

RULE MAKING ACTIVITIES

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

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

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

Department of Agriculture and Markets

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Incorporation by Reference in 1 NYCRR of the 2014 Edition of National Institute of Standards and Technology (“NIST”) Handbook 44

I.D. No. AAM-25-14-00010-P

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

Proposed Action: This is a consensus rule making to amend section 220.2(a) of Title 1 NYCRR.

Statutory authority: Agriculture and Markets Law, sections 16, 18 and 179

Subject: Incorporation by reference in 1 NYCRR of the 2014 edition of National Institute of Standards and Technology (“NIST”) Handbook 44.

Purpose: To incorporate by reference in 1 NYCRR the 2014 edition of NIST Handbook 44.

Text of proposed rule: Subdivision (a) of section 220.2 of 1 NYCRR is amended to read as follows:

(a) Except as otherwise provided in this Part, the specifications, tolerances and regulations for commercial weighing and measuring devices shall be those adopted by the [97th] 98th National Conference on Weights and Measures [2012] 2013 as published in the National Institute of Standards and Technology Handbook 44, [2013] 2014 edition. This document is available from the National Conference on Weights and Measures, 1135 M Street, Suite 110, Lincoln, NE 68508, or the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. It is

available for public inspection and copying in the office of the Director of Weights and Measures, Department of Agriculture and Markets, 10B Airline Drive, Albany, NY 12235, or in the office of the Department of State, One Commerce Plaza, 99 Washington Avenue, Suite 650, Albany, New York 12231.

Text of proposed rule and any required statements and analyses may be obtained from: Mike Sikula, New York State Department of Agriculture and Markets, 10B Airline Drive, Albany, New York 12235, (518) 457-3146, email: Mike.Sikula@agriculture.ny.gov

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

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

Consensus Rule Making Determination

The proposed rule will amend 1 NYCRR section 220.2 to incorporate by reference the 2014 edition of National Institute of Standards and Technology Handbook 44 in place of the 2013 edition which is presently incorporated by reference.

The proposed rule is non-controversial. The 2014 edition of Handbook 44 has been adopted by or is in the process of being adopted by every state; manufacturers of weighing and measuring devices located in New York already, therefore, conform their operations to the provisions of this document in order to sell their products in interstate commerce. Furthermore, the State’s users of commercial weighing and measuring devices also already use devices that conform to the provisions of this document due to its nearly-nationwide applicability. The proposed rule will not, therefore, have any adverse impact upon regulated businesses and is, therefore, non-controversial.

Job Impact Statement

The proposed rule will not have an adverse impact on jobs or on employment opportunities.

The proposed rule will incorporate by reference in 1 NYCRR section 220.2 the 2014 edition of National Institute of Standards and Technology Handbook 44 (henceforth, “Handbook 44 (2014 edition)”) which contains specifications, tolerances and regulations for commercial measuring devices. The 2013 edition of Handbook 44 is presently incorporated by reference. Handbook 44 (2014 edition) differs from the 2013 edition in that it amends the marked capacity limits for railway track scales that are used to weigh rail cars when they are on the tracks; clarifies the required orientation (horizontal or inclined) of belt conveyor scales used to weight coal, stone, etc. so that such commodities do not fall off the belt when being weighed; and establishes new tolerances for testing the air eliminator on meters used in fuel oil delivery trucks to ensure that customers do not pay for air passing through the meter; and other, non-substantive additions, amendments, and deletions. Handbook 44 (2014 edition) has been adopted or is in the process of being adopted by every state; manufacturers and users of weighing and measuring devices located in New York already, therefore, conform their operations to the provisions of this document in order to sell their products in interstate commerce.

The proposed rule will not, therefore, have any adverse impact upon jobs or employment opportunities.

Department of Audit and Control

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Creation of Administrative Process for Determinations of Erroneous Payments of Abandoned Funds

I.D. No. AAC-25-14-00009-P

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

Proposed Action: Addition of Part 131 to Title 2 NYCRR.

Statutory authority: Abandoned Property Law, section 1414

Subject: Creation of administrative process for determinations of erroneous payments of abandoned funds.

Purpose: To afford due process when a payment of abandoned funds is determined to have been in error for various reasons.

Text of proposed rule: Part 131 is added to Title 2 of NYCRR as follows:
Part 131.

Rules and Regulations for the Scheduling, Adjourning and Conduct of Administrative Hearings Relating to the Recovery of Erroneous Payments and Overpayments made by the Office of Unclaimed Funds

§ 131.1 Background

WHEREAS, section 1406 of the Abandoned Property Law provides that the Comptroller, shall have the full and complete authority to determine the validity of abandoned property claims and to provide claimants with notice of his determination; and,

WHEREAS, section 1406 further provides that a claimant may, at any time within four months of such a determination by the Comptroller, apply for a hearing and a redetermination of his claim, and that the Comptroller, after an appropriate hearing on notice before the Comptroller or a person designated by him, shall make and serve a final determination; and,

WHEREAS, from time to time where a claim for abandoned funds has been previously paid, the Comptroller may determine upon audit and review that such payment was erroneous in whole or part due to misrepresentation, fraud, or mistake; and,

WHEREAS upon a determination that an erroneous payment has been made, the Comptroller may advise the claimant/payee of such determination and make a demand of the claimant/payee for repayment; and,

WHEREAS such demand constitutes a determination by the Comptroller under section 1406 thus entitling the claimant/payee to a hearing and redetermination; and,

WHEREAS, section 1414 of the Abandoned Property Law authorizes the Comptroller to make such rules and regulations as he may deem necessary to enforce the provisions of the Abandoned Property Law;

THEREFORE, it is hereby determined that the following regulations shall be promulgated to determine the procedures which shall be observed and the rules which shall be followed for the scheduling of and conduct of such hearings.

§ 131.2 Notice of determination of erroneous payment

(a) When the Comptroller determines that a claim previously approved and paid was approved and paid erroneously, in whole or in part, due to misrepresentation, fraud or mistake, the Comptroller shall issue a determination in writing to that effect together with a demand for repayment. The Comptroller shall also advise the claimant/payee that he or she may within four months of such determination request a hearing and redetermination and provide information as to whom such request is to be sent.

(b) If the claimant/payee does not, within four months of the issuance of a notice pursuant to subdivision (a) of this section, either make payment in full or request a hearing and redetermination, then the determination that an erroneous payment was made shall be final, and the Comptroller may take any lawful action, including but not limited to recovery through the State Wide Offset Program pursuant to sections 171-d and 171-f of the New York Tax Law.

§ 131.3 Notice of hearing

(a) Where a claimant/payee makes a timely written demand for a hearing and redetermination, the Office of Unclaimed Funds, or its designee, shall notify the claimant/payee or, in the event the claimant/payee is represented by counsel, the claimant/payee's counsel, of the date a hearing will be held. The hearing shall be scheduled within a reasonable time following the receipt of such timely written demand.

(b) All notices of hearings shall specifically and plainly state the following:

- (1) the time, place and date of the hearing;
- (2) the purpose of the hearing;
- (3) the right of the claimant/payee to be represented by counsel;
- (4) the procedure for obtaining an adjournment and its consequences; and
- (5) the consequences of the claimant/payee's failure to appear at a scheduled hearing.

(c) The notice shall be accompanied by a designation by the Comptroller of a hearing officer pursuant to section 1406 of the Abandoned Property Law. The seal of the Comptroller shall be affixed to such designation.

(d) The notice and designation shall be mailed by certified mail to the claimant/payee or to the claimant/payee's counsel or other authorized representative not less than three weeks before the date of the scheduled hearing.

§ 131.4 Conduct of hearings

All hearings shall be conducted in an orderly manner in order to ascertain the substantive rights of the parties. The hearing officer, duly designated by the Comptroller, shall preside. The Comptroller may designate to serve as hearing officer either a qualified private party or a member of the staff of the Department of Audit and Control who has had no prior involvement in the claim. All witnesses shall testify under oath (or by affirmation) and a record of the proceedings shall be made and kept either by means of stenographic recording or tape recording at the discretion of the Comptroller. Where the total amount being demanded exceeds \$ 1,000, a transcribed copy of such record shall be made and furnished to the claimant/payee or when the claimant/payee is represented by counsel, to the claimant/payee's counsel, and the cost of the preparation of the record shall be borne by the Office of Unclaimed Funds. Where the total amount being demanded does not exceed \$ 1,000, a transcribed copy of such record shall only be made and furnished upon the request of the claimant/payee or the Office of Unclaimed Funds with the cost of transcribed copy of the record to be borne by the party or parties requesting such copy. The claimant/payee or the claimant/payee's counsel, the representative of the Office of Unclaimed Funds and the hearing officer may examine and cross-examine all parties and witnesses appearing at any hearing. All costs incurred by the claimant/payee in retaining counsel and/or presenting witnesses shall be the sole responsibility of the claimant/payee.

§ 131.5 Presentation of the payee's case

The claimant/payee shall state his or her case upon commencement of the proceeding. The claimant/payee will have the opportunity at that time to offer proofs to support the claimant/payee's position that the Comptroller's determination of an erroneous payment is incorrect and to call and examine any and all witnesses on behalf of the claimant/payee. Upon being sworn in, the claimant/payee may testify on his or her own behalf. In addition to the presentation of the claimant/payee's case, the hearing officer may hear argument and entertain motions for dismissal or for other appropriate relief.

§ 131.6 Presentation of the case of the Office of Unclaimed Funds

Upon completion of the claimant/payee's case, the Office of Unclaimed Funds shall have the opportunity to offer proofs in opposition to the claimant/payee's case. The Office of Unclaimed Funds may call and examine any and all witnesses on its behalf.

§ 131.7 Briefs and memoranda of law

Briefs and memoranda of law shall be prepared and submitted upon request therefor by the hearing officer. The costs of such preparation and submission shall be borne by the party preparing the same.

§ 131.8 Adjournment of hearing and scheduling of subsequent hearings

(a) In the absence of unforeseeable circumstances, a request for adjournment of the first date of any hearing must be submitted to the Office of Unclaimed Funds at least two business days or 48 hours, whichever is longer, prior to the scheduled date of such hearing.

(b) The adjournment of the initial hearing will be granted by the Office of Unclaimed Funds with the understanding that the claimant/payee or the claimant/payee's counsel, within 20 days after the adjournment, shall advise the Office of Unclaimed Funds of such date or dates convenient for the rescheduling of a hearing. Failure to advise the Office of Unclaimed Funds of such date or dates will result in a hearing being scheduled by the Office of Unclaimed Funds without further consultation with the claimant/payee or the claimant/payee's counsel.

(c) Any request for an adjournment made during the course of a hearing shall be addressed to the hearing officer who shall have sole authority to grant or deny such request. If an adjournment is granted, the hearing officer shall schedule the date of resumption of the hearing upon consultation with the parties if the hearing officer so desires.

§ 131.9 Failure of claimant/payee to appear

The failure of the claimant/payee or the claimant/payee's representative to appear at a scheduled hearing without a timely and proper adjourn-

ment pursuant to section 131.8 of this Part will result in a finding that the Comptroller's determination of erroneous payment was correct and the Comptroller may take any lawful action, including but not limited to recovery through the State Wide Offset Program pursuant to sections 171-d and 171-f of the New York Tax Law.

§ 131.10 Decision and review

(a) Upon completion of the presentations of the claimant/payee and the Office of Unclaimed Funds, and upon submission of all evidence in connection therewith, the hearing officer shall render a written decision upon the merits. Such decision shall set forth findings of fact and conclusions of law or reasons for the decision.

(b) A decision shall be in the form of a recommendation, signed by the hearing officer, to the Office of Unclaimed Funds. Within 10 business days of receipt of such a recommendation, the Comptroller shall make a written final determination with respect to such decision. The final determination shall set forth findings of facts and conclusions of law or reasons for the determination, provided that the final determination may adopt the findings of fact and conclusions of law or reasons as set forth in the decision of the hearing officer. The Comptroller's final determination shall be served upon the claimant/payee or the claimant/payee's counsel by mail, provided that where such determination in whole or in part affirms the Comptroller's determination of an erroneous payment, the determination shall be served by certified mail upon the claimant/payee, or where the claimant/payee is represented by counsel, then upon the claimant/payee's counsel.

(c) Any decision of a hearing officer or any determination by the Comptroller shall be deemed final upon the date of the mailing of such decision of determination.

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

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

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

Regulatory Impact Statement

1. Statutory authority: Pursuant to section 1414 of the Abandoned Property Law the Comptroller is authorized to make regulations to effectuate the Abandoned Property Law.

