 of the Insurance Law and sections 202 and 302 of the Financial Services Law authorize the Superintendent of Financial Services (the "Superintendent") to prescribe regulations interpreting the provisions of the Insurance Law and to effectuate any power granted to the Superintendent under the Insurance Law.

Insurance Law section 1109 authorizes the Superintendent to promulgate regulations to effectuate the purposes and provisions of the Insurance Law and Article 44 of the Public Health Law with respect to contracts between a health maintenance organization ("HMO") and its subscribers.

Insurance Law section 1124, which applies to student health plans offered by institutions of higher learning, requires that such plans be subject to all consumer protection laws applicable to Article 43 corporations, including minimum requirements of Insurance Law Article 43 and regulations thereunder regarding benefits, contracts, and rates.

Insurance Law section 3216 establishes requirements for individual accident and health insurance policies and sets forth the benefits that must be covered under such policies. Specifically, subsection (i)(25) requires the Superintendent to promulgate regulations setting forth the standards of

professionalism, supervision and relevant experience of individuals who provide behavioral health treatment in the form of applied behavior analysis ("ABA"), under the supervision of a certified behavior analyst for insurance coverage under such policies.

Insurance Law section 3221 establishes requirements and standard provisions for group or blanket accident and health insurance policies and sets forth the benefits that must be covered under such policies. Specifically, subsection (l)(17) requires the Superintendent to promulgate regulations setting forth the standards of professionalism, supervision and relevant experience of individuals who provide behavioral health treatment in the form of ABA under the supervision of a certified behavior analyst for insurance coverage under such policies.

Insurance Law section 4303 governs health insurance subscriber contracts written by not-for-profit corporations and sets forth the benefits that must be covered under such contracts. Specifically, subsection (ee) requires the Superintendent to promulgate regulations setting forth the standards of professionalism, supervision and relevant experience of individuals who provide behavioral health treatment in the form of ABA under the supervision of a certified behavior analyst for insurance coverage under such contracts.

Insurance Law section 4709(b), which applies to municipal cooperative health benefit plans, subjects such plans to the same scope and type of coverage as article 43 corporations.

Public Health Law section 4406 provides that the contract between an HMO and an enrollee is subject to regulation by the Superintendent as if it were a health insurance subscriber contract, and that it shall include all mandated benefits required by Article 43 of the Insurance Law.

2. Legislative objectives: In November 2011, Chapters 595 and 596 of the Laws of 2011 amended Insurance Law sections 3216, 3221 and 4303 to expand health insurance coverage for the screening, diagnosis and treatment of autism spectrum disorder ("ASD"). The amendments also directed the Superintendent, in consultation with the Commissioners of Health and Education, to promulgate regulations that set forth the standards of professionalism, supervision and relevant experience of individuals who provide behavioral health treatment in the form of ABA, under the supervision of a certified behavior analyst for insurance coverage pursuant to Insurance Law sections 3216(i)(25), 3221(l)(17), and 4303(ee). Chapters 595 and 596 took effect on November 1, 2012.

3. Needs and benefits: Prior to the enactment of Chapters 595 and 596, state law did not provide health insurers and HMOs sufficient clarity or an affirmative obligation to cover costs related to treatments for ASD. As a result, individuals diagnosed with an ASD who required treatment in addition to an individualized family services plan, individualized education program, or individualized service plan, had to pay out-of-pocket for expensive services. The law, as amended, ensures that insurance coverage is extended to individuals diagnosed with ASD for treatment such as ABA, thus alleviating the financial burdens placed on the parents and caregivers of those individuals. This rule is being promulgated pursuant to the new statutory amendments to establish the education, training and supervision requirements of ABA providers in order for them to be eligible for health insurance reimbursement under the statute, and also to ensure that qualified ABA providers will be rendering services to individuals with ASD.

4. Costs: This rule imposes no compliance costs upon state or local governments, except that, to the extent that local governments participate in municipal cooperative health benefit plans, the rule will impact them, but the costs of providing the coverage are mandated by the statute.

Some private ABA providers may incur additional costs to fulfill the educational and training requirements of the rule in order to become eligible for reimbursement from health insurance coverage for providing ABA. However, many individuals currently providing ABA are not expected to incur such costs and will be able to continue providing ABA as they always have. In addition, any such costs are likely to be offset by the additional revenue obtained from being newly eligible for health insurance reimbursement. Nonetheless, the Department of Financial Services ("Department") is unable to estimate the specific cost of such compliance because the cost depends on the number of ABA providers who intend to provide treatment to individuals with ASD for reimbursement through health insurance, and ABA providers are not regulated by the Department.

Insurers and HMOs also may incur compliance costs from having to develop an ABA provider eligibility database, and will have to expand their networks if they do not include an adequate number of ABA providers. Those costs may be passed on to consumers in the form of higher premiums, but the long-term benefits of having properly credentialed ABA providers to treat individuals with ASD greatly outweigh the costs. Furthermore, the costs for insurers and HMOs are a consequence of the legislation, not this regulation.

5. Local government mandates: This rule imposes no new mandates on any county, city, town, village, school district, fire district or other special district. The rule merely establishes the criteria by which insurers may reimburse ABA providers.

6. Paperwork: Insurers and HMOs submitted to the Department new health insurance policy forms and rates to add the new coverage for the screening, diagnosis and treatment of ASD. The requirement to make such submissions was imposed by the statutory mandate, not this rule.

7. Duplication: There are no federal or other New York State requirements that duplicate, or conflict with this regulation.

8. Alternatives: The Department, in consultation with the Department of Health and the State Education Department, considered various ways to establish the necessary standards of this regulation. The Department previously promulgated on an emergency basis two different versions of this rule. The first emergency regulation, promulgated on October 31, 2012, required an ABA provider both to be certified by a behavior analysis certification board (“board”) and to hold a certain type of license issued pursuant to New York Education Law Title VIII, or to be supervised by a person with both such a license and board certification. A number of stakeholders, however, expressed concern that the prior rule would permit very few providers to be eligible for health insurance reimbursement for providing ABA – perhaps less than 100 statewide.

In response to those concerns, the Department made significant changes to the rule when it was again promulgated on an emergency basis on January 28, 2013. That emergency rule eliminated the dual license/board certification requirement and also permitted health insurance reimbursement for ABA provided by licensed providers whose scope of practice includes ABA, certified providers, and ABA aides under the supervision of certified behavior analysts. However, stakeholders expressed concerns that the rule would continue to limit the number of providers eligible to directly provide or supervise ABA, to the detriment of individuals diagnosed with ASD. In addition, because the rule specified that the provider had to be licensed under the New York Education Law, some insurers apparently denied claims for out-of-state providers where services were provided in other states.

To address the concerns of interested parties, the Department made significant changes to the rule. Those changes are reflected in the rule that was promulgated on July 25, 2013. The rule now permits health insurance reimbursement for ABA provided by licensed providers, behavior analysts, and assistant behavior analysts under the supervision of behavior analysts. Behavior analysts must be board certified but are not required to be New York licensed providers. As a result, the rule should significantly expand the pool of providers eligible to provide and supervise ABA while still ensuring that only properly credentialed ABA providers treat individuals with ASD and that those who require supervision obtain it from highly qualified ABA providers. Also, the rule permits health insurance reimbursement to out-of-state providers who are board certified.

The Department subsequently received comments from stakeholders that the definition of “behavioral health treatment” – as set forth in the rule promulgated on July 25, 2013 – should be clarified because, as written, the definition could be read to suggest that only a licensed provider may develop an ABA treatment plan, which is contrary to current practice. This was not the Department’s intent. That provision serves only to clarify that a licensed provider also may provide ABA services as part of a treatment program for individuals with ASD; it does not prohibit a behavior analyst from developing an ABA treatment plan for an individual with ASD.

9. Federal standards: There are no federal minimum standards or regulations regarding professionalism, supervision and relevant experience for individuals who provide ABA under the supervision of a certified behavior analyst as defined under Insurance Law sections 3216(i)(25), 3221(l)(17) and 4303(ee).

10. Compliance schedule: Because the law took effect on November 1, 2012, this rule takes effect upon filing with the Secretary of State.

Regulatory Flexibility Analysis

1. Effect of the rule: This rule will impact insurers and health maintenance organizations (“HMOs”) in New York State, but none fall within the definition of “small business” set forth in section 102(8) of the State Administrative Procedure Act, because none are either independently owned or have less than one hundred employees.

However, this rule may affect providers of applied behavior analysis (“ABA”) who treat autism spectrum disorder (“ASD”), many of which are small businesses, because some of those ABA providers may be required under the rule to obtain additional education, training and experience in order to become eligible for health insurance reimbursement for rendering ABA. However, the rule should have a positive impact on small business because of the additional revenue to be generated from health insurance reimbursement for ABA services. The Department of Financial Services (the “Department”) is unable to quantify the precise number of small businesses affected by this rule because ABA providers are not regulated by the Department. The Department has established no reporting requirements with respect to these small businesses, nor does the Department maintain records of ABA providers in this state.

2. Compliance requirements: This rule does not impose any reporting,

recordkeeping, or other compliance requirements on small businesses, sole proprietors or local governments. The rule only establishes standards of professionalism, training and experience for ABA providers so that they can be eligible for insurance reimbursement for providing ABA.

3. Professional services: This rule does not require the use of professional services.

4. Compliance costs: This rule will not impose any compliance costs on local governments but may impose additional costs on small businesses that provide ABA services and want to obtain health insurance reimbursement for those services. In order to do so, some small business ABA providers who do not have the requisite education, training, or experience would have to incur costs of education, training and experience for their employees to become eligible for health insurance reimbursement for providing ABA. However, any such costs that may be incurred are likely to be more than offset by increased revenue as a result of health insurance reimbursement for these services. Nonetheless, the Department is unable to estimate the cost of such compliance because the cost depends on whether the providers already meet such requisites. Moreover, ABA providers are not regulated by the Department.

5. Economic and technological feasibility: Compliance with the rule is economically and technologically feasible for providers.

6. Minimizing adverse impact: Although some ABA providers that are small businesses may incur additional costs to fulfill the requirements of this rule, many will not, and those costs likely will be offset by the additional revenue that will be generated from health insurance reimbursement for providing ABA services.