2. Legislative objectives: To provide an administrative process whereby a claimant/payee may submit evidence and testimony to challenge the Department of Audit and Control's determination that a payment of Unclaimed Funds previously made to a claimant/payee was induced by fraud, mistake or misrepresentation or otherwise made in error. Because Tax law section 171-f requires an that a taxpayer be afforded the opportunity for an adjudicatory proceeding prior to the utilization of the State Wide Offset Program (hereinafter referred to as SWOP), the enactment of this rule will allow the Department of Audit and Control to utilize SWOP to collect from the claimant/payee any payments made by the Office of Unclaimed Funds that have been determined to have been made due to mistake, misrepresentation or fraud or otherwise made in error.

3. Needs and benefits: The Office of Unclaimed Funds returned \$412 million of unclaimed funds to its owners in 2013. See Press Release from the Office of the State Comptroller, Thomas P. DiNapoli, January 3, 2014. Thousands of payments made are made, but on occasion the Comptroller through audit and oversight, may determine that a payment was induced through the mistake, fraud, misrepresentation of a claimant/payee or otherwise made in error. Once that determination is made the Office of Unclaimed Funds seeks to have such payment returned to the Abandoned Property Fund. Sometimes the claimant/payee will refuse to repay and the cost of obtaining an enforceable judgment far outweighs the amount owed to be repaid. By adopting these regulations, there is a two-fold benefit. First, the administrative hearing process provides a more formal process in order for the claimant/payee to provide challenge the Comptroller's determination using sworn testimony or a presentation of proofs. Secondly, the formal administrative hearing process qualifies the Comptroller to utilize SWOP to recover from the claimant. SWOP is a program whereby debts owed to the State of New York are collected via offset from State tax refunds payable to the claimant/payee. SWOP is a cost effective method of collecting debt and it is expected that the Office of Unclaimed Funds will be able to collect \$XYZ, which may have been otherwise uncollectable.

4. Costs: a. Costs to regulated parties for the implementation of and continuing compliance with the rule: There are no capital costs to any claimant/payee as a result of the proposed rule. The Office of Unclaimed Funds would only request up to the amount erroneously paid from the claimants/payees who were erroneously paid. If the claimant/payee elects to challenge the Comptroller's determination in a formal hearing, the costs to the claimant/payee might, as outlined in greater detail below, include:

travel and lodging costs for the claimant/payee and any witnesses; costs for any certified documents (such as certified copies of death certificates or letters testamentary); attorney's fees (where the claimant/payee elects to retain an attorney); and costs for transcribed copies of the record of the hearing (where the amount at issue is less than \$1,000). Travel and lodging costs for New York residents will be relatively nominal in most cases since the Department affords hearing sites in nine sites located throughout the State, and, therefore, in most cases, the resident would only need to drive or take public transportation to the nearest site, which in most cases would only require a day trip. Additionally, travel costs for any witnesses the claimant/payee wishes to appear on their behalf (which again, for New York residents will be relatively nominal). However, if lodging and food are required, we estimate that lodging and meals could conceivably cost the claimant/payee up to \$150. The cost of obtaining certified documents to support the claimant/payee's case could cost up to \$100. If the claimant elects to be represented by an attorney, we estimate that attorney fees could be \$2,000 or more. Further, if the amount of the payment at issue is less than \$1,000 and the Comptroller does not elect to engage a stenographer, as allowed per the proposed rule, the claimant/payee can choose to have a stenographer present and bear the costs for such stenographer. The Office of Unclaimed Funds would have to pay fees for engaging a hearing officer and for providing a transcript, which costs roughly \$1,000 per hearing, based upon the current costs of holding denial hearings (note the Office of Unclaimed Funds is not required to provide a stenographer if the amount seeking to be repaid is less than \$1,000). The costs are calculated on estimates of the cost and number of past fair hearings held by other divisions in the Department of Audit and Control.

b. Costs to the agency, the state and local governments for the implementation and continuation of the rule: The Office of Unclaimed Funds would have to pay fees for engaging a hearing officer and for providing a transcript roughly \$1,000 per hearing (although it could elect to appoint an employee of the Department as a hearing officer) based upon the current costs of holding denial hearings. SWOP will be cost neutral to the agencies.

c. Information, including the source(s) of such information and the methodology upon which the cost analysis is based: Cost estimates are based upon the cost and number of past fair hearings held by OUF and other divisions in the Department of Audit and Control.

5. Local government mandates: Except in the unlikely case when a local government has obtained unclaimed funds through mistake, misrepresentation or fraud, these rules would not impact a local government.

6. Paperwork: None.

7. Duplication: None.

8. Alternatives: The only other significant alternative considered was to continue our current method of making written demand for repayment. Such alternative was discarded as the Office of Unclaimed Funds would likely continue to have the same difficulties collecting some of the smaller amounts and then would not be able to utilize SWOP.

9. Federal standards: None.

10. Compliance schedule: Immediately. Currently the Office Unclaimed Funds already holds hearings for denials of abandoned property claims and the same methods and resources would be used to hold hearings for repayments.

Regulatory Flexibility Analysis

1. Effect of rule: The rule will affect both small businesses and local governments. Five hundred small businesses made claim to abandoned funds in the last fiscal year, with an estimate of about five percent or less resulting in a determination of an erroneous or fraudulent payment. One hundred local governments made claim to abandoned funds in the last fiscal year, however, there have been no determinations that any payments to local governments were erroneous. It is estimated that in the future, a determination of an erroneous or fraudulent payment will happen 0%-1% of the time when a local government makes claim to abandoned funds. The effect of the rule is that any claimant/payee, including small businesses and local governments, will have the opportunity to have a more formal administrative hearing process where the claimant/payee can provide his/her/its rebuttal to the Comptroller's determination using sworn testimony or a presentation of proofs, and the Comptroller can present its case to the claimant/payee in the hearing process. The Comptroller will also be able to utilize the State-Wide Offset Program (SWOP), where debts owed to the State of New York are collected via offset from State tax refunds payable to the claimant/payee.

2. Compliance requirements: Although the claimant/payee is not required to engage in any additional reporting, recordkeeping, or other affirmative acts, the claimant/payee can submit evidence and testimony to challenge the Comptroller's determination that a payment of Unclaimed Funds was made in error or induced by fraud, mistake, or representation.

3. Professional services: No professional services are necessary for small businesses or local governments to comply with the rule. However, the professional services of an attorney may be utilized if the claimant/

payee chooses to be represented by an attorney for purposes of the hearing. Additionally, if the amount of the payment at issue is less than \$1,000 and the Comptroller does not elect to engage a stenographer, as allowed per the proposed rule, the claimant/payee can choose to have a stenographer present and bear the costs for such stenographer.

4. Compliance costs: There are no capital costs to any claimant/payee as a result of the proposed rule. If the claimant/payee elects to challenge the Comptroller's determination in a formal hearing, the costs to the claimant/payee might, as outlined in greater detail below, include: travel and lodging costs for the claimant/payee and any witnesses; costs for any certified documents (such as certified copies of death certificates or letters testamentary); attorney's fees (where the claimant/payee elects to retain an attorney); and costs for transcribed copies of the record of the hearing (where the amount at issue is less than \$1,000). Travel and lodging costs for New York residents should be relatively nominal in most cases since the Department affords hearing sites in nine sites located throughout the State, and, therefore, in most cases, the resident would only need to drive or take public transportation to the nearest site, which in most cases would only require a day trip. However, if lodging and food are required, we estimate that lodging and meals could conceivably cost the claimant/payee up to \$150. We estimate that the cost of obtaining certified documents to support the claimant/payee's case could be up to \$100. Claimants/payees are not required to be represented by an attorney, but, of course may choose to retain an attorney. If a claimant/payee chooses to be represented by an attorney, we estimate that attorney fees could be \$2,000 or more. Further, as stated above, if the amount of the payment at issue is less than \$1,000 and the Comptroller does not elect to engage a stenographer, as allowed per the proposed rule, the claimant/payee can choose to have a stenographer present and bear the costs for such stenographer. The Office of Unclaimed Funds would have to pay fees for engaging a hearing officer and for providing a transcript, which costs roughly \$1,000 per hearing, based upon the current costs of holding denial hearings (note the Office of Unclaimed Funds is not required to provide a stenographer if the amount seeking to be repaid is less than \$1,000). The costs are calculated on estimates of the cost and number of past fair hearings held by other divisions in the Department of Audit and Control.

5. Economic and technological feasibility: There are no economic or technological issues to complying with this rule. Note any technological resources needed for conducting a hearing (i.e. video conferencing hardware), will be provided by the Department of Audit and Control.

6. Minimizing adverse impact: The approaches suggested by the Legislature in SAPA § 202-b(1) were not considered. It does not appear that the rule will have an adverse economic impact on small businesses or local governments.

7. Small business and local government participation: Notice of this proposed rule making will be posted on the Comptroller's website in the form of a press release in order to ensure any small business and local government which wishes to participate in the rule making process has adequate notice of the proposed rule.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas: This rule will affect all rural areas.

2. Reporting, recordkeeping and other compliance requirements; and professional services: There are no reporting, recordkeeping, and other compliance requirements. A claimant/payee in a rural area who receives notice of an erroneous payment, if they elect to have a hearing, may engage an attorney if they so choose. Additionally, if the value of the payment seeking to be repaid is less than \$1,000 and the Comptroller does not elect to engage a stenographer, as allowed per the proposed rule, the claimant/payee can choose to have a stenographer present and bear the costs for such stenographer.

3. Costs: There are no capital costs to the claimant/payee. If the claimant/payee elects to challenge the Comptroller's determination in a formal hearing, the costs to the claimant/payee might, as outlined in greater detail below, include: travel and lodging costs for the claimant/payee and any witnesses; costs for any certified documents (such as certified copies of death certificates or letters testamentary); attorney's fees (where the claimant/payee elects to retain an attorney); and costs for transcribed copies of the record of the hearing (where the amount at issue is less than \$1,000). Travel and lodging costs for New York residents should be relatively nominal in most cases since the Department affords hearing sites via teleconference in nine sites located throughout the State, and, therefore, in most cases, the resident would only need to drive or take public transportation to the nearest site, which in most cases would only require a day trip. We note that, in more remote rural areas, where the nearest regional office may be some distance away, costs of travel and lodging could conceivably be higher, the sites should not be more than three to four hours' travel by car. However, if lodging and food are required, we estimate that lodging and meals could conceivably cost the claimant/payee up to \$150. We estimate that the cost of obtaining certified

documents to support the claimant/payee's case may cost up to \$100. Claimants/payees are not required to be represented by an attorney, but, of course may choose to retain an attorney. If a claimant/payee chooses to be represented by an attorney, we estimate that attorney fees could be \$2,000 or more. The Office of Unclaimed Funds would have to pay fees for engaging a hearing officer and for providing a transcript, which costs roughly \$1,000 per hearing, based upon the current costs of holding denial hearings. Additionally, as stated in the section above, if the amount of payment at issue to be repaid is less than \$1,000 and the Comptroller does not elect to engage a stenographer, as allowed per the proposed rule, the claimant/payee can choose to have a stenographer present and bear the costs for such stenographer. The costs are calculated on estimates of the cost and number of past hearings held by other divisions in the Department of Audit and Control.

4. Minimizing adverse impact: The approaches suggested by the Legislature in SAPA § 202-bb(2) were not feasible nor relevant. It does not appear that the rule will have an adverse economic impact on claimant/payees in rural areas since a claimant/payee can participate in a hearing throughout the State in the Comptroller's regional offices.

5. Rural area participation: Notice of this proposed rule making will be posted on the Comptroller's website in the form of a press release in order to ensure that a person or entity in a rural area who wishes to participate in the rule making process has adequate notice of the proposed rule.

Department of Civil Service

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-25-14-00001-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 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 Executive Department under the subheading "Statewide Financial System," by adding thereto the position of Secretary.

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@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-25-14-00002-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 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 Executive Department under the subheading "Office of Indigent Legal Services," 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:** Shirley LaPlante, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@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-25-14-00003-P

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

Proposed Action: Amendment of 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 Health under the subheading "Office of the Medicaid Inspector General," by adding thereto the position of Chief Investigations.**Text of proposed rule and any required statements and analyses may be obtained from:** Shirley LaPlante, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@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-25-14-00004-P

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

Proposed Action: Amendment of 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 of proposed rule:** Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Department of Family Assistance under the subheading "Office of Children and Family Services," by decreasing the number of positions of Assistant Commissioner from 8 to 7 and by increasing the number of positions of Deputy Commissioner from 3 to 4.**Text of proposed rule and any required statements and analyses may be obtained from:** Shirley LaPlante, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@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-25-14-00005-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 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 of proposed rule:** Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Department of Economic Development, by decreasing the number of positions of Deputy Director from 5 to 4 and by increasing the number of positions of Special Assistant from 4 to 5.**Text of proposed rule and any required statements and analyses may be obtained from:** Shirley LaPlante, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@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-25-14-00006-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 Department of Mental Hygiene under the subheading "Office of Mental Health," by increasing the number of positions of Associate Commissioner for Mental Health from 5 to 6.**Text of proposed rule and any required statements and analyses may be obtained from:** Shirley LaPlante, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@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-25-14-00007-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 3 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 labor class.**Text of proposed rule:** Amend Appendix 3 of the Rules for the Classified Service, listing positions in the labor class, under the heading All State Departments and Agencies, by deleting therefrom the positions of Building Service Aide and by adding thereto the positions of Facility Operations Aide.**Text of proposed rule and any required statements and analyses may be obtained from:** Shirley LaPlante, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@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-25-14-00008-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 2 of Title 4 NYCRR.

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

Subject: Jurisdictional Classification.

Purpose: To delete positions from and 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 "Office of Parks, Recreation and Historic Preservation," by decreasing the number of positions of Assistant Park Recreation Supervisor from 32 to 20 and by increasing the number of positions of Research and Collections Technician from 2 to 3.

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@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.

**Division of Criminal Justice
Services**

NOTICE OF EXPIRATION

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

Public access to records and access to personal information

I.D. No.	Proposed	Expiration Date
CJS-23-13-00008-P	June 5, 2013	June 5, 2014

Education Department

**EMERGENCY
RULE MAKING**

Science Intermediate Assessments

I.D. No. EDU-12-14-00012-E

Filing No. 478

Filing Date: 2014-06-09

Effective Date: 2014-06-09

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

Action taken: Amendment of sections 100.4(d)(4), (e)(4) and 100.18(b)(14) 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) and (20), 308(not subdivided), 309(not subdivided) and 3204(3)

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

Specific reasons underlying the finding of necessity: The proposed amendment to section 100.4(e)(4) would enact a technical change to clarify that students attending grade 8 may take a Regents examination in science in lieu of or in addition to the grade 8 science intermediate assessment. The proposed rule also provides that the science intermediate assessment shall not be administered in grade 8 to students who take such assessment in grade 7 and are being considered for placement in an accelerated high school-level science course when they are in grade 8. The proposed amendment would thereby provide a means to relieve students, teachers, and schools from having to prepare for multiple end-of-year assessments for students in grade 8 who receive Regents-level instruction in science and take Regents examinations in science.

The proposed amendment to 100.18(b)(14) clarifies how student results on grade 8 science assessments, including Regents examinations, will be used for institutional accountability purposes.

The proposed amendment also makes a technical revision to paragraph (4) of subdivision (d) of section 100.4 to correct a citation.

The proposed amendment was adopted as an emergency action at the March 10-11, 2014 Regents meeting, effective March 11, 2014. Because the Board of Regents meets at monthly intervals, the earliest the proposed amendment could be adopted by regular action after publication of a Notice of Emergency Adoption and Proposed Rule Making in the State Register on March 26, 2014 and expiration of the 45-day public comment period prescribed in State Administrative Procedure Act (SAPA) section 202 would be the June 23-24, 2014 Regents meeting. Furthermore, pursuant to SAPA section 203(1), the earliest effective date of the proposed amendment, if adopted at the June meeting, would be July 9, 2014, the date a Notice of Adoption would be published in the State Register. However, the March emergency rule will expire on June 9, 2014, 90 days after its filing with the Department of State on March 11, 2014. A lapse in the rule's effective date could disrupt implementation of grade 8 intermediate science assessments during the 2013-2014 school year.

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

It is anticipated that the proposed amendment will be presented for adoption as a permanent rule at the June 23-24, 2014 Regents meeting, which is the first scheduled Regents meeting after publication of the proposed rule in the State Register and expiration of the 45-day public comment period prescribed in the State Administrative Procedure Act for State agency rule makings.

Subject: Science intermediate assessments.

Purpose: To provide flexibility to schools in the administration of Regents science assessments to students in grades 7-8.

Text of emergency rule: 1. Paragraph (4) of subdivision (d) of section 100.4 of the Regulations of the Commissioner of Education is amended, effective June 9, 2014, as follows:

(4) Courses taken pursuant to this subdivision may be substituted for the appropriate requirements set forth in subdivision [(b)] (c) of this section.

2. Paragraph (4) of subdivision (e) of section 100.4 of the Regulations

of the Commissioner of Education is amended, effective June 9, 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) . . .
- (2) . . .
- (3) . . .

(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) . . .

3. Subparagraph (iii) of paragraph (14) of subdivision (b) of section 100.18 of the Regulations of the Commissioner of Education is amended, effective June 9, 2014, as follows:

(iii) Notwithstanding the provisions of this section:

- (a) . . .
- (b) . . .

(c) *Science assessments in grades 7 and 8.*

(i) *For students who, while attending grade 8, take a Regents examination in science but do not take the grade 8 science intermediate assessment, participation and accountability determinations for the school in which such student attends grade 8 shall be based upon such student's performance on the Regents examination in science.*

(ii) *For students who, while attending grade 8, take both the grade 8 science intermediate assessment and a Regents examination in science, participation and accountability determinations for the school in which such student attends grade 8 shall be based upon such student's performance on the grade 8 science intermediate assessment.*

(iii) *For students who have taken the grade 8 science intermediate assessment when they attended grade 7 and who take a Regents examination in science while attending grade 8, participation and accountability determinations for the school in which such student attends grade 8 shall be based upon such student's performance on the Regents examination in science.*

(iv) *For students who have taken the grade 8 science intermediate assessment when they attended grade 7 and who do not take a Regents examination in science while attending grade 8, participation and accountability determinations for the school in which the student attends grade 8 shall be based upon the student's performance on the grade 8 science intermediate assessment taken in grade 7.*

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-12-14-00012-EP, Issue of March 26, 2014. The emergency rule will expire August 7, 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 examinations as to attainments in learning and to award and confer suitable certificates, diplomas and degrees on persons who satisfactorily meet the requirements prescribed.

Education Law section 209 authorizes the Regents to establish secondary school examinations in studies furnishing a suitable standard of graduation and of admission to colleges; to confer certificates or diplomas on students who satisfactorily pass such examinations; and requires the

admission to these examinations of any person who shall conform to the rules and pay the fees prescribed by the Regents.

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

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

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

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

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

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

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

2. LEGISLATIVE OBJECTIVES:

The proposed amendment is consistent with the above statutory authority and is necessary to implement Regents policy relating to State learning standards, State assessments, graduation and diploma requirements, and higher levels of student achievement, and public school and district accountability.

3. NEEDS AND BENEFITS:

Section 100.4(e) (4) currently provides that the science intermediate assessment shall be administered in grade 8. However, some grade 7 and 8 students receive Regents-level instruction in science and take Regents examinations in science. The proposed amendment to section 100.4(e)(4) would enact a technical change to clarify that students attending grade 8 may take a Regents examination in science in lieu of or in addition to the grade 8 science intermediate assessment. The proposed rule also provides that the science intermediate assessment shall not be administered in grade 8 to students who take such assessment in grade 7 and are being considered for placement in an accelerated high school-level science course when they are in grade 8. The proposed amendment would thereby provide a means to relieve students, teachers, and schools from having to prepare for multiple end-of-year assessments for students in grade 8 who receive Regents-level instruction in science and take Regents examinations in science.

The proposed amendment to 100.18(b)(14) clarifies how student results on grade 8 science assessments, including Regents examinations, will be used for institutional accountability purposes, as follows:

- For students who, while attending grade 8, take a Regents examination in science but do not take the grade 8 science intermediate assessment, participation and accountability determinations for the school in which such student attends grade 8 shall be based upon such student's performance on the Regents examination in science.

- For students who, while attending grade 8, take both the grade 8 science intermediate assessment and a Regents examination in science, participation and accountability determinations for the school in which such student attends grade 8 shall be based upon such student's performance on the grade 8 science intermediate assessment.

- For students who have taken the grade 8 science intermediate assessment when they attended grade 7 and who take a Regents examination in science while attending grade 8, participation and accountability determinations for the school in which such student attends grade 8 shall be based upon such student's performance on the Regents examination in science.

- For students who have taken the grade 8 science intermediate assessment when they attended grade 7 and who do not take a Regents examination in science while attending grade 8, participation and accountability determinations for the school in which the student attends grade 8 shall be based upon the student's performance on the grade 8 science intermediate assessment taken in grade 7.

The proposed amendment also makes a technical revision to paragraph (4) of subdivision (d) of section 100.4 to correct a citation.

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 will not impose any additional costs on the State, local governments, private regulated parties or the State Education Department. The proposed amendment provides flexibility to school districts in the administration of the science intermediate assessment to: (1) students in grade 8 who receive Regents-level instruction in science and take Regents examinations in science, and (2) students who take the science intermediate assessment in grade 7 and are being considered for placement in an accelerated high school-level science course when they are in grade 8. The proposed amendment clarifies that students attending grade 8 may take a Regents examination in science in lieu of or in addition to the grade 8 science intermediate assessment. The proposed amendment also provides that the science intermediate assessment shall not be administered in grade 8 to students who take such assessment in grade 7 and are being considered for placement in an accelerated high school-level science course when they are in grade 8. The proposed amendment will reduce costs to school districts by providing a means to relieve students, teachers, and schools from having to prepare for multiple science assessments for students in grade 8 who receive Regents-level instruction in science and take Regents examinations in science and students who take the science intermediate assessment in grade 7 and are being considered for placement in an accelerated high school-level science course when they are in grade 8.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment provides flexibility to school districts in the administration of the science intermediate assessment and will not impose any additional program, service, duty or responsibility upon local governments. The proposed amendment will reduce compliance requirements and costs to school districts by providing a means to relieve students, teachers, and schools from having to prepare for multiple science assessments for students in grade 8.

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.

9. FEDERAL STANDARDS:

There are no related federal standards in this area.

10. COMPLIANCE SCHEDULE:

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

Regulatory Flexibility Analysis

Small Businesses:

The proposed amendment provides flexibility to school districts in the administration of the science intermediate assessment to: (1) students in grade 8 who receive Regents-level instruction in science and take Regents examinations in science, and (2) students who take the science intermediate assessment in grade 7 and are being considered for placement in an accelerated high school-level science course when they are in grade 8. The proposed amendment relates to State learning standards, State assessments, graduation and diploma requirements and higher levels of student achievement, and school and school district accountability, and does not impose any adverse economic impact, reporting, recordkeeping or any other compliance requirements on small businesses. Because it is evident from the nature of the 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, the 37 boards of cooperative educational services (BOCES), 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 approximately 40 charter schools authorized to issue Regents diplomas.

2. COMPLIANCE REQUIREMENTS:

The proposed amendment will not impose any additional compliance requirements on local governments. The proposed amendment provides flexibility to schools in the administration of the science intermediate assessment to: (1) students in grade 8 who receive Regents-level instruction in science and take Regents examinations in science, and (2) students who take the science intermediate assessment in grade 7 and are being considered for placement in an accelerated high school-level science

course when they are in grade 8. The proposed amendment clarifies that students attending grade 8 may take a Regents examination in science in lieu of or in addition to the grade 8 science intermediate assessment. The proposed amendment also provides that the science intermediate assessment shall not be administered in grade 8 to students who take such assessment in grade 7 and are being considered for placement in an accelerated high school-level science course when they are in grade 8. The proposed amendment will reduce costs to school districts by providing a means to relieve students, teachers, and schools from having to prepare for multiple science assessments for students in grade 8 who receive Regents-level instruction in science and take Regents examinations in science and students who take the science intermediate assessment in grade 7 and are being considered for placement in an accelerated high school-level science course when they are in grade 8.

3. PROFESSIONAL SERVICES:

The proposed amendment imposes no additional professional service requirements.

4. COMPLIANCE COSTS:

The proposed amendment will not impose any additional costs. The proposed amendment provides flexibility to schools in the administration of the science intermediate assessment and will not impose any additional program, service, duty or responsibility upon local governments. The proposed amendment will reduce compliance requirements and costs by providing a means to relieve students, teachers, and schools from having to prepare for multiple science assessments for students in grade 8.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

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

6. MINIMIZING ADVERSE IMPACT:

The proposed amendment will not impose any additional compliance requirements or costs. The proposed amendment provides flexibility to schools in the administration of the science intermediate assessment to: (1) students in grade 8 who receive Regents-level instruction in science and take Regents examinations in science, and (2) students who take the science intermediate assessment in grade 7 and are being considered for placement in an accelerated high school-level science course when they are in grade 8. The proposed amendment clarifies that students attending grade 8 may take a Regents examination in science in lieu of or in addition to the grade 8 science intermediate assessment. The proposed amendment also provides that the science intermediate assessment shall not be administered in grade 8 to students who take such assessment in grade 7 and are being considered for placement in an accelerated high school-level science course when they are in grade 8. The proposed amendment will reduce costs to school districts by providing a means to relieve students, teachers, and schools from having to prepare for multiple science assessments for students in grade 8 who receive Regents-level instruction in science and take Regents examinations in science and students who take the science intermediate assessment in grade 7 and are being considered for placement in an accelerated high school-level science course when they are in grade 8.