7. Small business and local government participation: On October 31, 2012, the Department first promulgated this rule on an emergency basis pursuant to a mandate in Chapters 595 and 596 of the Laws of 2011 amending Insurance Law sections 3216, 3221 and 4303, and again on January 28, 2013 and April 26, 2013. The Department received a number of comments from interested parties regarding the rule, particularly with respect to the regulation’s requirement that ABA providers and supervisors of ABA providers had to be licensed under the New York Education Law, which would significantly limit the number of eligible ABA providers and supervisors of ABA providers.

In response to those concerns, the Department made significant changes to the rule. Those changes are reflected in the rule that was promulgated on July 25, 2013. The rule now permits health insurance reimbursement for ABA services provided by licensed providers, behavior analysts, and assistant behavior analysts under the supervision of behavior analysts. Behavior analysts will only be required to be certified by a behavior analysis certification board. As a result, the rule should significantly expand the pool of providers eligible to provide ABA services and to supervise ABA providers while still ensuring that only properly credentialed ABA providers treat individuals with ASD and that those who require supervision obtain it from highly qualified ABA providers.

The Department subsequently received comments from stakeholders that the definition of “behavioral health treatment” – as set forth in the rule promulgated on July 25, 2013 – should be clarified because, as written, the definition could be read to suggest that only a licensed provider may develop an ABA treatment plan, which is contrary to current practice. That was not the Department’s intent. The rule serves only to clarify that a licensed provider also may provide ABA services as part of a treatment program for individuals with ASD; it does not prohibit a behavior analyst from developing an ABA treatment plan for an individual with ASD.

All interested parties will have a formal opportunity to comment on the rule when the Department files a notice of proposed rulemaking.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas: Applied behavior analysis (“ABA”) providers, health insurers, and health maintenance organizations (“HMOs”) affected by this rule operate throughout this state, including rural areas as defined under State Administrative Procedure Act section 102(10).

2. Reporting, recordkeeping and other compliance requirements, and professional services: This rule will not impose any reporting, recordkeeping, or other compliance requirements on ABA providers located in rural areas. The rule only establishes standards of professionalism, training and experience required to be eligible for insurance reimbursement for providing ABA.

3. Costs: This rule may impose additional costs on some ABA providers located in rural areas who may need additional education, training and experience and certification pursuant to the rule in order to become eligible for health insurance reimbursement for providing ABA services. However, any such costs are likely to be more than offset by increased revenue generated from health insurance reimbursement for the services of ABA providers. Moreover, the education, training and experience requirements need to be uniform within the state, and providing ABA services within rural areas does not negate the need for the providers to satisfy these minimum consumer protection requirements.

Insurers and HMOs submitted to the Department of Financial Services (the "Department") new health insurance policy forms and rates to add the new coverage for the screening, diagnosis and treatment of ASD. The requirement to add such coverage was imposed by the enactment of Chapters 595 and 596 of the Laws of 2011 amending Insurance Law sections 3216, 3221 and 4303. As a result, insurers and HMOs may incur compliance costs from having to develop an ABA provider eligibility database, and may have to expand their networks if they do not include an adequate number of ABA providers. Those costs may be passed on to consumers in the form of higher premiums, but these additional costs are consequences of the statute, not the regulation, and the long-term benefits of having properly credentialed ABA providers to treat individuals with ASD, as well as the prohibitively expensive out-of-pocket costs for ABA services, greatly outweigh any increase in premiums.

4. **Minimizing adverse impact:** Although some ABA providers in rural areas may incur additional costs to fulfill the requirements of this rule, those costs likely will be offset from the additional revenue that will be generated from health insurance reimbursement for their services. This rule also will enable many behavior analysts and assistant behavior analysts to immediately start providing ABA services covered by health insurance.

5. **Rural area participation:** On October 31, 2012, the Department first promulgated this rule pursuant to a mandate in Chapters 595 and 596 of the Laws of 2011 amending Insurance Law sections 3216, 3221 and 4303 on an emergency basis, and again on January 28, 2013 and April 26, 2013. The Department received a number of comments from interested parties regarding the rule, particularly with respect to the licensing requirement for ABA providers and supervisors of ABA providers, which would significantly limit the number of eligible ABA providers and supervisors of ABA providers.

In response to those concerns, the Department made significant changes to the rule. Those changes are reflected in the rule that was promulgated on July 25, 2013. The rule now permits health insurance reimbursement for ABA services provided by licensed providers, behavior analysts, and assistant behavior analysts under the supervision of behavior analysts. Behavior analysts will only be required to be certified by a behavior analysis certification board. As a result, the rule should significantly expand the pool of providers eligible to provide ABA services and to supervise ABA providers while still ensuring that only properly credentialed ABA providers treat individuals with ASD and that those who require supervision obtain it from highly qualified ABA providers.

The Department subsequently received comments from stakeholders that the definition of "behavioral health treatment" – as set forth in the rule promulgated on July 25, 2013 – should be clarified because, as written, the definition could be read to suggest that only a licensed provider may develop an ABA treatment plan, which is contrary to current practice. This was not the Department's intent. That provision serves only to clarify that a licensed provider also may provide ABA services as part of a treatment program for individuals with ASD; it does not prohibit a behavior analyst from developing an ABA treatment plan for an individual with ASD.

All interested parties will have a formal opportunity to comment on the rule when the Department files a notice of proposed rulemaking.

Job Impact Statement

1. **Nature of impact:** In November 2011, Chapters 595 and 596 of the Laws of 2011 amended Insurance Law sections 3216, 3221 and 4303 to expand health insurance coverage for the screening, diagnosis and treatment of autism spectrum disorder ("ASD"). The amendments also directed the Superintendent of Financial Services, in consultation with the Commissioners of Health and Education, to promulgate regulations that set forth the standards of professionalism, supervision and relevant experience of individuals who provide behavioral health treatment in the form of applied behavior analysis ("ABA"). Chapters 595 and 596 took effect on November 1, 2012.

This rule should have no adverse impact on jobs and employment opportunities because it merely implements the statutory charge to establish standards of professionalism, supervision and relevant experience of individuals who provide behavioral health treatment in the form of ABA. These standards are designed to ensure that individuals with ASD receive treatment from qualified ABA providers. In fact, this rule will provide more job and employment opportunities because it does not require ABA providers to be licensed pursuant to the New York Education Law in order to receive insurance reimbursement for ABA services.

EMERGENCY RULE MAKING

Public Retirement Systems

I.D. No. DFS-30-14-00015-E

Filing No. 631

Filing Date: 2014-07-14

Effective Date: 2014-07-14

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

Action taken: Amendment of Part 136 (Regulation 85) of Title 11 NYCRR.

Statutory authority: Financial Services Law, sections 202 and 302; Insurance Law, sections 301, 314, 7401(a) and 7402(n)

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

Specific reasons underlying the finding of necessity: The Second Amendment to 11 NYCRR 136 (Insurance Regulation 85), effective November 19, 2008, established new standards of behavior with regard to investment of the assets of the New York State Common Retirement Fund ("Fund"), conflicts of interest, and procurement. In addition, it created new audit and actuarial committees, and greatly strengthened the investment advisory committee. The Second Amendment also set high ethical standards, strengthened internal controls and governance, enhanced the operational transparency of the Fund, and strengthened supervision by the Department.

Nevertheless, recent events surrounding how placement agents conduct business on behalf of their clients with regard to the Fund compel the Superintendent to conclude that the mere strengthening of the Fund's control environment is insufficient to protect the integrity of the state employees' retirement systems. Rather, only an immediate ban on the use of placement agents will ensure sufficient protection of the Fund's members and beneficiaries and safeguard the integrity of the Fund's investments.

This regulation was previously promulgated on an emergency basis on June 18, 2009, September 16, 2009, January 5, 2010, April 2, 2010, May 28, 2010, July 29, 2010, September 23, 2010, November 19, 2010, January 18, 2011, March 21, 2011, May 19, 2011, August 16, 2011, November 10, 2011, February 7, 2012, May 7, 2012, August 3, 2012, October 31, 2012, January 28, 2013, April 26, 2013, July 24, 2013, October 21, 2013, January 17, 2014, and April 16, 2014. The Department is currently working with the Governor's Office to make additional revisions to the regulation.

Subject: Public Retirement Systems.

Purpose: To ban the use of placement agents by investment advisors engaged by the state employees' retirement systems.

Text of emergency rule: Section 136-2.2 is amended to read as follows:

§ 136-2.2 Definitions.

The following words and phrases, as used in this Subpart, unless a different meaning is plainly required by the context, shall have the following meanings:

[(a) Retirement system shall mean the New York State and Local Employees' Retirement System and the New York State and Local Police and Fire Retirement System.]

[(b) Fund shall mean the New York State Common Retirement Fund, a fund in the custody of the Comptroller as trustee, established pursuant to Section 422 of the Retirement and Social Security Law, which holds the assets of the retirement system.]

[(c)](a) Comptroller shall mean the Comptroller of the State of New York in his capacity as administrative head of the Retirement System and the sole trustee of the [fund] Fund.

[(d) OSC shall mean the Office of the State Comptroller.]

[(e)](b) Consultant or advisor shall mean any person (other than an OSC employee) or entity retained by the [fund] Fund to provide technical or professional services to the [fund] Fund relating to investments by the [fund] Fund, including outside investment counsel and litigation counsel, custodians, administrators, broker-dealers, and persons or entities that identify investment objectives and risks, assist in the selection of [money] investment managers, securities, or other investments, or monitor investment performance.

(c) Family member shall mean any person living in the same household as the Comptroller, and any person related to the Comptroller within the third degree of consanguinity or affinity.

(d) Fund shall mean the New York State Common Retirement Fund, a fund in the custody of the Comptroller as trustee, established pursuant to Section 422 of the Retirement and Social Security Law ("RSSL"), which holds the assets of the Retirement System.

[f](e) Investment manager shall mean any person (other than an OSC employee) or entity engaged by the Fund in the management of part or all of an investment portfolio of the [fund] *Fund*. “Management” shall include, but is not limited to, analysis of portfolio holdings, and the purchase, sale, and lending thereof. For the purposes hereof, any investment made by the Fund pursuant to RSSL § 177 (7) shall be deemed to be the investment of the Fund in such investment entity (rather than in the assets of such investment entity).