7. LOCAL GOVERNMENT PARTICIPATION:

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

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

Pursuant to State Administrative Procedure Act section 207(1)(b), the State Education Department proposes that the initial review of this rule shall occur in the fifth calendar year after the year in which the rule is adopted, instead of in the third calendar year. The justification for a five year review period is that the proposed amendment is necessary to implement long-range Regents policy relating to State learning standards, State assessments, graduation and diploma requirements and higher levels of student achievement, and school and school district accountability. Accordingly, there is no need for a shorter review period. The proposed amendment clarifies that students attending grade 8 may take a Regents examination in science in lieu of or in addition to the grade 8 science intermediate assessment. The proposed amendment also provides that the science intermediate assessment shall not be administered in grade 8 to students who take such assessment in grade 7 and are being considered for placement in an accelerated high school-level science course when they are in grade 8. The proposed amendment will reduce costs to school districts by providing a means to relieve students, teachers, and schools from having to prepare for multiple science assessments for students in grade 8 who receive Regents-level instruction in science and take Regents examinations in science and students who take the science intermediate assessment in grade 7 and are being considered for placement in an accelerated high school-level science course when they are in grade 8.

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, the 37 boards of cooperative educational services (BOCES) and to charter schools that are authorized to issue Regents diplomas with respect to State assessments and high school graduation and diploma requirements, 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. 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 will not impose any additional compliance requirements. The proposed amendment provides flexibility to schools in the administration of the science intermediate assessment to: (1) students in grade 8 who receive Regents-level instruction in science and take Regents examinations in science, and (2) students who take the science intermediate assessment in grade 7 and are being considered for placement in an accelerated high school-level science course when they are in grade 8. The proposed amendment clarifies that students attending grade 8 may take a Regents examination in science in lieu of or in addition to the grade 8 science intermediate assessment. The proposed amendment also provides that the science intermediate assessment shall not be administered in grade 8 to students who take such assessment in grade 7 and are being considered for placement in an accelerated high school-level science course when they are in grade 8. The proposed amendment will reduce costs to school districts by providing a means to relieve students, teachers, and schools from having to prepare for multiple science assessments for students in grade 8 who receive Regents-level instruction in science and take Regents examinations in science and students who take the science intermediate assessment in grade 7 and are being considered for placement in an accelerated high school-level science course when they are in grade 8.

The proposed amendment imposes no additional professional service requirements.

3. COMPLIANCE COSTS:

The proposed amendment will not impose any additional costs. The proposed amendment provides flexibility to schools in the administration of the science intermediate assessment. The proposed amendment will reduce compliance requirements and costs by providing a means to relieve students, teachers, and schools from having to prepare for multiple science assessments for students in grade 8.

4. MINIMIZING ADVERSE IMPACT:

The proposed amendment will not impose any additional compliance requirements or costs. The proposed amendment provides flexibility to schools in the administration of the science intermediate assessment to: (1) students in grade 8 who receive Regents-level instruction in science and take Regents examinations in science, and (2) students who take the science intermediate assessment in grade 7 and are being considered for placement in an accelerated high school-level science course when they are in grade 8. The proposed amendment clarifies that students attending grade 8 may take a Regents examination in science in lieu of or in addition to the grade 8 science intermediate assessment. The proposed amendment also provides that the science intermediate assessment shall not be administered in grade 8 to students who take such assessment in grade 7 and are being considered for placement in an accelerated high school-level science course when they are in grade 8. The proposed amendment will reduce costs to school districts by providing a means to relieve students, teachers, and schools from having to prepare for multiple science assessments for students in grade 8 who receive Regents-level instruction in science and take Regents examinations in science and students who take the science intermediate assessment in grade 7 and are being considered for placement in an accelerated high school-level science course when they are in grade 8. Because the Regents policy upon which the proposed amendment is based applies to all school districts in the State and to charter schools authorized to issue Regents diplomas, it is not possible to establish differing compliance or reporting requirements or timetables or to exempt schools in rural areas from coverage by the proposed amendment.

5. RURAL AREA PARTICIPATION:

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

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

Pursuant to State Administrative Procedure Act section 207(1)(b), the State Education Department proposes that the initial review of this rule

shall occur in the fifth calendar year after the year in which the rule is adopted, instead of in the third calendar year. The justification for a five year review period is that the proposed amendment is necessary to implement long-range Regents policy relating to State learning standards, State assessments, graduation and diploma requirements and higher levels of student achievement, and school and school district accountability. Accordingly, there is no need for a shorter review period. The proposed amendment clarifies that students attending grade 8 may take a Regents examination in science in lieu of or in addition to the grade 8 science intermediate assessment. The proposed amendment also provides that the science intermediate assessment shall not be administered in grade 8 to students who take such assessment in grade 7 and are being considered for placement in an accelerated high school-level science course when they are in grade 8. The proposed amendment will reduce costs to school districts by providing a means to relieve students, teachers, and schools from having to prepare for multiple science assessments for students in grade 8 who receive Regents-level instruction in science and take Regents examinations in science and students who take the science intermediate assessment in grade 7 and are being considered for placement in an accelerated high school-level science course when they are in grade 8.

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

Job Impact Statement

The proposed amendment provides flexibility to school districts in the administration of the science intermediate assessment to: (1) students in grade 8 who receive Regents-level instruction in science and take Regents examinations in science, and (2) students who take the science intermediate assessment in grade 7 and are being considered for placement in an accelerated high school-level science course when they are in grade 8.

The proposed amendment relates to State learning standards, State assessments, graduation and diploma requirements, and higher levels of student achievement, and school and school district accountability, 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

The agency received no public comment since publication of the last assessment of public comment.

EMERGENCY RULE MAKING

Special Education Services and Programs for Preschool Children with Disabilities

I.D. No. EDU-12-14-00013-E

Filing No. 477

Filing Date: 2014-06-09

Effective Date: 2014-06-09

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

Action taken: Amendment of sections 200.16 and 200.20 of Title 8 NYCRR.

Statutory authority: Education Law, sections 101(not subdivided), 207(not subdivided), 305(1), (2), (20), 308(not subdivided), 4401(1)-(11), 4402(1)-(7), 4403(1)-(5), (9), (11), (13), (15), (20), 4410(1)-(5), (9), (9-a), (9-b), (9-d), (10), (11) and (13); and L. 2013, ch. 545, sections 1 and 2

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

Specific reasons underlying the finding of necessity: The purpose of the proposed amendment is to conform the Commissioner's Regulations to Education Law section 4410, as amended by Chapter 545 of the Laws of 2013, which was enacted to address certain findings in relation to audits of preschool providers conducted by the Office of the State Comptroller.

The proposed amendment to section 200.16(c) would require the Committee on Preschool Special Education to submit a written notice to the Commissioner when it places a preschool student with a disability in a program operated by the same provider who evaluated the student.

The proposed amendment to section 200.20(b) would add a requirement that providers ensure that executive directors or individuals assigned with executive director responsibilities have an education background in a

field related to business, administration and/or education and have the knowledge and ability to oversee a preschool special education program; ensure that executive directors reside within a reasonable geographic distance from the program to ensure appropriate oversight of the day to day activities of the program; and that individuals who are assigned in a full-time role as the executive director are not engaging in activities that would interfere with or impair the executive director's ability to carry out and perform his or her duties, responsibilities and obligations.

The proposed amendment was adopted as an emergency action at the March 10-11, 2014 Regents meeting, effective March 11, 2014. Because the Board of Regents meets at monthly intervals, the earliest the proposed amendment could be adopted by regular action after publication of a Notice of Emergency Adoption and Proposed Rule Making in the State Register on March 26, 2014 and expiration of the 45-day public comment period prescribed in State Administrative Procedure Act (SAPA) section 202 would be the June 23-24, 2014 Regents meeting. Furthermore, pursuant to SAPA section 203(1), the earliest effective date of the proposed amendment, if adopted at the June meeting, would be July 9, 2014, the date a Notice of Adoption would be published in the State Register. However, the March emergency rule will expire on June 9, 2014, 90 days after its filing with the Department of State on March 11, 2014. A lapse in the rule's effective date could disrupt implementation of Chapter 545 of the Laws of 2013 during the 2013-2014 school year.

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

It is anticipated that the proposed amendment will be presented for adoption as a permanent rule at the June 23-24, 2014 Regents meeting, which is the first scheduled Regents meeting after publication of the proposed rule in the State Register and expiration of the 45-day public comment period prescribed in the State Administrative Procedure Act for State agency rule makings.

Subject: Special Education Services and Programs for Preschool Children with Disabilities.

Purpose: To implement L. 2013, ch. 545, relating to CPSE placement of a child in an approved program that also conducted an evaluation of the child, and qualifications for executive directors of approved preschool programs.

Text of emergency rule: 1. Paragraph (3) of subdivision (c) of section 200.16 of the Regulations of the Commissioner of Education is amended, effective June 9, 2014, as follows:

(3) Prior to making any recommendation that would place a child in an approved program owned or operated by the same agency which conducted the [initial] evaluation of the child, the committee may exercise its discretion to obtain an evaluation of the child from another approved evaluator. *If the committee recommends placing a child in an approved program that also conducted an evaluation of the child, it shall indicate in writing that the placement is appropriate for the child and shall provide written notice to the commissioner of such recommendation on a form prescribed by the commissioner.*

2. A new paragraph (3) of subdivision (b) of section 200.20 of the Regulations of the Commissioner of Education is added, effective June 9, 2014, as follows:

(3) *Each approved preschool program shall ensure that:*

(i) *the executive director or person assigned to perform the duties of a chief executive officer hired or assigned on or after April 17, 2014, shall have earned a bachelor's degree or higher from an accredited or approved college or university in a field related to business, administration and/or education and shall have, but not be limited to, the following qualifications:*

(a) *knowledge of the requirements for providing appropriate evaluations and/or special education services and supervision to preschool students with disabilities;*

(b) *knowledge of and ability to comply with applicable laws and regulations;*

(c) *ability to maintain or supervise the maintenance of financial and other records;*

(d) *ability to establish the approved program's policy, program and budget; and*

(e) *ability to recruit, employ, train, direct and evaluate qualified staff.*

(ii) *the executive director or person assigned to perform the duties of a chief executive officer shall reside within a reasonable geographic distance from the program's administrative, instructional and/or evaluation sites to ensure appropriate oversight of the program; and*

(iii) *if paid as a full time executive director, the executive director shall be employed in a full-time, full-year position and shall not engage in activity that would interfere with or impair the executive director's ability to carry out and perform his or her duties, responsibilities and obligations.*

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-12-14-00013-EP, Issue of March 26, 2014. The emergency rule will expire August 7, 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 and charges the Department with the general management and supervision of public schools and the educational work of the State.

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

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

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

Education Law 4402 establishes districts' duties regarding education of students with disabilities.

Education Law 4403 outlines the Department's and district's responsibilities regarding special education programs and services to students with disabilities. Section 4403(3) authorizes the Department to adopt regulations as the Commissioner deems in their best interests.

Education Law 4410 outlines special education services and programs for preschool children with disabilities. Section 4410(3) authorizes the Commissioner to adopt regulations.

Sections 1 and 2 of Chapter 545 of the Laws of 2013 amended Education Law section 4410 in relation to special education placements for preschool children with disabilities and requirements for executive directors of preschool special education programs.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment is required by sections 1 and 2 of Chapter 545 of the Laws of 2013 to address certain findings made by the Office of the State Comptroller in its audits of preschool providers. The statute requires: (1) a Committee on Preschool Special Education (CPSE) that recommends placement of a child in an approved program that also conducted an evaluation of the child to indicate in writing that such placement is appropriate and provide notice of such recommendation to the Commissioner; and (2) a provider of preschool special education services or programs to certify pursuant to regulations promulgated by the Commissioner that it will take measures to ensure its executive director or person performing duties of a chief executive officer meets the criteria established by the Commissioner to be an executive director and, if paid as a full time executive director, that such executive director is employed in a full time, full year position and shall not engage in activity that would interfere or impair such executive director's ability to carry out and perform his or her duties, responsibilities and obligations.

3. NEEDS AND BENEFITS:

The proposed amendment would ensure increased review by CPSEs in the selection of preschool providers and would establish qualifications for executive directors of preschool programs to ensure that they have the appropriate background and qualifications and reside in a reasonable geographic distance from the program to ensure appropriate oversight of the preschool program.

4. COSTS:

a. Costs to State government: None.

b. Costs to local governments: None.

c. Costs to regulated parties: None.

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

The proposed amendment is necessary to implement sections 1 and 2 of Chapter 545 of the Laws of 2013 and does not impose any additional costs on the State, local governments, private regulated parties or the State Education Department beyond those inherent in the statute.

5. LOCAL GOVERNMENT MANDATES:

Consistent with sections 1 and 2 of Chapter 545 of the Laws of 2013, the proposed amendment establishes requirements for school districts to

report certain information on a preschool child with a disability's selected provider and establishes qualifications for executive directors of approved preschool programs.

Section 200.16(c)(3) is amended to require a committee on preschool special education, when placing a child in the same program that conducted the child's evaluation, to indicate in writing that the placement is appropriate and to notify the Commissioner.

Section 200.20(c) is amended to require each approved preschool program to ensure that an executive director or persons assigned to perform the duties of a chief executive officer hired or assigned on or after April 17, 2014 has earned a bachelor's degree or higher from an accredited or approved college or university in a field related to business, administration and/or education and shall have, but not be limited to, appropriate qualifications to oversee a special education preschool program including, but not limited to knowledge of the requirements for providing appropriate evaluations and/or special education services and supervision to preschool students with disabilities; knowledge of and ability to comply with applicable laws and regulations; ability to maintain or supervise the maintenance of financial and other records; ability to establish the approved program's policy, program and budget; and ability to recruit, employ, train, direct and evaluate qualified staff. Further, the proposed amendment would require each executive director or persons assigned to perform the duties of a chief executive officer to reside within a reasonable geographic distance from the program's administrative, instructional and/or evaluation sites to ensure appropriate oversight of the program; and to require that, if paid as a full time executive director, the executive director shall be employed in a full-time, full-year position and shall not engage in activity that would interfere with or impair the executive director's ability to carry out and perform his or her duties, responsibilities and obligations.

6. PAPERWORK:

The proposed amendment requires a written notification by school districts to the Commissioner on a form prescribed by the Commissioner.

7. DUPLICATION:

The proposed amendment is necessary to implement sections 1 and 2 of Chapter 545 of the Laws of 2014 and will not duplicate, overlap or conflict with any other State or federal statute or regulation.

8. ALTERNATIVES:

The Department considered requiring all executive directors of preschool programs to meet the new qualifications but determined that doing so may result in individuals losing their current positions. The Department also considered a new reporting form for CPSEs to submit notification to the Commissioner of the provider recommendation but determined it would reduce school district and State Education Department administrative burden and costs to add this information to an existing form ("Preschool STAC-1: Request for Commissioner's Approval of Reimbursement for Services for students with Disabilities") which school districts must currently submit for each preschool student with a disability. Including this notice on the STAC-1 would minimize the administrative burden of school districts for additional reporting as well as provide the Department with the ability to verify and run reports on such data using existing technology.

9. FEDERAL STANDARDS:

The proposed amendment does not exceed any minimum standards of the federal government for the same or similar subject areas and is not required by federal law or regulations, but will ensure consistency with recent changes to State statute.

10. COMPLIANCE SCHEDULE:

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

Regulatory Flexibility Analysis

1. EFFECT OF RULE:

The proposed amendment of section 200.16 applies to each of the 695 public school districts in the State. The proposed amendment of section 200.20 applies to approved preschool programs for preschool children with disabilities funded pursuant to Education Law section 4410. It is estimated that 115 of such providers are small businesses.

2. COMPLIANCE REQUIREMENTS:

The proposed amendment is necessary to implement sections 1 and 2 of Chapter 545 of the Laws of 2013, which requires the Department to establish regulations regarding the qualifications of executive directors of preschool programs for students with disabilities and reporting to the Department when a school district places a child with the same provider that evaluated the child for special education. The proposed amendment does not impose any additional compliance requirements on small businesses or local governments beyond those inherent in the statute.

Section 200.16(c)(3) is amended to require a committee on preschool special education, when placing a child in the same program that conducted the child's evaluation, to indicate in writing that the placement is appropriate and to notify the Commissioner on a form prescribed by the Commissioner.

Section 200.20(c) is amended to add a new paragraph (3) to require each approved preschool program to ensure that an executive director or persons assigned to perform the duties of a chief executive officer hired or assigned on or after April 17, 2014 has earned a bachelor's degree or higher from an accredited or approved college or university in a field related to business, administration and/or education and shall have, but not be limited to, appropriate qualifications to oversee a special education preschool program including, but not limited to knowledge of the requirements for providing appropriate evaluations and/or special education services and supervision to preschool students with disabilities; knowledge of and ability to comply with applicable laws and regulations; ability to maintain or supervise the maintenance of financial and other records; ability to establish the approved program's policy, program and budget; and ability to recruit, employ, train, direct and evaluate qualified staff. Further, the proposed amendment would require each executive director or persons assigned to perform the duties of a chief executive officer to reside within a reasonable geographic distance from the program's administrative, instructional and/or evaluation sites to ensure appropriate oversight of the program; and to require that, if paid as a full time executive director, the executive director shall be employed in a full-time, full-year position and shall not engage in activity that would interfere with or impair the executive director's ability to carry out and perform his or her duties, responsibilities and obligations.

3. PROFESSIONAL SERVICES:

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

4. COMPLIANCE COSTS:

The proposed amendment is necessary to implement sections 1 and 2 of Chapter 545 of the Laws of 2013 and does not impose any additional costs on small businesses or local governments beyond those inherent in the statute.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

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

6. MINIMIZING ADVERSE IMPACT:

The proposed amendment is necessary to implement sections 1 and 2 of Chapter 545 of the Laws of 2013, and has been carefully drafted to meet State statutory requirements while minimizing adverse impact. The proposed amendment does not impose any additional costs or compliance requirements on small businesses or local governments beyond those inherent in the statute. To minimize the administrative burden on school districts imposed by statute, the regulations would provide that districts submit information on the preschool student's placement on a form that they are currently required to submit for State reimbursement purposes ("Preschool STAC-1: Request for Commissioner's Approval of Reimbursement for Services for students with Disabilities"). Including this notice on the STAC-1 would minimize the administrative burden of school districts for additional reporting as well as provide the Department with the ability to verify and run reports on such data using existing technology.

7. SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION:

Copies of the proposed amendment have been provided to District Superintendents and the chief officers of the Big 5 city school districts with the request that they distribute them to school districts within their supervisory districts for review and comment. The proposed amendment was disseminated to approved preschool special education providers, including those that are small businesses.

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

Pursuant to State Administrative Procedure Act section 207(1)(b), the State Education Department proposes that the initial review of this rule shall occur in the fifth calendar year after the year in which the rule is adopted, instead of in the third calendar year. The justification for a five year review period is that the proposed amendment is necessary to implement statutory requirements in Chapter 545 of the Laws of 2013 and therefore the substantive provisions of the proposed amendment cannot be repealed or modified unless there is a further statutory change. Accordingly, there is no need for a shorter review period. The Department invites public comment on the proposed five year review period for this rule. Comments should be sent to the agency contact listed in item 10 of the Notice of Proposed Rule Making published herewith, and must be received within 45 days of the State Register publication date of the Notice.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBERS OF RURAL AREAS:

The proposed amendment will apply to all public school districts and approved preschool programs for preschool children with disabilities funded pursuant to Education Law section 4410 in the State, including those located in the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with population density of 150 per square miles or less. Currently, there are 130 approved preschool programs located in rural areas.

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

The proposed amendment is necessary to implement sections 1 and 2 of Chapter 545 of the New York State (NYS) Laws of 2013, which requires the Department to establish regulations regarding the qualifications of executive directors of preschool programs for students with disabilities and reporting to the Department when a school district places a child with the same provider that evaluated the child for special education. The proposed amendment does not impose any additional reporting, recordkeeping or other compliance requirements, or professional service requirements, on entities in rural areas beyond those imposed by the statute.

Section 200.16(c)(3) is amended to require a committee on preschool special education, when placing a child in the same program that conducted the child's evaluation, to indicate in writing that the placement is appropriate and to notify the Commissioner on a form prescribed by the Commissioner.

Section 200.20(c) is amended to require each approved preschool program to ensure that an executive director or persons assigned to perform the duties of a chief executive officer hired or assigned on or after April 17, 2014 has earned a bachelor's degree or higher from an accredited or approved college or university in a field related to business, administration and/or education and shall have, but not be limited to, appropriate qualifications to oversee a special education preschool program including, but not limited to knowledge of the requirements for providing appropriate evaluations and/or special education services and supervision to preschool students with disabilities; knowledge of and ability to comply with applicable laws and regulations; ability to maintain or supervise the maintenance of financial and other records; ability to establish the approved program's policy, program and budget; and ability to recruit, employ, train, direct and evaluate qualified staff. Further, the proposed amendment would require each executive director or persons assigned to perform the duties of a chief executive officer to reside within a reasonable geographic distance from the program's administrative, instructional and/or evaluation sites to ensure appropriate oversight of the program; and to require that, if paid as a full time executive director, the executive director shall be employed in a full-time, full-year position and shall not engage in activity that would interfere with or impair the executive director's ability to carry out and perform his or her duties, responsibilities and obligations.

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

3. COSTS:

The proposed amendment is necessary to implement sections 1 and 2 of Chapter 545 of the Laws of 2013 and would not impose any additional costs to school districts or providers in rural areas, beyond those inherent in the statute.

4. MINIMIZING ADVERSE IMPACT:

The proposed amendment is necessary to implement sections 1 and 2 of Chapter 545 of the Laws of 2013, and has been carefully drafted to meet State statutory requirements while minimizing adverse impact. Since the statutory requirements apply to all school districts and approved providers in the State, it is not possible to adopt different standards for these entities located in rural areas. The proposed amendment does not impose any additional costs or compliance requirements on these entities beyond those inherent in the statute. To minimize the administrative burden on school districts imposed by statute, the regulations would provide that districts submit information on the preschool student's placement on a form that they are currently required to submit for State reimbursement purposes ("Preschool STAC-1: Request for Commissioner's Approval of Reimbursement for Services for students with Disabilities"). Including this notice on the STAC-1 would minimize the administrative burden of school districts for additional reporting as well as provide the Department with the ability to verify and run reports on such data using existing technology.

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. The proposed amendment was disseminated to approved preschool special education providers, including those that are 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 Chapter 545 of the Laws of 2013 and therefore the substantive provisions of the proposed amendment cannot be repealed or modified unless there is a further statutory change. Accordingly, there is no need for a shorter review period. The Department invites public comment on the proposed five year review period for this rule.

Comments should be sent to the agency contact listed in item 10 of the Notice of Proposed Rule Making published herewith, and must be received within 45 days of the State Register publication date of the Notice.

Job Impact Statement

The proposed amendment is necessary to implement sections 1 and 2 of Chapter 545 of the Laws of 2013 relating to the placement of children in preschool special education programs requirements for executive directors of preschool special education programs. The statute requires: (1) Committees on Preschool Special Education (CPSE) that recommend placement of a child in an approved program that also conducted an evaluation of the child to indicate in writing that such placement is appropriate and provide notice of such recommendation to the Commissioner; and (2) a provider of preschool special education services or programs to certify pursuant to regulations promulgated by the Commissioner that it will take measures to ensure its executive director or person performing duties of a chief executive officer meets the criteria established by the Commissioner to be an executive director and, if paid as a full time executive director, that such executive director is employed in a full time, full year position and shall not engage in activity that would interfere or impair such executive director's ability to carry out and perform his or her duties, responsibilities and obligations.

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

Assessment of Public Comment

The agency received no public comment since publication of the last assessment of public comment.

Department of Financial Services

NOTICE OF ADOPTION

Enterprise Risk Management and Own Risk and Solvency Assessment

I.D. No. DFS-03-14-00014-A

Filing No. 481

Filing Date: 2014-06-09

Effective Date: 2014-06-25

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

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

Statutory authority: Financial Services Law, sections 202 and 302; Insurance Law, sections 110, 301, 309, 1109, 1115, 1501, 1503, 1504(c), 1604, 1702, 1717 and arts. 15, 16 and 17

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

Purpose: To require ERM functions and ORSAs, and the filing of reports related thereto with the Superintendent.

Substance of final rule: Section 82.1 sets forth definitions.

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

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

describes which domestic insurers are exempt from the requirements of this section.

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

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

Final rule as compared with last published rule: Nonsubstantive changes were made in section 82.2(b)(1).