(f) *Investment policy statement shall mean a written document that, consistent with law, sets forth a framework for the investment program of the Fund.*

(g) *OSC shall mean the Office of the State Comptroller.*

[(g)](h) Placement agent or intermediary shall mean any person or entity, including registered lobbyists, directly or indirectly engaged and compensated by an investment manager (other than [an] a regular employee of the investment manager) to promote investments to or solicit investment by [assist the investment manager in obtaining investments by the fund, or otherwise doing business with] the [fund] *Fund*, whether compensated on a flat fee, a contingent fee, or any other basis. Regular employees of an investment manager are excluded from this definition unless they are employed principally for the purpose of securing or influencing the decision to secure a particular transaction or investment by the *Fund*. [obtaining investments or providing other intermediary services with respect to the fund.] For purpose of this paragraph, the term “employee” shall include any person who would qualify as an employee under the federal Internal Revenue Code of 1986, as amended, but shall not include a person hired, retained or engaged by an investment manager to secure or influence the decision to secure a particular transaction or investment by the *Fund*.

[(h)] Investment policy statement shall mean a written document that, consistent with law, sets forth a framework for the investment program of the fund.]

[(i)] Third party administrator shall mean any person or entity that contractually provides administrative services to the retirement system, including receiving and recording employer and employee contributions, maintaining eligibility rosters, verifying eligibility for benefits or paying benefits and maintaining any other retirement system records. Administrative services do not include services provided to the fund relating to fund investments.]

(i) *Retirement System shall mean the New York State and Local Employees’ Retirement System and the New York State and Local Police and Fire Retirement System.*

(j) *Third party administrator shall mean any person or entity that contractually provides administrative services to the Retirement System, including receiving and recording employer and employee contributions, maintaining eligibility rosters, verifying eligibility for benefits, paying benefits or maintaining any other Retirement System records. “Administrative services” do not include services provided to the Fund relating to Fund investments.*

[(j)](k) Unaffiliated Person shall mean any person other than: (1) the Comptroller or a family member of the Comptroller, (2) an officer or employee of OSC, (3) an individual or entity doing business with OSC or the [fund] *Fund*, or (4) an individual or entity that has a substantial financial interest in an entity doing business with OSC or the [fund] *Fund*. For the purpose of this paragraph, the term “substantial financial interest” shall mean the control of the entity, whereby “control” means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of the entity, whether through the ownership of voting securities, by contract (except a commercial contract for goods or non-management services) or otherwise; but no individual shall be deemed to control an entity solely by reason of his being an officer or director of such entity. Control shall be presumed to exist if any individual directly or indirectly owns, controls or holds with the power to vote ten percent or more of the voting securities of such entity.

[(k)] Family member shall mean any person living in the same household as the Comptroller, and any person related to the Comptroller within the third degree of consanguinity or affinity.]

Section 136-2.4 (d) is amended to read as follows:

(d) Placement agents or intermediaries: In order to preserve the independence and integrity of the [fund] *Fund*, to [address] preclude potential conflicts of interest, and to assist the Comptroller in fulfilling his or her duties as a fiduciary to the [fund] *Fund*, [the Comptroller shall maintain a reporting and review system that must be followed whenever the fund] *the Fund shall not* [engages, hires, invests with, or commits] *engage, hire, invest with or commit* to[,] an outside investment manager who is using the services of a placement agent or intermediary to assist the investment manager in obtaining investments by the [fund] *Fund*. [, or otherwise doing business with the fund. The Comptroller shall require investment managers to disclose to the Comptroller and to his or her designee payments made to any such placement agent or intermediary. The reporting

and review system shall be set forth in written guidelines and such guidelines shall be published on the OSC public website.]

Section 136-2.5 (g) is amended to read as follows:

(g) The Comptroller shall:

(1) file with the superintendent an annual statement in the format prescribed by Section 307 of the Insurance Law, including the [retirement system’s] *Retirement System’s* financial statement, together with an opinion of an independent certified public accountant on the financial statement;

(2) file with the superintendent the Comprehensive Annual Financial Report within the time prescribed by law, but no later than the time it is published on the OSC public website;

(3) disclose on the OSC public website, on at least an annual basis, all fees paid by the [fund] *Fund* to investment managers, consultants or advisors, and third party administrators;

[(4)] disclose on the OSC public website, on at least an annual basis, instances where an investment manager has paid a fee to a placement agent or intermediary;]

[(5)](4) disclose on the OSC public website the [fund’s] *Fund’s* investment policies and procedures; and

[(6)](5) require fiduciary and conflict of interest reviews of the [fund] *Fund* every three years by a qualified unaffiliated person.

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 11, 2014.

Text of rule and any required statements and analyses may be obtained from: Michael Maffei, New York State Department of Financial Services, One State Street, New York, NY 10004, (212) 480-5027, email: michael.maffei@dfs.ny.gov

Regulatory Impact Statement

1. Statutory authority: The Superintendent’s authority for the adoption of the rule to 11 NYCRR 136 is derived from sections 202 and 302 of the Financial Services Law (“FSL”) and sections 301, 314, 7401(a), and 7402(n) of the Insurance Law.

FSL section 202 establishes the office of the Superintendent and designates the Superintendent to be the head of the Department of Financial Services (“DFS”).

FSL section 302 and Insurance Law section 301, in material part, authorize the Superintendent to effectuate any power accorded to him 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.

Insurance Law section 314 vests the Superintendent with the authority to promulgate standards with respect to administrative efficiency, discharge of fiduciary responsibilities, investment policies and financial soundness of the public retirement and pension systems of the State of New York, and to make an examination into the affairs of every system at least once every five years in accordance with Insurance Law sections 310, 311 and 312. The implementation of the standards is necessarily through the promulgation of regulations.

As confirmed by the Court of Appeals in *Matter of Dinallo v. DiNapoli*, 9 N.Y. 3d 94 (2007), the Superintendent functions in two distinct capacities. The first is as regulator of the insurance industry. The second is as statutory receiver of financially distressed insurance entities. Article 74 of the Insurance Law sets forth the Superintendent’s role and responsibilities in this latter capacity.

Insurance Law section 7401(a) sets forth the entities, including the public retirement systems, to which Article 74 applies.

Insurance Law section 7402(n) provides that it is a ground for rehabilitation if an entity subject to Article 74 has failed or refused to take such steps as may be necessary to remove from office any officer or director whom the Superintendent has found, after appropriate notice and hearing, to be a dishonest or untrustworthy person.

2. Legislative objectives: Insurance Law section 314 authorizes the Superintendent to promulgate and amend, after consultation with the respective administrative heads of public retirement and pension systems and after a public hearing, standards with respect to the public retirement and pension systems of the State of New York.

This rule, which in effect bans the use of an investment tool that has been found to be untrustworthy, is consistent with the public policy objectives that the Legislature sought to advance in enacting Insurance Law section 314, which provides the Superintendent with the powers to promulgate standards to protect the New York State Common Retirement Fund (the “Fund”).

3. Needs and benefits: The Second Amendment to 11 NYCRR 136 (Regulation 85), effective November 19, 2008, established new standards with regard to investment of the assets of the Fund, conflicts of interest and procurement. In addition, the Second Amendment created new audit

and actuarial committees, and greatly strengthened the investment advisory committee. The Second Amendment also set high ethical standards, strengthened internal controls and governance, enhanced the operational transparency of the Fund, and strengthened supervision by the Department.

Nevertheless, recent allegations regarding “pay to play” practices, whereby politically connected individuals reportedly sold access to investment opportunities with the Fund, compel the Superintendent to conclude that the mere strengthening of the Fund’s control environment is insufficient to protect the integrity of the state employees’ retirement systems. The Third Amendment to Regulation 85 will adopt an immediate ban on the use of placement agents to ensure sufficient protection of the Fund’s members and beneficiaries, and safeguard the integrity of the Fund’s investments. Further, the rule defines “placement agent or intermediary” in a manner that both thwarts evasion of the ban while ensuring that such ban not extend to persons otherwise acting lawfully on behalf of investment managers.

4. Costs: The rule does not impose any additional requirements on the Comptroller, and no additional costs are expected to result from the implementation of the ban imposed by this rule. There are no costs to the Department or other state government agencies or local governments. Investment managers, consultants and advisors who provide services to the Fund, which are required to discontinue the use of placement agents in connection with investment services they provide to the Fund, may lose opportunities to do business with the Fund.

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

6. Paperwork: No additional paperwork should result from the prohibition imposed by the rule.

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

8. Alternatives: The Superintendent considered other ways to limit the influence of placement agents, including a partial ban, increased disclosure requirements, and adopting alternative definitions of placement agent or intermediary. The Department considered limiting the ban to include intent on the part of the party using placement agents, or defining “placement agent” in more general terms.

In developing the rule, the Superintendent and State Comptroller not only consulted with one another, but also briefed representatives of: (1) New York State and New York City Public Employee Unions; (2) New York City Retirement and Pension Funds; (3) the Borough Presidents of the five counties of New York City; and (4) officials of the New York City Mayor’s Office, Comptroller’s Office and Finance Department. These entities agreed with the concerns expressed by the Department and intend to explore remedies most appropriate to the pension funds that they represent.

Initially, the Superintendent concluded that only an immediate total ban on the use of placement agents could provide sufficient protection of the Fund’s members and beneficiaries and safeguard the integrity of the Fund’s investments. The proposed rule was published in the State Register on March 17, 2010. A Public Hearing was held on April 28, 2010. The following comments were received:

Blackstone Group, a global investment manager and financial advisor, wrote to oppose the proposed ban on the use of placement agents by investment advisors engaged by the New York State Common Retirement Fund (“The Fund”). It stated that the rule would lessen the number of investment opportunities brought before the Fund, adversely affect small, medium-sized and women-and minority-owned investment firms seeking to do business with the Fund, and adversely affect a number of New York-headquartered financial institutions doing business as placement agents.

Blackstone suggested the inclusion of the following provisions in the rule instead:

- A ban on political contributions by any employee of any placement agent seeking to do business with the Fund;
- A requirement that any placement agent seeking to do business with the Fund be registered as a broker dealer with the SEC and ensure that its professionals have passed the appropriate Series qualifications administered by Financial Industry Regulatory Authority (“FINRA”);
- A requirement that any placement agent seeking to do business in New York register with the Department; and
- A requirement that any placement agent representing an investment manager before the Fund fully disclose the contractual arrangement between it and the manager, including the fee arrangement and the scope of services to be provided.