Revised rule making(s) were previously published in the State Register on April 30, 2014.

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

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

Changes made to the last published rule do not necessitate revision to the previously published Regulatory Impact Statement, Regulatory Flexibility Analysis and Rural Area Flexibility Analysis for new 11 NYCRR 82 (Insurance Regulation 203).

The amendment to the adopted rule merely deletes language that requires an entity or domestic insurer to file with the Superintendent of Financial Services a hard copy of the enterprise risk report that was due April 30, 2014.

Revised Job Impact Statement

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

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.

NOTICE OF ADOPTION

Market Value Separate Accounts Funding Guaranteed Benefits; Separate Account Operations and Reserve Requirements

I.D. No. DFS-16-14-00002-A

Filing No. 480

Filing Date: 2014-06-09

Effective Date: 2014-06-25

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

Action taken: Amendment of Part 97 (Regulation 128) of Title 11 NYCRR.

Statutory authority: Financial Services Law, sections 202 and 302; Insurance Law, sections 301, 1403, 1405, 1414, 4217 and 4240

Subject: Market Value Separate Accounts Funding Guaranteed Benefits; Separate Account Operations and Reserve Requirements.

Purpose: To revise the discount rate used to determine guaranteed contract liabilities and the filing due date of actuarial memoranda.

Text or summary was published in the April 23, 2014 issue of the Register, I.D. No. DFS-16-14-00002-P.

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

Text of rule and any required statements and analyses may be obtained from: Michael Cebula, New York State Department of Financial Services, One Commerce Plaza, Albany, NY 12257, (518) 474-7929, email: michael.cebula@dfs.ny.gov

Initial Review of Rule

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

Assessment of Public Comment

The agency received no public comment.

Department of Health

NOTICE OF ADOPTION

Rate Rationalization-Community Residences (CRs)/ Individualized Residential Alternatives (IRAs) Habilitation and Day Habilitation

I.D. No. HLT-15-14-00011-A

Filing No. 488

Filing Date: 2014-06-10

Effective Date: 2014-07-01

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

Action taken: Addition of Subpart 86-10 to Title 10 NYCRR.

Statutory authority: Social Services Law, section 363-a; Public Health Law, section 201(1)(v)

Subject: Rate Rationalization-Community Residences (CRs)/ Individualized Residential Alternatives (IRAs) Habilitation and Day Habilitation.

Purpose: To establish new rate methodology effective July 1, 2014.

Text or summary was published in the April 16, 2014 issue of the Register, I.D. No. HLT-15-14-00011-P.

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

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

Assessment of Public Comment

1. COMMENT: 86-10.3(c)(1)(xxviii) State Wide Budget Neutrality Adjustment - In addition to describing the calculation of the Budget Neutrality Adjustment, the actual value of the adjustment should be published as part of the regulation in order for providers to be able to calculate its rate from reading the regulations. Also, the Budget Neutrality Adjustment is permanently fixed because it is calculated using the sum of all provider rate sheets “in effect on June thirtieth, two thousand fourteen.” This language should be modified to indicate that this value will be revised annually to include the value of services expansion and other funding increases added after June 30, 2014.

RESPONSE: The Department has decided that no change to the regulation is necessary at this time in response to the comment. However, the comment will be taken under advisement for consideration when subsequent amendments are made to the regulation.

2. COMMENT: 86-10.2(h)(1), (2), (3), (4) DOH Regions - The use of DOH regions to align providers is predicated on the anticipated move to managed care. However, since the predominance of funding for people with developmental disabilities is in fact related to OPWDD funded services and not health or other long term care services we question not using regions that are driven by OPWDD services.

RESPONSE: Although DOH regions are slightly different from OPWDD regions, the Department of Health feels that the regions are closely aligned and are appropriate for use in the methodology. The regions were chosen to align with long term managed care regions currently being used by the Department.

3. COMMENT: 86-10.2(n) Initial Period - The “initial period” is defined as “July first, two thousand fourteen through December thirty-first, two thousand fourteen for providers reporting on a calendar year basis or July first, two thousand fourteen through June thirtieth, two thousand fifteen for providers reporting on a fiscal year basis”. However, in 641-1-6 (Transition Period and reimbursement), there is no reference to the “initial period” but rather to the “base operating rate” which as defined in 641-1.2(d) has a different meaning.

RESPONSE: The “initial period” will be July one, two thousand fourteen through June thirty, two thousand fifteen and refers to the first year of operation under the new methodology, while the “base operating rate” refers to the reimbursement amount calculated by dividing the annual reimbursement by applicable annual units of service in effect on June thirtieth, two thousand fourteen. The Department has decided that no change to the regulation is necessary at this time in response to the

comment. However, the comment will be taken under advisement for consideration when subsequent amendments are made to the regulation.

4. COMMENT: 86-10.3(c)(1)(i)-(vi), 86-10.3(d)(1)(i)-(vi) and 86-10.3(e)(1)(i)-(vi) Regional Averages - The regulations refer to various "regional averages" for various components of the operating rate and the method for calculating such "regional averages" and the resulting values should be published as part of the regulations in order for providers to be able to calculate its rate from reading the regulation.

RESPONSE: The regional averages will be posted on the Department's website and therefore will be accessible to providers.

5. COMMENT: 86-10.3(c)(1)(xiv) Statewide Average Direct Hours Per Provider - We previously raised serious concerns about IRA methodology and the health, safety and community inclusion implications of using statewide averages, E-Scores and acuity based upon the developmental disabilities profile (DDP) which has not been validated. The instrument also lacks inter-rater reliability. The proposed methodology will result in approximately 120 providers receiving revenue reductions for direct support hours that they actually provided while 127 providers will receive increased funding for direct support staffing hours without any prior documentation that additional direct support hours are required. See attached letters (A and B) to CMS which illuminate these concerns.

The use of DDP scores to adjust hours was not included in the ICF or day habilitation methodologies because of insufficient statistical validity. We believe that the statistical validity to use DDP score to adjust hours in ICFs and day habilitation programs should have confirmed that the DDP has no place in the new rate setting methodology.

In our view, the appropriate solution is to not discriminate against people who live in IRA's by amending the regulation to allow all IRA providers to be funded for the actual direct support hours that they actually provided in the same manner as is proposed for ICFs/DD and day habilitation programs. The solution is to await implementation of the new CAS assessment tool next year and ensure not-discriminatory treatment of all individuals receiving OPWDD supported services.

RESPONSE: The Department is confident in the results of a regression analysis utilizing DDP for the Supervised and Supportive IRA, which yielded strong regression models with r-squared values between 30 and 40%. The findings for Day Hab and ICF yielded r-squared values below an acceptable level, and therefore were not used. Risk assessment tools currently used in acute care payment methodologies on average have lower r-squared values ranging between 15 percent and 30 percent.

6. COMMENT: 86-10.3(c)(3)(i)-(iii) and 86-10.3(d)(3)(i)-(iii) Facility Cost Component - We strongly object to the methodology being utilized to calculate residential facility costs. We believe that the calculation is not consistent with the federal Social Security Administration regulations and expectations on the use of Supplemental Security Income (SSI). Our objection centers on the proposed methodology related to the calculation of the provider's room and board costs.

The proposed rate methodology proposes to take a provider's actual board costs and apply a budget neutrality factor that will in effect reduce each provider's board costs; then add in the approved room costs to generate adjusted total room and board costs. From this adjusted figure Supplemental Security Income (SSI) and the Supplemental Nutrition Assistance Program (SNAP) funding is subtracted to generate a net (reduced) room and board value. In a number of instances, the value of the combination of the SSI and SNAP benefits will exceed this net (reduced) room and board value which will falsely result in "excess" SSI/SNAP benefits which can then be used to reduce a provider's rate funded under Medicaid. Meanwhile, the individuals who reside in IRA settings are not able to have their SSI/SNAP benefits fully utilized to first cover their actual room and board costs.

In doing the calculation in this manner it will result in the unintentional misuse of the SSI and the SNAP benefits of the people with developmental disabilities who live in these settings. Both of these federal programs are designed for very specific purposes under federal law. According to Social Security's website, SSI provides cash to help aged, blind, and disabled people, who have little or no income, meet basic needs for food, clothing and shelter. Also, according to the NYS Office of Temporary Disability and Assistance, SNAP benefits can help low-income working people, seniors, the disabled and others feed themselves and their families.

By determining that some portion of the SSI will not be used to cover the full room and board costs for a person, in other words only pays those costs in part, it could have an adverse impact and result in the person's SSI benefit reduced by up to one third.

It is also clear in federal regulation that it is the responsibility of the representative payee to know the person's needs and to use the SSI benefits in the person's best interest to meet their maintenance needs. Federal regulation does not permit a State to "in essence" make this decision either on behalf of the person or their representative payee. It is only when the State is the representative payee can it make such a decision.

Although CMS insists that Medicaid does not pay for room and board

costs and that SSI and earned and unearned income should pay for room and board, the proposed rate methodology for facility costs property could take a portion of a person's SSI, even though all of their room and board costs have not been covered, and use it to reduce the cost of a Medicaid funded waiver residential habilitation service.

We understand the potential need for DOH to include a budget neutrality calculation but it should occur at the very end of the calculation when the State can decide how much of the true (actual) excess room and board costs over SSI/SNAP benefits it wants to supplement providers.

RESPONSE: The Department has decided that no change to the regulation is necessary at this time in response to the comment. However, the comment will be taken under advisement for consideration when subsequent amendments are made to the regulation.

7. COMMENT: 86-10.3(c)(5)(i)-(iv), 86-10.3(d)(5)(i)-(iv) and 86-10.3(e)(5)(i)-(iv) Capital Component - The capital thresholds included in the proposed regulations are more than 6 years old (adopted April 1, 2008) and minimally should be made current. This issue is especially problematic for the downstate regions of the State where affordable housing continues to be a significant problem. There needs to be a provision for amendments to the cap and threshold values for capital acquisitions, new construction and leases to be updated on at least a periodic basis based upon an appropriate housing index.

The State and the nonprofit providers have made significant investments in real property to support thousands of individuals yet there is no provision to exceed the threshold values:

- especially as homes are reviewed by OPWDD against fire safety guidelines that could require providers to make significant capital investments to meet code;
- for developing new homes that can satisfactorily meet the needs of individuals with significant challenging behaviors and/or medical issues; and
- in order to meet money follows the person goals which require 4 persons or less to live together.

The inclusion of language that "DOH may retroactively adjust the capital component" in (i) General Principles is problematic for providers whose capital cost has already been approved by OPWDD in that the draft regulation appear to permit DOH to reduce capital reimbursement approved under proposes to limit reimbursement at the lower of the amount Subpart 745-6 if it exceeds reimbursement under the new proposed regulations. The language in the proposed regulation needs to be amended as follows "(i) General principles." Capital costs shall be included in the rate at the lower of the amount determined pursuant to Subpart 635-6 of this Title or thresholds as determined pursuant to subparagraph (iv) of this paragraph. However, capital costs approved by OPWDD prior to July 1, 2014 through the formal prior property approval process shall only be subject to Subpart 635-6 of this Title. DOH may retroactively adjust the capital component to reflect capital costs approved pursuant to Subpart 635-6 or pursuant to this paragraph.

The language in "(ii) Initial rate" needs to be amended to make clear that the new regulations on capital costs only apply to new residential and day programs and that the new proposed capital cost rules do not apply to capital costs approved by OPWDD prior to July 1, 2014 and such capital costs shall only be subject to Subpart 635-6.

The short term interest time limit ("k") should be increased from 12 months to 18 months without limitation between acquisition or renovation phases given the delays in receiving prior property approvals as well the delays in the ability to obtain building permits from local municipalities.

RESPONSE: The Department has decided that no change to the regulation is necessary at this time in response to the comment. However, the comment will be taken under advisement for consideration when subsequent amendments are made to the regulation.

8. COMMENTS: 86-10.5 Trend Factor - The regulation states that "for years in which DOH does not update the base year, subject to the approval of the Director of the Budget, DOH may use a compounded trend factor to bring base year costs forward to the appropriate rate period". However, the regulation fails to describe the use of a trend factor when the base year is being updated.

RESPONSE: The Department's language as stated is correct. Trend factors will not be applied in years in which the methodology is rebased.

9. COMMENTS: 86-10.6(b)(1)-(3) Therapeutic Leave Days - The regulations indicate that Therapeutic Leave Days shall be reimbursed at zero dollars to start and reimbursed after a period of time. This will have major cash flow implications on providers and was recognized by both DOH and OPWDD after the regulation was proposed. There was misunderstanding by DOH that an edit in E-MedNY was needed before reimbursing providers which is not the case. It is our understanding that OPWDD/DOH plans to correct this through an emergency regulation, to be filed by June 30, 2014, which will indicate that the provider will be reimbursed for therapeutic leave days at its residential habilitation rate starting July 1, 2014.