The Securities Industry and Financial Markets Association (“SIFMA”), representing hundreds of securities firms, banks, and asset managers, commented that the proposed rule (1) inadvertently limits the access of smaller fund managers to the Fund; (2) restricts the number and types of advisers that could be utilized by the Fund; (3) creates an inherent conflict between federal and state law that would make it impossible to do business with the

Fund while complying with both; and (4) adds duplicative regulation in an area already substantially regulated at the state level and that is primed for further federal regulation through the imminent imposition of a federal pay-to-play regime on all registered broker-dealers acting as placement agents. In addition, SIFMA provided language that it believes would be consistent with the existing federal requirements on the use of placement agents. SIFMA requested that the Department either exclude from the proposed rule those placement agents who are registered as broker-dealers under the Securities Exchange Act of 1934 or delay the enactment of the proposed rule until the federal and state placement agent initiatives are finalized.

The Superintendent did consider other ways to limit the influence of placement agents, including a partial ban, increased disclosure requirements, and adopting alternative definitions of placement agent or intermediary. The Department considered limiting the ban to include intent on the part of the party using placement agents, or defining “placement agent” in more general terms. At the time, the Superintendent concluded that only an immediate, total ban on the use of placement agents could provide sufficient protection of the Fund’s members and beneficiaries and safeguard the integrity of the Fund’s investments.

9. Federal standards: The Securities and Exchange Commission issued a “Pay-To-Play” regulation for financial advisors on July 1, 2010, which may have an impact on the issues addressed in the proposed rule.

10. Compliance schedule: The emergency adoption of this regulation on June 18, 2009 ensured that the ban would become enforceable immediately. The ban needs to remain in effect on an emergency basis until such time as an amended regulation can be made permanent.

Regulatory Flexibility Analysis

1. Effect of the rule: This rule strengthens standards for the management of the New York State and Local Employees’ Retirement System and New York State and Local Police and Fire Retirement System (collectively, “the Retirement System”), and the New York State Common Retirement Fund (“the Fund”).

The Second Amendment to 11 NYCRR 136 (Insurance Regulation 85), effective November 19, 2008, established new standards with regard to investment of the assets of the Fund, conflicts of interest and procurement. In addition, the Second Amendment created new audit and actuarial committees, and greatly strengthened the investment advisory committee. The Second Amendment also set high ethical standards, strengthened internal controls and governance, enhanced the operational transparency of the Fund, and strengthened supervision by the Department.

Nevertheless, recent allegations regarding “pay to play” practices, whereby politically connected individuals reportedly sold access to investment opportunities with the Fund, compel the Superintendent to conclude that the mere strengthening of the Fund’s control environment is insufficient to protect the integrity of the state employees’ retirement systems. The Third Amendment to Insurance Regulation 85 will adopt an immediate ban on the use of placement agents to ensure sufficient protection of the Fund’s members and beneficiaries, and safeguard the integrity of the Fund’s investments. Further, the rule defines “placement agent or intermediary” in a manner that both thwarts evasion of the ban while ensuring that such ban not extend to persons otherwise acting lawfully on behalf of investment managers.

These standards are intended to assure that the conduct of the business of the Retirement System and the Fund, and of the State Comptroller (as administrative head of the Retirement System and as sole trustee of the Fund), are consistent with the principles specified in the rule. Most among all affected parties, the State Comptroller, as a fiduciary whose responsibilities are clarified and broadened, is impacted by the rule. The State Comptroller is not a “small business” as defined in section 102(8) of the State Administrative Procedure Act.

This rule will affect investment managers and other intermediaries (other than OSC employees) who provide technical or professional services to the Fund related to Fund investments. The rule will prohibit investment managers from using the services of a placement agent unless such agent is a regular employee of the investment manager and is acting in a broader capacity than just providing specific investment advice to the Fund. In addition, the rule is also directed to placement agents, who as a result of this rule, will no longer be engaged directly or indirectly by investment managers that do business with the Fund. Some investment managers and placement agents may come within the definition of “small business” set forth in section 102(8) of the State Administrative Procedure Act, because they are independently owned and operated, and employ 100 or fewer individuals.

The rule bans the use of placement agents in connection with investments by the Fund. This may adversely affect the business of placement agents, who will lose opportunities to earn profits in connection with investments by the Fund. Nevertheless, as a result of recent allegations regarding “pay to play” practices, whereby politically connected individuals reportedly sold access to investment opportunities with the Fund, the

Superintendent has concluded that an immediate ban on the use of placement agents is necessary to protect the Fund's members and beneficiaries and to safeguard the integrity of the Fund's investments.

This rule will not impose any adverse compliance requirements or result in any adverse impacts on local governments. The basis for this finding is that this rule is directed at the State Comptroller; employees of the Office of State Comptroller; and investment managers, placement agents, consultants or advisors - none of which are local governments.

2. Compliance requirements: None.

3. Professional services: Investment managers, consultants and advisors who provide services to the Fund, and are required to discontinue the use of placement agents in connection with investment services they provide to the Fund, may need to employ other professional services.

4. Compliance costs: The rule does not impose any additional requirements on the Comptroller, and no additional costs are expected to result from the implementation of the ban imposed by this rule. There are no costs to the Department of Financial Services or other state government agencies or local governments. However, investment managers, consultants and advisors who provide services to the Fund, which are required to discontinue the use of placement agents in connection with investment services they provide to the Fund, may lose opportunities to do business with the Fund.

5. Economic and technological feasibility: The rule does not impose any economic and technological requirements on affected parties, except for placement agents who will lose the opportunity to earn profits in connection with investments by the Fund.

6. Minimizing adverse impact: The costs to placement agents are lost opportunities to earn profits in connection with investments by the Fund. The Superintendent considered other ways to limit the influence of placement agents, including a partial ban, increased disclosure requirements, and adopting alternative definitions of placement agent or intermediary. But in the end, the Superintendent concluded that only an immediate total ban on the use of placement agents could provide sufficient protection of the Fund's members and beneficiaries and safeguard the integrity of the Fund's investments.

7. Small business and local government participation: In developing the rule, the Superintendent and State Comptroller not only consulted with one another, but also briefed representatives of: (1) New York State and New York City Public Employee Unions; (2) New York City Retirement and Pension Funds; (3) the Borough Presidents of the five counties of New York City; and (4) officials of the New York City Mayor's Office, Comptroller's Office and Finance Department.

A public hearing was held on April 28, 2010. Comments were received from two entities recommending that the total ban on the use of placement agents be modified. The Department will continue to assess the comments that have been received and any others that may be submitted.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas: Investment managers, placement agents, consultants or advisors that do business in rural areas as defined under State Administrative Procedure Act Section 102(10) will be affected by this rule. The rule bans the use of placement agents in connection with investments by the New York State Common Retirement Fund ("the Fund"), which may adversely affect the business of placement agents and of other entities that utilize placement agents and are involved in Fund investments.

2. Reporting, recordkeeping and other compliance requirements, and professional services: This rule will not impose any reporting, recordkeeping or other compliance requirements on public or private entities in rural areas, with the exception of requiring investment managers, consultants and advisors who provide services to the Fund to discontinue the use of placement agents.

3. Costs: The costs to placement agents are lost opportunities to earn profits in connection with investments by the Fund.

4. Minimizing adverse impact: The rule does not adversely impact rural areas.

5. Rural area participation: A public hearing was held on April 28, 2010. Comments were received from two entities recommending that the total ban on the use of placement agents be modified. The Department will continue to assess the comments that have been received and any others that may be submitted.

Job Impact Statement

The Department of Financial Services finds that this rule will have little or no impact on jobs and employment opportunities. The rule bans investment managers from using placement agents in connection with investments by the New York State Common Retirement Fund ("the Fund"). The rule may adversely affect the business of placement agents, who could lose the opportunity to earn profits in connection with investments by the Fund. Nevertheless, in view of recent events about how placement agents conduct business on behalf of their clients with regard to the Fund, the Su-

perintendent has concluded that an immediate ban on the use of placement agents is necessary to protect the Fund's members and beneficiaries, and to safeguard the integrity of the Fund's investments.

Department of Health

NOTICE OF ADOPTION

Opioid Overdose Prevention Programs

I.D. No. HLT-20-14-00010-A

Filing No. 636

Filing Date: 2014-07-15

Effective Date: 2014-07-30

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

Action taken: Amendment of section 80.138 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 3309

Subject: Opioid Overdose Prevention Programs.

Purpose: To establish standards for approval of any opioid overdose prevention programs.

Text or summary was published in the May 21, 2014 issue of the Register, I.D. No. HLT-20-14-00010-P.

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

Revised rule making(s) were previously published in the State Register on May 21, 2014.

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

Assessment of Public Comment

The agency received no public comment.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Prevention of Influenza Transmission by Healthcare and Residential Facility and Agency Personnel

I.D. No. HLT-30-14-00016-P

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

Proposed Action: Amendment of section 2.59 of Title 10 NYCRR.

Statutory authority: Public Health Law, sections 225, 2800, 2803, 3612 and 4010

Subject: Prevention of Influenza Transmission by Healthcare and Residential Facility and Agency Personnel.

Purpose: To clarify regulatory amendments and implement more flexible reporting provisions.

Text of proposed rule: Section 2.59 is amended as follows:

§ 2.59 Prevention of influenza transmission by healthcare and residential facility and agency personnel

(a) Definitions.

(1) "Personnel," for the purposes of this section, shall mean all persons employed or affiliated with a healthcare or residential facility or agency, whether paid or unpaid, including but not limited to employees, members of the medical and nursing staff, contract staff, students, and volunteers, who engage in activities such that if they were infected with influenza, they could potentially expose patients or residents to the disease.

(2) "Healthcare and residential facilities and agencies," for the purposes of this section, shall include:

(i) any facility or institution included in the definition of "hospital" in section 2801 of the Public Health Law, including but not limited to general hospitals, nursing homes, and diagnostic and treatment centers;

(ii) any agency established pursuant to Article 36 of the Public Health Law, including but not limited to certified home health agencies, long term home health care programs, acquired immune deficiency syndrome (AIDS) home care programs, licensed home care service agencies, and limited licensed home care service agencies; and

(iii) hospices as defined in section 4002 of the Public Health Law.

(3) "Influenza season," for the purposes of this section, shall mean the period of time during which influenza is prevalent as determined by the Commissioner.

(4) "Patient or resident," for the purposes of this section, shall mean any person receiving services from a healthcare or residential facility or agency, including but not limited to inpatients and outpatients, overnight residents, adult day health care participants, and home care and hospice patients, as well as any person presenting for registration or admission at a healthcare or residential facility or agency.

(5) "Influenza vaccine" or "vaccine," for the purposes of this section, means a vaccine currently licensed for immunization and distribution in the United States by the Food and Drug Administration (FDA), for active immunization for the prevention of influenza disease caused by influenza virus(es), or authorized for such use by the FDA pursuant to an Emergency Use Authorization (EUA) or as an Emergency Investigational New Drug (EIND).

(b) All healthcare and residential facilities and agencies shall determine and document which persons qualify as "personnel" under this section.

(c) All healthcare and residential facilities and agencies shall document the influenza vaccination status of all personnel for the current influenza season in each individual's personnel record or other appropriate record. Documentation of vaccination must include [the name and address of the individual who ordered or administered the vaccine and the date of vaccination]:

(1) a document, prepared by the licensed healthcare practitioner who administered the vaccine, indicating that one dose of influenza vaccine was administered, and specifying the vaccine formulation and the date of administration; or

(2) for personnel employed by a healthcare employer other than the healthcare or residential facility or agency in which he or she is providing service, an attestation by the employer that the employee(s) named in the attestation have been vaccinated against influenza for the current influenza season, and that the healthcare employer maintains documentation of vaccination of those employees, as described in paragraph (1) of this subdivision; or

(3) for student personnel, an attestation by the professional school that the student(s) named in the attestation have been vaccinated against influenza for the current influenza season, and that the school maintains documentation of vaccination of those students, as described in paragraph (1) of this subdivision.

(d) During the influenza season, all healthcare and residential facilities and agencies shall ensure that all personnel not vaccinated against influenza for the current influenza season wear a surgical or procedure mask while in areas where patients or residents [may be] are typically present, except that:

(1) when personnel provide services outside the home of a patient or resident, and not inside a healthcare or residential facility, mask wear shall not be required by this section, provided that this paragraph shall not be interpreted as eliminating any requirement that personnel wear a mask pursuant to standard and transmission-based precautions not addressed by this section;

(2) personnel required to wear a mask by this subdivision, but who provide speech therapy services, may remove the mask when necessary to deliver care, such as when modeling speech; and

(3) for any person who lip reads, personnel required to wear a mask by this subdivision may remove the mask when necessary for communication.

[Healthcare and residential facilities and agencies shall supply such masks to personnel, free of charge.]

(e) Upon the request of the Department, a healthcare or residential facility or agency must report the number and percentage of personnel that have been vaccinated against influenza for the current influenza season.

(f) All healthcare and residential facilities and agencies shall develop and implement a policy and procedure to ensure compliance with the provisions of this section. The policy and procedure shall include, but is not limited to, identification of those areas where unvaccinated personnel must wear a mask pursuant to subdivision (d) of this Section.

(g) Healthcare and residential facilities and agencies shall supply surgical or procedure masks required by this section at no cost to personnel.

(h) Nothing in this section shall be interpreted as prohibiting any healthcare or residential facility or agency from adopting policies that are more stringent than the requirements of this section.

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: regsqa@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.

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

Regulatory Impact Statement

Statutory Authority:

The authority for the promulgation of these regulations is contained in Public Health Law (PHL) Sections 225(5), 2800, 2803(2), 3612 and 4010(4). PHL 225(5) authorizes the Public Health and Health Planning Council (PHHPC) to issue regulations in the State Sanitary Code pertaining to any matters affecting the security of life or health or the preservation and improvement of public health in the state of New York, including designation and control of communicable diseases and ensuring infection control at healthcare facilities and any other premises.

PHL Article 28 (Hospitals), Section 2800 specifies that "Hospital and related services including health-related service of the highest quality, efficiently provided and properly utilized at a reasonable cost, are of vital concern to the public health. In order to provide for the protection and promotion of the health of the inhabitants of the state, pursuant to section three of article seventeen of the constitution, the department of health shall have the central, comprehensive responsibility for the development and administration of the state's policy with respect to hospital and related services, and all public and private institutions, whether state, county, municipal, incorporated or not incorporated, serving principally as facilities for the prevention, diagnosis or treatment of human disease, pain, injury, deformity or physical condition or for the rendering of health-related service shall be subject to the provisions of this article."

PHL Section 2803(2) authorizes PHHPC to adopt and amend rules and regulations, subject to the approval of the Commissioner, to implement the purposes and provisions of PHL Article 28, and to establish minimum standards governing the operation of health care facilities. PHL Section 3612 authorizes PHHPC to adopt and amend rules and regulations, subject to the approval of the Commissioner, with respect to certified home health agencies and providers of long term home health care programs. PHL Section 4010(4) authorizes PHHPC to adopt and amend rules and regulations, subject to the approval of the Commissioner, with respect to hospice organizations.

Legislative Objectives:

PHL 225 empowers PHHPC to address any issue affecting the security of life or health or the preservation and improvement of public health in the state of New York, including designation and control of communicable diseases and ensuring infection control at healthcare facilities and any other premises. PHL Article 28 specifically addresses the protection of the health of the residents of the State by assuring the efficient provision and proper utilization of health services of the highest quality at a reasonable cost. PHL Article 36 addresses the services rendered by certified home health agencies. PHL Article 40 declares that hospice is a socially and financially beneficial alternative to conventional curative care for the terminally ill. The requirement of surgical or procedure masks of unvaccinated healthcare and residential facility and agency personnel in these facilities promotes the health and safety of the patients and residents they serve and support efficient and continuous provision of services.

Needs and Benefits:

In general, section 2.59 of Title 10 of the NYCRR requires healthcare personnel who have not been vaccinated against influenza to wear a mask during the influenza season. These amendments clarify certain provisions of the existing regulation and make one substantive change.

The clarifying amendments codify the Department's interpretation of section 2.59, as published by the Department in a document entitled "Frequently Asked Questions (FAQ) Regarding Title 10, Section 2.59 'Regulation for Prevention of Influenza Transmission by Healthcare and Residential Facility and Agency Personnel'", dated September 24, 2013. The amendments clarify that the masking requirement applies in those areas where patients or residents are "typically" present, rather than "may be" present. The amendments also define "influenza vaccine" to mean a vaccine approved as an influenza vaccine by the Food and Drug Administration (FDA), or pursuant to an Emergency Use Authorization (EUA), or as an Emergency Investigational New Drug (EIND). This clarification is important because, in the event of a novel influenza virus outbreak, such as H1N1 in 2009, new vaccines and emergency use of existing vaccines may be available or necessary to meet the requirements of the regulation.

The amendments also clarify that the regulation is not intended to require mask wear while a patient or resident is receiving services outside the home or regulated facility. This regulation is based on the reasonable expectation that patients and residents should not be exposed to influenza in their homes or in medical care facilities, by the personnel who they rely upon to care for them. However, when they choose to leave the home or facility and interact with the general public in the community, they are potentially exposing themselves to influenza from any number of sources. The risk of exposure from the healthcare provider is essentially subsumed by the risk of general community exposures. For this reason, unvaccinated healthcare personnel who are accompanying patients are not required to

wear masks while away from patient homes and off facility grounds—for example, while on public transportation, at community events, and in shops.

The final clarification amendment provides that the regulation should not be interpreted as requiring mask wear by unvaccinated personnel who provide speech therapy services, during the time that such personnel are providing care. Similarly, for any person who lip reads, unvaccinated personnel may remove the mask when necessary to communicate.

These amendments also include one important substantive change, in that they revise the documentation requirement for healthcare and residential facilities and agencies. The intent of this change is to create a more flexible system for documenting vaccination status, thereby easing the regulatory burden on regulated parties. Specifically, required documentation would include only the date of vaccination and information specifying the vaccine formulation administered. Further, where the personnel of a healthcare or residential facility or agency includes contract staff and students, the facility or agency may accept an attestation from the employer or school, stating that specified persons have been vaccinated and that the employer or school maintains the required documentation.

Costs for the Implementation of and Continuing Compliance with these Regulations to the Regulated Entity:

These amendments do not create any new costs for regulated entities. The revised documentation requirements are expected to ease the regulatory burden on healthcare and residential facilities and agencies.

Cost to State and Local Government:

These amendments do not create any new costs for State or local government. To the extent that State or local governments operate healthcare and residential facilities and agencies, the revised documentation requirements are expected to ease the regulatory burden on these entities.

Cost to the Department of Health:

There are no additional costs to the State or local government. Existing staff will be utilized to educate healthcare and residential facilities and agencies about the revised reporting requirements.

Local Government Mandates:

There are no additional programs, services, duties or responsibilities imposed by this rule upon any county, city, town, village, school district, fire district or any other special district.

Paperwork:

These amendments will not result in any additional paperwork or electronic reporting. The revised documentation requirements are expected to ease the regulatory burden on regulated entities.

Duplication:

This regulation will not conflict with any state or federal rules.

Alternative Approaches:

The alternative would be to leave the current regulation in its current form. However, doing so would continue documentation requirements for regulated parties that do not include the flexibility of this proposed amendment. There would also be no provision relating to persons who choose not to be vaccinated and who, for a medical reason, cannot wear a mask.

Federal Requirements:

There are no minimum standards established by the federal government for the same or similar subject areas.

Compliance Schedule:

This proposal will go into effect upon a Notice of Adoption in the New York State Register.

Regulatory Flexibility Analysis

Effect of Rule:

Any facility defined as a hospital pursuant to Article 28, a home services agency by PHL Article 36, or a hospice by PHL Article 40 will be required to comply. In New York State there are approximately 228 general hospitals, 1198 hospital extension clinics, 1239 diagnostic and treatment centers, and 635 nursing homes. There are also 139 certified home health agencies (CHHAs), 97 long term home health care programs (LTH-HCP), 19 hospices and 1164 licensed home care services agencies (LHCSAs).

Of those, it is known that 3 general hospitals, approximately 237 diagnostic and treatment centers, 40 nursing homes, 69 CHHAs, 36 hospices and 860 LHCSAs are small businesses (defined as 100 employees or less), independently owned and operated, affected by this rule. Local governments operate 18 hospitals, 40 nursing homes, 42 CHHAs, at least 7 LHCSAs, and a number of diagnostic and treatment centers and hospices.

Compliance Requirements:

All facilities and agencies must comply with the revised documentation requirement regarding the vaccination status of personnel.

Professional Services:

There are no additional professional services required as a result of this regulation.

Compliance Costs:

These amendments do not create any new costs for small businesses or local governments. To the extent that small businesses and local governments operate healthcare and residential facilities and agencies, the revised documentation requirements are expected to ease the regulatory burden on these entities.

Economic and Technological Feasibility:

This proposal is economically and technically feasible, as it does not impose any additional burdens.

Minimizing Adverse Impact:

This amendment does not create any adverse effect on regulated parties that would require a minimization analysis.