Finally, since reimbursement for therapeutic leave days will commence July 1, 2014, this section needs to be amended to exclude reference to therapeutic leave days.

RESPONSE: The Department has made system changes in order to allow providers to be paid for therapeutic leave days as they are reported. With respect to the remainder of the comment, the Department has decided that no change to the regulations is necessary at this time in response to the comment. However, the comment will be taken under advisement for consideration when subsequent amendments are made to the regulation.

10. COMMENTS: 86-10.6(b)(3) Vacant Bed Days. The last sentence in this section needs to be amended as follows: "Providers will be paid for vacant bed days at seventy five percent of the daily operating rate as calculated pursuant to paragraph (1) of subdivision (c) of section 641-1.3 of this Subpart up to a maximum of ninety consecutive vacancy days per vacancy".

We also recommend that the following two items be added to the proposed regulations:

- The regulations should provide for at least a 90 day correction period for errors made in the computation of the rate.
- Template funding/rates is clearly not addressed in the Waiver regulations. We recommend that the funding of template rates under Balancing Incentive Program (BIP) funds be specifically included in the rate setting methodology.

RESPONSE: The vacant bed language is correct as written. The maximum allowable vacant bed days for the initial period will be limited to a maximum of ninety days per bed.

- OPWDD regulations 14 NYCRR 686.13(h) already allow for a 90-day review period for any rates promulgated. This regulation when promulgated will not supersede the previous approved regulation.
- Template funded individuals are not included in the new methodology as yet. These individuals will continue to receive their current level of funding until 10/1/15 at which time consideration will be given to the needs of these individuals.

NOTICE OF ADOPTION

Rate Rationalization – Intermediate Care Facilities for Persons with Developmental Disabilities (ICF/DDs)

I.D. No. HLT-15-14-00012-A

Filing No. 487

Filing Date: 2014-06-10

Effective Date: 2014-07-01

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

Action taken: Addition of Subpart 86-11 to Title 10 NYCRR.

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

Subject: Rate Rationalization – Intermediate Care Facilities for Persons with Developmental Disabilities (ICF/DDs).

Purpose: To establish new rate methodology effective July 1, 2014.

Text or summary was published in the April 16, 2014 issue of the Register, I.D. No. HLT-15-14-00012-P.

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

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

Assessment of Public Comment

1. COMMENT: 86-11.3(c)(1)(xxvi) State Wide Budget Neutrality Adjustment - In addition to describing the calculation of the Budget Neutrality Adjustment, the actual value of the adjustment should be published as part of the regulation in order for providers to be able to calculate its rate from reading the regulations. Also, the Budget Neutrality Adjustment is permanently fixed because it is calculated using the sum of all provider rate sheets "in effect on June thirtieth, two thousand fourteen." This language should be modified to indicate that this value will be revised annually to include the value of services expansion and other funding increases added after June 30, 2014.

RESPONSE: The Department has decided that no change to the regulation is necessary at this time in response to the comment. However, the comment will be taken under advisement for consideration when subsequent amendments are made to the regulation.

2. COMMENT: 86-11.2(e) (1) (2) (3) (4) DOH Regions - The use of DOH regions to align providers is predicated on the anticipated move to managed care. However, since the predominance of funding for people

with developmental disabilities is in fact related to OPWDD funded services and not health or other long term care services we question not using regions that are driven by OPWDD services.

RESPONSE: Although DOH regions are slightly different from OPWDD regions, the Department of Health feels that the regions are closely aligned and are appropriate for use in the methodology. The regions were chosen to align with long term managed care regions currently being used by the Department.

3. COMMENT: 86-11.2(i) Initial Period - The "initial period" is defined as "July first, two thousand fourteen through December thirty-first, two thousand fourteen for providers reporting on a calendar year basis or July first, two thousand fourteen through June thirtieth, two thousand fifteen for providers reporting on a fiscal year basis". However, in 641-1-6 (Transition Period and reimbursement), there is no reference to the "initial period" but rather to the "base operating rate" which as defined in 641-1.2(d) has a different meaning.

RESPONSE: The "initial period" will be July one, two thousand fourteen through June thirty, two thousand fifteen and refers to the first year of operation under the new methodology, while the "base operating rate" refers to the reimbursement amount calculated by dividing the annual reimbursement by applicable annual units of service in effect on June thirtieth, two thousand fourteen. The Department has decided that no change to the regulation is necessary at this time in response to the comment. However, the comment will be taken under advisement for consideration when subsequent amendments are made to the regulation.

4. COMMENT: 86-11.3(c)(1)(i-vi) Regional Averages - The regulations refer to various "regional averages" for various components of the operating rate and the method for calculating such "regional averages" and the resulting values should be published as part of the regulations in order for providers to be able to calculate its rate from reading the regulation.

RESPONSE: The regional averages will be posted on the Department's website and therefore will be accessible to providers.

5. COMMENT: 86-11.3(c)(4)(i-iv) Capital Component - The capital thresholds included in the proposed regulations are more than 6 years old (adopted April 1, 2008) and minimally should be made current. This issue is especially problematic for the downstate regions of the State where affordable housing continues to be a significant problem. There needs to be a provision for amendments to the cap and threshold values for capital acquisitions, new construction and leases to be updated on at least a periodic basis based upon an appropriate housing index.

The State and the nonprofit providers have made significant investments in real property to support thousands of individuals yet there is no provision to exceed the threshold values:

- especially as homes are reviewed by OPWDD against fire safety guidelines that could require providers to make significant capital investments to meet code;
- for developing new homes that can satisfactorily meet the needs of individuals with significant challenging behaviors and/or medical issues; and
- in order to meet money follows the person goals which require 4 persons or less to live together.

The inclusion of language that "DOH may retroactively adjust the capital component" in (i) General Principles is problematic for providers whose capital cost has already been approved by OPWDD in that the draft regulation appear to permit DOH to reduce capital reimbursement approved under proposes to limit reimbursement at the lower of the amount Subpart 745-6 if it exceeds reimbursement under the new proposed regulations. The language in the proposed regulation needs to be amended as follows "(i) General principles." Capital costs shall be included in the rate at the lower of the amount determined pursuant to Subpart 635-6 of this Title or thresholds as determined pursuant to subparagraph (iv) of this paragraph. However, capital costs approved by OPWDD prior to July 1, 2014 through the formal prior property approval process shall only be subject to Subpart 635-6 of this Title. DOH may retroactively adjust the capital component to reflect capital costs approved pursuant to Subpart 635-6 or pursuant to this paragraph.

The language in "(ii) Initial rate" needs to be amended to make clear that the new regulations on capital costs only apply to new residential and day programs and that the new proposed capital cost rules do not apply to capital costs approved by OPWDD prior to July 1, 2014 and such capital costs shall only be subject to Subpart 635-6.

The short term interest time limit ("k") should be increased from 12 months to 18 months without limitation between acquisition or renovation phases given the delays in receiving prior property approvals as well the delays in the ability to obtain building permits from local municipalities.

RESPONSE: The Department has decided that no change to the regulation is necessary at this time in response to the comment. However, the comment will be taken under advisement for consideration when subsequent amendments are made to the regulation.

6. COMMENTS: 86-11.6 Trend Factor - The regulation states that “for years in which DOH does not update the base year, subject to the approval of the Director of the Budget, DOH may use a compounded trend factor to bring base year costs forward to the appropriate rate period”. However, the regulation fails to describe the use of a trend factor when the base year is being updated.

RESPONSE: The Departments language as stated is correct. Trend factors will not be applied in years in which the methodology is rebased.

7. COMMENTS: The regulations should provide for at least a 90-day correction period for errors made in the computation of the rate.

RESPONSE: OPWDD regulations 14 NYCRR 686.13(h) already allow for a 90-day review period for any rates promulgated. This regulation when promulgated will not supersede the previous approved regulation.

Department of Motor Vehicles

NOTICE OF ADOPTION

Temporary License Plates

I.D. No. MTV-16-14-00004-A

Filing No. 483

Filing Date: 2014-06-10

Effective Date: 2014-06-25

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

Action taken: Amendment of section 21.2 of Title 15 NYCRR.

Statutory authority: Vehicle and Traffic Law, sections 215(a) and 404(3)

Subject: Temporary License Plates.

Purpose: To permit the issuance of Emergency plates to State and Local governments.

Text or summary was published in the April 23, 2014 issue of the Register, I.D. No. MTV-16-14-00004-EP.

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

Text of rule and any required statements and analyses may be obtained from: Michelle Seabury, Department of Motor Vehicles, 6 ESP, Room 522A, Albany, NY 12228, (518) 474-0874, email: mseabury@dmv.ny.gov

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Dealer Plate Program

I.D. No. MTV-16-14-00005-A

Filing No. 484

Filing Date: 2014-06-10

Effective Date: 2014-06-25

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

Action taken: Amendment of section 78.23(a) of Title 15 NYCRR.

Statutory authority: Vehicle and Traffic Law, sections 215(a) and 420-a

Subject: Dealer Plate Program.

Purpose: Waives one year waiting period for new dealers to enter the Dealer Plate Issuance Program.

Text or summary was published in the April 23, 2014 issue of the Register, I.D. No. MTV-16-14-00005-P.

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

Text of rule and any required statements and analyses may be obtained from: Michelle Seabury, Department of Motor Vehicles, 6 ESP, Room 522A, Albany, NY 12228, (518) 474-0871, email: mseabury@dmv.ny.gov

Assessment of Public Comment

The agency received no public comment.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Waiver of Skills Test for Certain Out of State Licensees Applying for a NYS License

I.D. No. MTV-25-14-00011-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 8.2(a) of Title 15 NYCRR.

Statutory authority: Vehicle and Traffic Law, sections 215(a), 502(4)(b) and 508

Subject: Waiver of skills test for certain out of state licensees applying for a NYS license.

Purpose: Skills test waived for out of state applicants for a NYS license if out of state license is not expired more than two years.

Text of proposed rule: Subdivision (a) of section 8.2 is amended to read as follows:

(a) if the applicant was formerly a resident of another state, the District of Columbia, Guam, Puerto Rico, the Canal Zone or a province of Canada and has become a resident of this State, and is or was, within [one year] two years prior to the date of application for a New York license, the holder of a valid license issued by the motor vehicle authority of his former residence.

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

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

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

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

Consensus Rule Making Determination

The proposed amendment will allow a person moving to New York State to obtain a New York State driver's license without taking the driving skills test if such person submits an out-of-state license that is not expired more than two years. Currently, if such out-of-state license is expired more than one year, the applicant for the New York State license must take the skills test. The knowledge test is currently waived if the out-of-state license is not expired more than two years.

This amendment is consistent with the Vehicle and Traffic Law (VTL) and current regulations. Section 502(6) of the VTL provides that a New York State license may be renewed as long as such license has not been expired for more than two years. In addition, a road test is waived, under Part 8.2(b), if an applicant is applying for an original license after revocation of a New York State license, provided that application is made within two years from the date the person was last validly licensed. Consistent with this two year rule, it follows that a person from another state who is applying for a New York State license should have the road test waived if his or her out-of-state license has not been expired more than two years.

This proposed rule will be beneficial to customers moving to New York State and will reduce the number of road tests that the DMV must offer.

Since the proposed amendment is consistent with current law and regulations regarding the renewal of licenses and the waiver of road tests, a consensus rule is appropriate.

Job Impact Statement

A Job Impact Statement is not submitted with this rule because it will not have an adverse impact on job creation or development.

Office for People with Developmental Disabilities

NOTICE OF ADOPTION

Pathway to Employment Service

I.D. No. PDD-11-14-00012-A

Filing No. 482

Filing Date: 2014-06-10

Effective Date: 2014-07-01

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

Action taken: Amendment of Subparts 635-10, 635-99 and section 686.99 of Title 14 NYCRR.

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

Subject: Pathway to Employment Service.

Purpose: To establish Pathway to Employment as a new HCBS waiver service.

Text or summary was published in the March 19, 2014 issue of the Register, I.D. No. PDD-11-14-00012-P.

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

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

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

Assessment of Public Comment

OPWDD received comments from two providers of services to people with developmental disabilities, five provider associations and the New York State (NYS) Education Department's Office of Adult Career and Continuing Education Services.

Note: This assessment does not respond to comments submitted that did not directly address the proposed regulations (e.g. comments about training and service provision). OPWDD responded to those comments in a separate document that has been posted on its website. Additionally, this assessment does not provide answers to questions submitted. Questions on the Pathway to Employment service are being answered in a different venue.