Small Business and Local Government Participation:

Small businesses and local governments are invited to comment during the Codes and Regulations Committee meeting of the Public Health and Health Planning Council, as well as during the official comment period.

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 when developing a regulation or explain in the Regulatory Flexibility Analysis why one was not included. This regulation creates no new penalty or sanction. Hence, a cure period is not necessary.

Rural Area Flexibility Analysis

Effect of Rule:

Any facility defined as a hospital pursuant to Article 28, a home services agency by PHL Article 36, or a hospice by PHL Article 40 will be required to comply. In New York State there are approximately 228 general hospitals, 1198 hospital extension clinics, 1239 diagnostic and treatment centers, and 635 nursing homes. There are also 139 certified home health agencies (CHHAs), 97 long term home health care programs (LTH-HCP), 19 hospices and 1164 licensed home care services agencies (LHCSAs). Of those, it is known that 47 general hospitals, approximately 90 diagnostic and treatment centers, 159 nursing homes, 92 certified home health agencies, 19 hospices, and 26 LHCSAs are in counties serving rural areas. These facilities and agencies will not be affected differently than those in non-rural areas.

Compliance Requirements:

All facilities and agencies must document the vaccination status of each personnel member as defined in this regulation for influenza virus, in their personnel or other appropriate record.

Professional Services:

There are no additional professional services required as a result of this regulation.

Compliance Costs:

These amendments do not create any new costs for small businesses or local governments. To the extent that healthcare and residential facilities and agencies are located in rural areas, the revised documentation requirements are expected to ease the regulatory burden on these entities.

Economic and Technological Feasibility:

This proposal is economically and technically feasible, as it does not impose any additional burdens.

Minimizing Adverse Impact:

This amendment does not create any adverse effect on regulated parties that would require a minimization analysis.

Public and Local Government Participation:

The public and local governments are invited to comment during the Codes and Regulations Committee meeting of the Public Health and Health Planning Council, as well as during the official comment period.

Job Impact Statement

No Job Impact Statement is required pursuant to section 201-a(2)(a) of the State Administrative Procedure Act (SAPA). It is apparent, from the nature of the proposed amendment, that it will have no impact on jobs and employment opportunities.

Office of Mental Health

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Medical Assistance Payment for Outpatient Programs and COPS

I.D. No. OMH-30-14-00018-EP

Filing No. 635

Filing Date: 2014-07-15

Effective Date: 2014-07-15

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

Proposed Action: Amendment of Part 588; and repeal of Part 592 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 7.09, 31.04 and 43.02

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

Specific reasons underlying the finding of necessity: The purpose of the proposed rule is two-fold. The rule implements an increase in the Medicaid fees paid to all OMH-licensed day treatment programs serving children and repeals 14 NYCRR Part 592 – Comprehensive Outpatient Programs (“COPS”). The Centers for Medicare and Medicaid Services mandated COPS funding to cease effective October 1, 2013; this rule making increases Medicaid fees paid to day treatment programs effective October 1, 2013. This increase will preserve program funding and will enable day treatment programs to continue to provide treatment to children in need of services. Since this proposed regulation has significant impact upon public health, safety and general welfare, the proposed rule warrants emergency filing.

Subject: Medical Assistance Payment for Outpatient Programs and COPS.

Purpose: Amend Part 588 by increasing Medicaid fees paid to OMH-licensed day treatment programs for children and repeal outdated rule.

Text of emergency/proposed rule: 1. Subdivision (c) of Section 588.13 of Title 14 NYCRR is amended to read as follows:

(c) Effective [April 1, 2011] *October 1, 2013*, reimbursement under the medical assistance program for day treatment programs serving children licensed solely pursuant to article 31 of the Mental Hygiene Law, and Part 587 of this Title shall be in accordance with the following fee schedule.

(1) For programs operated in Bronx, Kings, New York, Queens and Richmond Counties:

Full day	at least 5 hours	[\$78.61] \$98.26
Half day	at least 3 hours	[39.31] 49.14
Brief day	at least 1 hour	[26.21] 32.76
Collateral	at least 30 minutes	[26.21] 32.76
Home	at least 30 minutes	[78.61] 98.26
Crisis	at least 30 minutes	[78.61] 98.26
Preadmission – full day	at least 5 hours	[78.61] 98.26
Preadmission – half day	at least 3 hours	[39.31] 49.14

(2) For programs operated in other than Bronx, Kings, New York, Queens and Richmond Counties:

Full day	at least 5 hours	[\$75.99] \$94.99
Half day	at least 3 hours	[37.99] 47.49
Brief day	at least 1 hour	[25.29] 31.61
Collateral	at least 30 minutes	[25.29] 31.61
Home	at least 30 minutes	[75.99] 94.99
Crisis	at least 30 minutes	[75.99] 94.99
Preadmission – full day	at least 5 hours	[75.99] 94.99
Preadmission – half day	at least 3 hours	[37.99] 47.49

2. 14 NYCRR Part 592 is repealed.

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 12, 2014.

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

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: Sections 7.09 and 31.04 of the Mental Hygiene Law give the Commissioner of the Office of Mental Health the power and responsibility to plan, establish, license, and evaluate programs and services for the benefit of individuals diagnosed with mental illness, and to adopt regulations that are necessary and proper to implement matters under his or her jurisdiction.

Section 43.02 of the Mental Hygiene Law provides that payments under the Medical Assistance Program for outpatient services at facilities licensed by the Office of Mental Health shall be at rates certified by the Commissioner of Mental Health and approved by the Director of the Budget.

Section 43.02(b) of the Mental Hygiene Law gives the Commissioner the authority to request from operators of facilities licensed by the Office of Mental Health such financial, statistical and program information as the Commissioner may determine to be necessary.

2. Legislative Objectives: Articles 7 and 31 of the Mental Hygiene Law reflect the authority of the Commissioner to establish regulations regarding mental health programs. Day treatment programs for children are licensed by the Office of Mental Health (OMH) as outpatient programs serving children with a diagnosis of emotional disturbance. The goals of outpatient treatment for children are to reduce symptoms and improve functioning while allowing children to stay in their natural environments and providing ongoing support to the child and his or her family. A day treatment program serving children provides treatment designed to stabilize a child’s adjustment to educational settings, prepare a child for a return to educational settings, and ensure that he or she has received the necessary educational services to move to independent living. The proposed rule furthers the legislative intent under Article 7 by assuring the delivery of mental health services to children with serious emotional disturbance and facilitating financing procedures and mechanisms to support such a service delivery system.

3. Needs and Benefits: The reason for the rule making is two-fold. First, the proposed amendments increase the Medicaid fees paid to all OMH-licensed day treatment programs serving children, effective October 1, 2013. Second, the proposed amendments repeal 14 NYCRR Part 592, OMH’s regulation regarding Comprehensive Outpatient Programs (COPS).

The Centers for Medicare and Medicaid Services (CMS) mandated COPS funding to cease effective October 1, 2013. The increase in Medicaid fees reflects reinvestment of a portion of the State share of Medicaid associated with the COPS supplement, as contained in this year’s Aid to Localities Budget, in order to provide adequate funding for day treatment services. The balance of the State share of Medicaid associated with the COPS supplement will be used for State aid payments to such programs to minimize the operating deficits caused by the elimination of the COPS supplement. The revised fees have been approved by the Director of the Division of Budget. It is anticipated that the increase in Medicaid fees paid to day treatment programs serving children will provide assistance with regard to program viability and enable these programs to continue to serve children in need of mental health services.

14 NYCRR Part 592 was created in 1991, and established the standards for supplemental reimbursement under the Medical Assistance Program for comprehensive outpatient programs for adults with mental illness and children with serious emotional disturbance. As the funding for COPS ceased effective October 1, 2013, the Part is no longer necessary and will only serve to confuse providers of service if it is not repealed. Therefore, this rule making will repeal this Part.

4. Costs:

(a) Cost to State government: These regulatory amendments are expected to result in a cost of \$2.13 million to State government, which will be covered by a reinvestment of a portion of the State share of Medicaid associated with the COPS supplement. This was included in OMH’s Aid to Localities Budget and approved by the Division of the Budget.

(b) Cost to local government: These regulatory amendments are not expected to result in any additional costs to local government.

(c) Cost to regulated parties: These regulatory amendments are not expected to result in any additional costs to regulated parties.

5. Local Government Mandates: These regulatory amendments will not result in any additional imposition of duties or responsibilities upon county, city, town, village, school or fire districts.

6. Paperwork: This rule should not result in an increase in the paperwork requirements of providers.

7. Duplication: These regulatory amendments do not duplicate existing State or federal requirements.

8. Alternatives: The only alternative to the regulatory amendment would be inaction. This alternative was rejected due to the need for OMH to comply with the requirements of CMS to eliminate COPS funding. Further, inaction would have caused a reduction of funding to day treatment programs, which could have resulted in a reduction of services for children in these programs.

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

10. Compliance Schedule: These regulatory amendments will be effective upon adoption, and shall be deemed to have been effective on and after October 1, 2013.

Regulatory Flexibility Analysis

The proposed rule serves a dual purpose. The first is to increase the Medicaid fees paid to all OMH-licensed day treatment programs serving children, effective October 1, 2013. The second is to repeal 14 NYCRR Part 592 (Comprehensive Outpatient Programs – “COPS”) as it is no longer necessary and would only serve to confuse providers of service if it was not repealed. As there will be no adverse economic impact on small business or local governments, a Regulatory Flexibility Analysis for Small Business and Local Governments has not been submitted with this notice.

Rural Area Flexibility Analysis

The proposed rule serves a dual purpose. The first is to increase the Medicaid fees paid to all OMH-licensed day treatment programs serving children, effective October 1, 2013. The second is to repeal 14 NYCRR Part 592 (Comprehensive Outpatient Programs – “COPS”) as it is no longer necessary and would only serve to confuse providers of service if it was not repealed. The proposed rule will not impose any adverse economic impact on rural areas; therefore, a Rural Area Flexibility Analysis is not submitted with this notice.

Job Impact Statement

This proposed rule serves a dual purpose. The first is to increase the Medicaid fees paid to all OMH-licensed day treatment programs serving children, effective October 1, 2013. The second is to repeal 14 NYCRR Part 592 (Comprehensive Outpatient Programs – “COPS”) as it is no longer necessary and would only serve to confuse providers of service if it was not repealed. It is apparent from the nature and purpose of the rule that it will not have an impact on jobs and employment opportunities; therefore, a Job Impact Statement for these amendments is not being submitted with this rule making.

Public Service Commission

NOTICE OF ADOPTION

Adopting Emergency Rule As a Permanent Rule

I.D. No. PSC-19-14-00002-A

Filing Date: 2014-07-11

Effective Date: 2014-07-11

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

Action taken: On 7/11/14, the PSC adopted an order approving as a permanent rule, an emergency rule that approved Niagara Mohawk Power Corporation d/b/a National Grid’s petition for two emergency Customer Care low income programs.

Statutory authority: Public Service Law, sections 65 and 66

Subject: Adopting emergency rule as a permanent rule.

Purpose: To adopt emergency rule as a permanent rule.

Substance of final rule: The Commission, on July 11, 2014, adopted as a permanent rule, an emergency rule that approved Niagara Mohawk Power Corporation d/b/a National Grid’s request for two emergency Customer

Care low income programs in response to the effect that the severe 2014 winter weather had on increasing both wholesale electric commodity prices and its customers’ bills, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(12-E-0201EA6)

NOTICE OF ADOPTION

Adopting Emergency Rule As a Permanent Rule

I.D. No. PSC-19-14-00003-A

Filing Date: 2014-07-11

Effective Date: 2014-07-11

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

Action taken: On 7/11/14, the PSC adopted an order approving as a permanent rule, an emergency rule that approved an Order Granting Requests for Rehearing and Issuing a Stay issued April 25, 2014.

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

Subject: Adopting emergency rule as a permanent rule.

Purpose: To adopt emergency rule as a permanent rule.

Substance of final rule: The Commission, on July 11, 2014, adopted as a permanent rule, an emergency rule that approved an Order Granting Requests for Rehearing and Issuing a Stay issued on April 25, 2014, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(12-M-0476EA8)

NOTICE OF ADOPTION

Adopting Emergency Rule As a Permanent Rule

I.D. No. PSC-19-14-00004-A

Filing Date: 2014-07-10

Effective Date: 2014-07-10

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

Action taken: On 7/10/14, the PSC adopted an order approving on a permanent basis, an emergency rule that approved Central Hudson Gas and Electric Corporation’s tariff amendments to PSC No. 15 — Electricity.

Statutory authority: Public Service Law, section 66

Subject: Adopting emergency rule as a permanent rule.

Purpose: To adopt emergency rule as a permanent rule.

Substance of final rule: The Commission, on July 10, 2014, adopted as a permanent rule, an emergency rule that approved Central Hudson Gas and Electric Corporation’s tariff amendments to PSC No. 15 — Electricity, to effectuate changes in conformance with the establishment of the New York Independent System Operator new lower Hudson Valley capacity zone, 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-0133EA1)

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

Uniform System of Accounts - Request for Accounting Authorization

I.D. No. PSC-30-14-00019-P

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

Proposed Action: The Public Service Commission is considering whether to accept, reject or modify a petition from Fishers Island Water Works Corporation to defer approximately \$40,000 in expenses related to a transfer in company leadership.

Statutory authority: Public Service Law, sections 89-c(3)

Subject: Uniform System of Accounts - Request for Accounting Authorization.

Purpose: To allow the company deferred accounting treatment for expenses related to the change in corporate leadership.

Substance of proposed rule: The Public Service Commission is considering a request from Fishers Island Water Works Corporation (Fishers Island) for the deferral of one-time costs, approximately \$40,000, associated with the transition of the company's presidency and leadership responsibilities during the year 2013. This incremental costs incurred over and above the amounts authorized in the company's previously approved in Rate Case 06-W-0446 effective December 28, 2006. The Commission may approve, reject or modify, in whole or in part, the relief requested by Fishers Island and consider any 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-W-0262SP1)

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

Uniform System of Accounts - Request for Accounting Authorization

I.D. No. PSC-30-14-00020-P

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

Proposed Action: The Public Service Commission is considering whether to accept, reject or modify a petition from Fishers Island Telephone Corporation to defer approximately \$44,000 in expenses related to a transfer in company leadership.

Statutory authority: Public Service Law, section 95(2)

Subject: Uniform System of Accounts - Request for Accounting Authorization.

Purpose: To allow the company deferred accounting treatment for expenses related to the change in corporate leadership.

Substance of proposed rule: The Public Service Commission is considering a request from Fishers Island Telephone Corporation (Fishers Island) for the deferral of one-time costs, approximately \$44,000, associated with the transition of the company's presidency and leadership responsibilities during the year 2013. This incremental costs incurred over and above the amounts authorized in the company's previously approved in Rate Case 05-C-1331 effective April 21, 2006. The Commission may approve, reject or modify, in whole or in part, the relief requested by Fishers Island and consider any 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-C-0260SP1)

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

Uniform System of Accounts - Request for Accounting Authorization

I.D. No. PSC-30-14-00021-P

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

Proposed Action: The Public Service Commission is considering whether to accept, reject or modify a petition from Fishers Island Electric Corporation to defer approximately \$40,000 in expenses related to a transfer in company leadership.

Statutory authority: Public Service Law, section 66(9)

Subject: Uniform System of Accounts - Request for Accounting Authorization.

Purpose: To allow the company deferred accounting treatment for expenses related to the change in corporate leadership.

Substance of proposed rule: The Public Service Commission is considering a request from Fishers Island Electric Corporation (Fishers Island) for the deferral of one-time costs, approximately \$40,000, associated with the transition of the company's presidency and leadership responsibilities during the year 2013. This incremental costs incurred over and above the amounts authorized in the company's previously approved in Rate Case 08-E-1458 effective June 24, 2009. The Commission may approve, reject or modify, in whole or in part, the relief requested by Fishers Island and consider any 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-E-0261SP1)

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

Financing Proposed by Astoria Generating Company, L.P.

I.D. No. PSC-30-14-00022-P

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

Proposed Action: The Commission is considering whether to approve a financing proposed by Astoria Generating Company, L.P. for a maximum of \$2 billion.

Statutory authority: Public Service Law, section 69

Subject: Financing proposed by Astoria Generating Company, L.P.

Purpose: To consider financing proposed by Astoria Generating Company, L.P.

Substance of proposed rule: The Public Service Commission is considering a petition filed by Astoria Generating Company, L.P. on July 8, 2014, requesting approval of a financing pursuant to Public Service Law (PSL) § 69. The financing would be for an increase from \$1.38 billion to a maximum of \$2 billion, with the flexibility to shift obligations between the credit facilities. The Commission may adopt, reject or modify, in whole or in part, the relief proposed and may resolve 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-E-0264SP1)

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

Whether to Permit the Use of the Sensus iPERL Fire Flow Meter

I.D. No. PSC-30-14-00023-P

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

Proposed Action: The Public Service Commission is considering whether to approve, deny or modify, in whole or in part, a petition filed by New York American Water Company Incorporated for approval to use the Sensus iPERL Fire Flow Meter.

Statutory authority: Public Service Law, section 89-d(1)

Subject: Whether to permit the use of the Sensus iPERL Fire Flow Meter.

Purpose: Pursuant to 16 NYCRR Part 500.3, it is necessary to permit the use of the Sensus iPERL Fire Flow Meter.

Substance of proposed rule: The Commission is considering a petition filed by New York American Water Inc. (NYAW), requesting authorization to begin use of the Sensus iPERL Fire Flow Meter in its service territory. NYAW states that changes to the New York State building code now require the installation of "looped" sprinkler systems, which are supplied by the same service line as a building's drinking water supply, when significant renovations are made to a structure. The company further states that its current water meters can, by design, can impede the flow of water and reduce service pressure, which might have a negative effect on a sprinkler system. The proposed Sensus meter operates under a different mechanism than the company's current meters and, according to the petition, does not pose the same risk to fire suppression. NYAW also requests Commission approval of a draft letter to ratepayers possessing looped sprinkler systems, informing them that the systems would not operate if their water is turned off for nonpayment.

The Public Service Commission is considering whether to grant, deny

or modify, in whole or part, the petition and may also address any other related matters.

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

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

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

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

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

(14-W-0268SP1)

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

Continued Operation of R.E. Ginna Nuclear Power Plant for Reliability Purposes

I.D. No. PSC-30-14-00024-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 initiate a proceeding to examine a proposal for the continued operation of the R.E. Ginna Nuclear Power Plant.

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

Subject: Continued operation of R.E. Ginna Nuclear Power Plant for reliability purposes.

Purpose: To consider the continued operation of R.E. Ginna Nuclear Power Plant for reliability purposes.

Substance of proposed rule: The Public Service Commission is considering a petition filed by R.E. Ginna Nuclear Power Plant, LLC on July 11, 2014, requesting initiation of a proceeding to examine a proposal for the continued operation of the R.E. Ginna Nuclear Power Plant. The Petitioner requests that the Commission find a reliability need for the continued operation of the generation facility; direct Rochester Gas & Electric Corporation and the Petitioner to negotiate a Reliability Support Services Agreement; and find that prior communications with stakeholders and a completed reliability study satisfy the required six month period for retirement notices. The Commission may adopt, reject or modify, in whole or in part, the relief proposed and may resolve 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-E-0270SP1)

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

Allocation of Uncommitted Technology and Market Development Funds to the Combined Heat & Power Performance Program

I.D. No. PSC-30-14-00025-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 petition from the New York State Energy and Research Authority regarding the allocation of uncommitted Technology and Market Development Funds for Strategic Initiatives to the Combined Heat & Power Performance Program.

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

Subject: Allocation of uncommitted Technology and Market Development Funds to the Combined Heat & Power Performance Program.

Purpose: To consider allocation of uncommitted Technology & Market Development Funds to the Combined Heat & Power Performance Program.

Substance of proposed rule: The Public Service Commission is considering a petition from the New York State Energy Research Development Authority's (NYSERDA) filed on June 16, 2014 seeking authorization to allocate uncommitted Technology and Market Development (T&MD) funds to support additional program activities in the Combined Heat and Power (CHP) Performance Program of the T&MD portfolio. NYSEDA asks for allocation to CHP of \$7.5 million from \$10 million formerly allocated to the Brookhaven National Laboratory (BNL) in an Order Authorizing the Reallocation of Uncommitted System Benefits Charge III Funds issued September 13, 2012 in Case 07-M-0458. The \$10 million was intended to secure United States Department of Energy (US DOE) funding for a New York Energy Storage Innovation Hub, of which \$2.5 million would go towards support of the New York Battery and Energy Storage Technology Consortium (NY BEST). Spending of the remaining \$7.5 million was contingent on DOE approval of the Energy Storage Innovation Hub. If approval was not granted, NYSEDA was to file an alternative proposal; since approval was not, granted NYSEDA's filing proposes an alternative. The Commission may adopt, reject or modify, in whole or in part, the relief proposed and may resolve 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.

(10-M-0457SP7)

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

Petition for a Waiver to Master Meter Electricity

I.D. No. PSC-30-14-00026-P

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

Proposed Action: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by Renaissance Corporation of Albany for a waiver to master meter electricity at 100 Union Drive, Albany, NY.

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

Subject: Petition for a waiver to master meter electricity.

Purpose: Considering the request of Renaissance Corporation of to master meter electricity at 100 Union Drive, Albany, NY.

Substance of proposed rule: The Public Service Commission is considering the petition filed by Renaissance Corporation of Albany for a waiver to master meter electricity at 100 Union Drive, Albany, New York, located in the territory of Niagara Mohawk Power Corporation d/b/a National Grid. The Commission may grant, deny or modify, in whole or part, the relief requested in the petition.

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

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

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

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

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

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

(14-E-0217SP1)

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

Minor Electric Rate Filing

I.D. No. PSC-30-14-00027-P

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

Proposed Action: The Public Service Commission is considering a tariff filing by the Village of Fairport. The pending tariffs would increase annual base revenues by approximately \$293,425 or 1.4% in P.S.C. No. 1 — Electricity to become effective October 6, 2014.

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

Subject: Minor electric rate filing.

Purpose: For approval of tariff filing, which would increase annual base revenues by approximately \$293,425 or 1.4%.

Substance of proposed rule: The Commission is considering whether to approve, modify or reject, in whole or in part, a tariff filing submitted by the Village of Fairport on July 9, 2014. The pending tariffs would increase the Village of Fairport's annual base revenues by approximately \$293,425 or 1.4% to P.S.C. No. 1 — Electricity. The proposed filing has an effective date of October 6, 2014. The Commission may also consider other related matters.

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

Data, views or arguments may be submitted to: Kathleen H. Burgess, 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-0267SP1)

Department of State

NOTICE OF ADOPTION

Real Estate Broker Record Retention

I.D. No. DOS-10-14-00004-A

Filing No. 637

Filing Date: 2014-07-15

Effective Date: 90 days after filing

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

Action taken: Amendment of section 175.23 of Title 19 NYCRR.

Statutory authority: Real Property Law, section 442-k(1)

Subject: Real estate broker record retention.

Purpose: To update an existing regulation which requires real estate brokers to retain certain business records.

Text of final rule: § 175.23 Records of transactions to be maintained.

(a) Each licensed broker shall keep and maintain for a period of three years, *paper and/or electronic* records of each transaction effected through his or her office concerning the sale [or mortgage] of [one- to four-family dwellings] *real property used or occupied, or intended to be used or occupied, wholly or partly, as the home or residence of one or more persons improved by a one-to-four family dwelling, or a condominium or cooperative apartments but shall not refer to unimproved real property upon which such dwellings are to be constructed. Records to be kept and maintained shall contain:*

(1) the names and addresses of the seller[,] and the buyer, [mortgagee, if any,] (2) the broker prepared purchase contract or binder, or if the purchase contract is not prepared by the broker, then the purchase price [and resale price, if any,] and the amount of deposit [paid on contract] (if collected by broker), (3) the amount of commission paid to broker, (4) [or g]the gross profit realized by the broker if purchased by him or her for resale, [expenses of procuring the mortgage loan, if any, the net commission or net profit realized by the broker showing the disposition of all payments made by the broker. In lieu thereof each broker shall keep and maintain, in connection with each such transaction a copy of (1) contract of sale, (2) commission agreement, (3) closing statement, (4) statement showing disposition of proceeds of mortgage loan.] (5) any document required under Article 12-A of the Real Property Law and (6) the listing agreement or commission agreement or buyer-broker agreement.

(b) Each licensed broker engaged in the business of soliciting and granting mortgage loans to purchasers of one to four family dwellings shall keep and maintain for a period of three years, a record of the name of the applicant, the amount of the mortgage loan, the closing statement with the disposition of the mortgage proceeds, a copy of the verification of employment and financial status of the applicant, a copy of the inspection and compliance report with the Baker Law requirements of FHA with the name of the inspector. Such records shall be available to the Department of State at all times upon request.] (b) *In some transactions, the broker may not be provided a copy of the documents required to be maintained by subdivision (a) of this section. In such instances, the broker will not be found to have violated the requirements of this section.*

Final rule as compared with last published rule: Nonsubstantive changes were made in section 175.23(a) and (b).

Text of rule and any required statements and analyses may be obtained from: Whitney A. Clark, Department of State, Division of Licensing Services, 1 Commerce Plaza, 99 Washington Avenue, Albany, NY, (518) 473-2728, email: whitney.clark@dos.ny.gov

Revised Regulatory Impact Statement

Minor, non-substantive changes have been made to the text of the rule, since it was originally noticed as a proposed rulemaking, for the exclusive purpose (and resulting effect) of clarifying the text as originally proposed.

The Department of State has determined that the revisions made to the original proposed rule are not substantial and do not necessitate a modification of the previously-issued Regulatory Impact Statement (RIS).

The RIS issued with the Notice of Proposed Rulemaking for this rule remains adequate and complete. As such, there is no need to issue a Revised RIS.

Revised Regulatory Flexibility Analysis

Minor, non-substantive changes have been made to the text of the rule, since it was originally noticed as a proposed rulemaking, for the exclusive purpose (and resulting effect) of clarifying the text as originally proposed.

The Department of State has determined that the revisions made to the original proposed rule are not substantial and do not necessitate a modification of the previously-issued Regulatory Flexibility Analysis (RFA).

The RFA issued with the Notice of Proposed Rulemaking for this rule remains adequate and complete. As such, there is no need to issue a Revised RFA.

Revised Rural Area Flexibility Analysis

Minor, non-substantive changes have been made to the text of the rule, since it was originally noticed as a proposed rulemaking, for the exclusive purpose (and resulting effect) of clarifying the text as originally proposed.

The Department of State has determined that the revisions made to the original proposed rule are not substantial and do not necessitate a modification of the previously-issued Rural Area Flexibility Analysis (RAFA).

The RAFA issued with the Notice of Proposed Rulemaking for this rule remains adequate and complete. As such, there is no need to issue a Revised RAFA.

Revised Job Impact Statement

Minor, non-substantive changes have been made to the text of the rule, since it was originally noticed as a proposed rulemaking, for the exclusive purpose and resulting effect of clarifying the text as originally proposed.

The Department of State has determined that the revisions made to the original proposed rule as are not substantial and do not necessitate a modification of the previously-issued Job Impact Statement (JIS).

The JIS issued with the Notice of Proposed Rulemaking for this rule remains adequate and complete. As such, there is no need to issue a Revised Job Impact Statement.

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.

Workers' Compensation Board

EMERGENCY RULE MAKING

Methodology for Determining Annual Assessments

I.D. No. WCB-30-14-00017-E

Filing No. 629

Filing Date: 2014-07-14

Effective Date: 2014-07-14

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

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

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

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

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

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

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

Accordingly, emergency adoption of this rule is necessary.

Subject: Methodology for determining annual Assessments.

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

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

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

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

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

Standard premium is defined as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) In addition at any time prior to March 31, June 30, September 30, or December 31, the Board may identify any employer that has refused or

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

Section 500-9 describes the required reports:

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

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

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

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

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

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

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

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

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

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

This notice is intended to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires October 11, 2014.

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

Regulatory Impact Statement**1. Statutory authority:**

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

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

"on the first day of November two thousand thirteen, and annually thereafter, the chair shall establish an assessment rate for all affected employers in the state of New York in an amount expected to be sufficient to produce assessment receipts at least sufficient to fund all estimated annual expense pursuant to subdivision one of this section except those expenses for which an assessment is authorized for self-insurance pursuant to subdivision five of section fifty of this chapter. Such rate shall be assessed effective the first of January of the succeeding year and shall be based on a single methodology determined by the chair." The assessment rate funds statutorily required programs such as the Board's administrative expenses (151 WCL), the liabilities of the Special Disability Fund (15-8 WCL), the Fund for Reopened Cases (25-a WCL) and the Special Fund for Disability Benefits (214 WCL).

2. Legislative objectives:

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

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

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

3. Needs and benefits:

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

- Currently, a disconnect exists between the amounts that carriers collect from their policy holders and the amounts that the WCB bills those carriers. The new rule will result in the WCB no longer issuing assessment bills and instead promulgating a rate that will fund the required programs. Carriers will collect the amount driven by the rate from their policyholders and remit that amount to the Board. Eventually, the employers will remit to the Board directly.

- The base factors currently used to calculate the various payers proportionate share of assessments are not currently audited and/or verified. The new process will include mechanisms to audit the data including verification of amounts included on other State mandated forms like the NYS-45 required by the Departments of Tax and Finance and Labor.

- The current process of assessments being based on paid indemnity for certain payers requires the accrual and funding of significant long term liabilities. This requires carriers, SIF and self-insured's to hold aside monies to pay assessment liabilities that they will not have to actually remit until several years later.

- The current process is administratively onerous and lacks transparency for both the WCB and the various payers. The new process will result in more verification and audit of the data submitted.

- Each carrier, SIF, private and public self-insurer is receiving as many as 23 invoices from the WCB annually. Also, the data collection used to apportion the different assessments is manual and paper-based. The system used to calculate and bill the assessments is a custom module to the financial system used by the WCB that is difficult to maintain, particularly when upgrades and/or legislative changes are necessary. The WCB will no longer issue invoices and eventually a system will be implemented to allow payers to view and pay their assessments electronically.

4. Costs:

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

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

5. Local government mandates:

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

6. Paperwork:

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

7. Duplication:

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

8. Alternatives:

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

9. Federal standards:

There are no federal standards applicable to this proposed rule.

10. Compliance schedule:

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

Regulatory Flexibility Analysis**1. Effect of rule:**

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

2. Compliance requirements:

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

3. Professional services:

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

4. Compliance costs:

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

5. Economic and technological feasibility:

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

6. Minimizing adverse impact:

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

7. Small business and local government participation:

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

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:

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

2. Reporting, recordkeeping and other compliance requirements:

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

3. Costs:

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

4. Minimizing adverse impact:

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

5. Rural area participation:

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

Job Impact Statement

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