Comment: A provider and provider association are concerned that the reimbursement rate for service delivery in Region 3 will not cover the cost of the Pathway to Employment service. A provider association commented that reimbursement for Region 3 as specified in the proposed regulations is not equitable to reimbursement in the other two remaining regions.

Response: OPWDD agrees that the Region 3 fee needs to be increased to promote equity in service delivery among regions. Consequently, OPWDD has collaborated with the Department of Health to adjust the Region 3 fee, and plans to promulgate an emergency regulation to increase the hourly fees for this Region. The emergency regulation is planned to take effect on July 1, 2014 to coincide with the effective date of the Pathway to Employment service.

Comment: A provider association is concerned that the rate structure for the Pathway to Employment service is a disincentive to providers in providing person centered services. The provider recommends that OPWDD consider re-balancing the dollars so that agencies have the financial option to provide services in an approach that meets each person's needs most effectively.

Response: OPWDD appreciates the feedback on the rate structure for Pathway to Employment. Since the annual reimbursement for Pathway to Employment will be significantly higher than current Supported Employment fees, OPWDD believes that this will incentivize providers to assist individuals with developmental disabilities in achieving their employment goals.

Comment: A provider association suggested that the following activities listed as involving direct service provision also be listed as involving indirect service provision since these activities could involve both types of service provision: job related discovery; assessment for use of assistive technology to increase independence in the workplace; career/vocational planning; customized job development; and planning for self-employment,

including identifying skills that could be used to start a business, and identifying business training and technical assistance that could be utilized in achieving self-employment goals.

Response: OPWDD has intentionally categorized the activities noted above as only involving direct service provision because OPWDD considers that interaction with the individual during these activities would make service delivery more meaningful. Consequently, the regulations are designed to discourage providers from participating in activities that do not involve interaction with the individual unless such activities never involve interaction and are only conducted on behalf of the individual. OPWDD is therefore promulgating the regulation without the suggested changes.

Comment: A provider association suggested that travel time, case note/reporting time, and advocacy, be added to the list of activities involving indirect service provision.

Response: OPWDD appreciates the feedback on the allowable activities for Pathway to Employment. OPWDD disagrees with the suggestion to add travel time as an allowable activity involving indirect service provision (i.e. staff is not with an individual receiving services). However, OPWDD is planning to add transportation as an allowable activity involving direct service provision (i.e. staff is with an individual receiving services). OPWDD considers that advocacy and case note/reporting are allowable activities to the extent that they meet the criteria for an allowable activity listed in the proposed regulation.

Comment: A provider requested clarification that the group size limit of three individuals applies to the size of a group during countable service delivery time for which one staff member is providing service (as opposed either to a "caseload" limit for an individual staff or to the agency as a whole), and that there is no outside limit to the number of individuals who can be supported in Pathway to Employment, provided that the agency has sufficient staff and authorized units.

A provider association recommended that the group limit be increased from three to four so that program participants can be paired for observation of skills, interpersonal interactions, peer training and mentoring, and to accommodate for attendance fluctuations, particularly for people with greater health or behavioral support needs. A provider association commented that there may be times that the group size should exceed the limit of three.

A provider association applauded the inclusion of the provision limiting group sizes to three or less individuals.

Response: OPWDD confirms that the group size limit applies to the size of the group during service delivery. OPWDD's intention is for Pathway to Employment to be an individualized service; however, OPWDD recognizes that some activities may lend themselves to being provided in a group setting. OPWDD considers that the group size must be small enough to maintain the individualized nature of the service. OPWDD is therefore promulgating the regulation without changes to this requirement.

Comment: A provider asserted that the requirement that the Pathway to Employment service be limited to 12 months/278 hours of service is not realistic or reasonable as it applies to Region 3, given the current unemployment rates of 8.6% and 7.6% (non-metro and metro counties, respectively) in the upstate area. The provider remarked that Region 3 consists of many rural and relatively unpopulated areas with limited employment opportunities.

A provider association questioned the need for a 12 month/278 hour timeframe requirement. This provider association suggested that the clock stop once the individual achieves his or her vocational outcomes and that the 12 month timeframe should be more of a guideline to establish true readiness and/or a need for a more intensive service to complete discovery based on an individual's needs. A provider association stated that the 12 month/278 hour timeframe requirement may not adequately reflect a person centered approach in addressing a person's life time employment goals.

A provider association observed that the 12 month/278 hour limit excludes individuals interested in career advancement from participation in the service, and the provider association asserted that the Pathway to Employment service should also serve this need. A provider association commented that the lifetime cap does not provide additional support that may be needed to develop new skills or to explore other types of employment opportunities during the course of a person's career. The provider association referenced a scenario described by family member whereby the family member's son was competitively employed a half a dozen times for periods of up to two years but was fired or had to leave jobs for health reasons.

A provider association recommended that the timeframe for the service be extended to 24 months, and two provider associations recommended that OPWDD allow for an extension of an additional term of 278 hours for those individuals who may require additional time for further job exploration and development. A provider association suggested that an agency's

overall performance in the program be considered in the decision to grant the request for an extension.

Two provider associations expressed concerns about the lifetime cap of 556 hours as it excludes individuals who need additional time from the program and it is premature to establish a lifetime cap for a service which is essential to helping individuals attain employment, a goal of both OPWDD and providers.

A provider association recommends that for each 278 hour term of service, 60 hours be allotted for indirect services as opposed to the requirement to limit indirect service provision to a total of 60 hours for the lifetime of the service.

Response: OPWDD considers that the 12 months/278 hours timeframe requirement for completion of the Pathway to Employment service is a reasonable timeframe for an individual for discovery, engagement in pre-employment activities and development of a vocational plan. Therefore, OPWDD is retaining this requirement in its final regulations. OPWDD notes that the regulations allow providers to submit a request to OPWDD for an extension of the service for an additional 12 months/278 hours. Providers may request an extension of the timeframe requirement for individuals who need more time achieving their vocational outcomes.

OPWDD designed the Pathway to Employment service to be a transitional service that transitions individuals from school or Prevocational services into competitive employment. OPWDD expects that the timeframe requirements in the regulation will direct individuals towards individualized, needs-based services in a timely manner. The timeframe requirements will motivate providers and individuals in determining whether or not an individual is ready for competitive employment. If the timeframe requirements do not motivate individuals to make a transition as intended, then the requirements will prompt individuals to select a more appropriate service option (e.g. Prevocational services, Community Habilitation, or Day Habilitation). Due to the transitional nature of the Pathway to Employment service, it is not designed to address career advancement. Providers may utilize the supported employment service to assist individuals with career advancement. OPWDD is currently working on changes to the Supported Employment service to improve supports offered for career advancement.

At this time, OPWDD considers that 60 hours is a sufficient amount of time for participation in activities involving indirect service provision. However, if upon implementation of the service, OPWDD observes that more hours are needed, OPWDD will consider changes to this requirement.

Consequently, OPWDD is promulgating the regulations with no changes to timeframe requirements.

Comment: A provider recommended that, regarding the requirement that individuals who participate in paid internship be paid at least the minimum wage, there be exceptions for individuals who are pursuing a career path in self-employment. The provider asserted that people who start up their own businesses very often do not immediately produce enough net income such that they would earn the equivalent of minimum wage or higher. The provider expressed that work as an artist, craftsman, or other similar self-employment endeavor may result in great personal satisfaction and self-worth yet may not result in financial wealth. The provider argued that the regulation should not force the payment of a wage level in such paid internships that could undermine successful self-employment pursuits by setting unrealistic earnings expectations. The provider cited the New York Labor Law as providing limited exceptions to the payment of minimum wage for certain employees such as those who work on a family farm and perhaps others (assistant camp counselors, church caretaker, companionship worker, newspaper delivery, etc.). The provider concluded that paid internships in these jobs should be permitted at the commensurate wage consistent with NY Labor Law.

Similarly, a provider association asserted that jobs and internships that are exempt from minimum wage and are considered legal employment (such as certain restaurant jobs) should be included as allowable, and that self-employment including the creation of art where the sale of such products may not result in a salary that reaches minimum wage also be allowed. Another provider association recommended that, regarding self-employment and compensation for individuals working in the informal economy, OPWDD address the mechanism that agencies would use to demonstrate achievement of meeting the minimum wage standard in fluid compensation environments.

Response: OPWDD considers that the provider and provider association raised some good points, and recognizes that there are no minimum wage requirements for certain types of employment and self employment. OPWDD observes that the phrase "New York State minimum wage," as used in the proposed regulations, may also mean no minimum wage for certain types of employment and self employment. OPWDD agrees with the idea that paid internships be permitted at the commensurate wage established for the type of employment or self-employment sought through the internship opportunity. OPWDD plans to make this clarification in its emergency regulations.

Comment: The NYS Education Department's Office of Adult Career and Continuing Education Services (ACCES-VR) commented that the regulations contain an outdated citation. ACCES-VR suggested that the reference to the Individualized Written Rehabilitation Plan (IWRP) be changed to the Individualized Plan for Employment (IPE), which replaced the IWRP in 1998.

Response: OPWDD agrees with ACCES-VR and plans to update the reference in its emergency regulations.

Comment: A provider association cautioned that the definitions of all terms be fully explained and coincide with federal guidelines and regulations, and that there be consistency in definitions across the service systems so that individuals who may need services from different sources are not removed from a valued service eligibility.

Response: OPWDD agrees with the provider association that there should be consistency in definitions of terms. OPWDD has taken into account the importance of consistency in the development of the Pathway to Employment service and requirements, and will continue to focus on consistency as it implements this service. OPWDD is promulgating the regulations without further explanation of terms used in the requirements, but will consider providing such explanation in its guidance on the service.

Comment: The provider also noted that the regulations do not appear to require prior denial from ACCES-VR as an eligibility criterion and is requesting confirmation that prior denial is not an eligibility criterion. Additionally, the provider is unclear as to how individuals who are eligible for supported employment through ACCES-VR, or who are about to graduate, but who have not yet established eligibility for services and who are therefore not enrolled in the Home and Community Based Services (HCBS) waiver, would access Pathway to Employment services.

Response: OPWDD confirms that prior denial from ACCES-VR is not an eligibility criterion for enrollment in Pathway to Employment.

OPWDD has determined that individuals who are about to graduate, but who have not yet established eligibility for services and who are therefore not enrolled in the HCBS waiver, would not have access to the Pathway to Employment service. OPWDD requires HCBS waiver enrollment as a condition for enrollment into the Pathway to Employment service.

OPWDD is promulgating the regulations without any changes to eligibility requirements.

Public Service Commission

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Inclusion of Certain New York Power Authority (NYPA) Municipal Customers in the SBC and RPS Programs

I.D. No. PSC-25-14-00012-P

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

Proposed Action: The Commission is considering whether to adopt, modify, or reject, in whole or in part, the petition filed on behalf of certain NYPA municipal customers seeking to opt-in to the System Benefits Charge (SBC) and Renewable Portfolio Standard (RPS) programs.

Statutory authority: Public Service Law, sections 4(1), 5(1)(b), (2), 65(1), 66(1), (2), (4), (5), (9) and (12)

Subject: The inclusion of certain New York Power Authority (NYPA) municipal customers in the SBC and RPS programs.

Purpose: To establish whether certain NYPA municipal customers should be included in the SBC and RPS programs.

Substance of proposed rule: The Public Service Commission (Commission) is considering whether to adopt, modify, or reject, in whole or in part, the petition dated May 1, 2014 and filed on May 8, 2014 by Global Structured Finance Advisors and GP Renewables & Trading, LLC, on behalf of certain New York Power Authority municipal customers, seeking to opt-in to the System Benefits Charge and Renewable Portfolio Standard programs, and may address 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.

(03-E-0188SP50)

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

Exemption for or Approval of a Transfer of Ownership Interests and a Financing for BEC's 345 KV Transmission Line

I.D. No. PSC-25-14-00013-P

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

Proposed Action: The Commission is considering a petition from Bayonne Energy Center LLC (BEC) and others requesting exemption from transfer and financing regulation or, in the alternative, approvals of a transfer and financing at its 345 kV transmission line to Brooklyn.

Statutory authority: Public Service Law, sections 5(1)(b), 69, 69-a and 70

Subject: Exemption for or approval of a transfer of ownership interests and a financing for BEC's 345 kV transmission line.

Purpose: To consider exemption for or approval of a transfer of ownership interests and a financing for BEC's 345 kV transmission line.

Substance of proposed rule: The Public Service Commission is considering a petition filed on May 22, 2014 by Bayonne Energy Center LLC (BEC), Hess Corporation (Hess), Hess Bayonne LLC and AL Bayonne Holdings LLC (ALBH) requesting exemption from transfer and financing regulation under Public Service Law (PSL) §§ 69, 69-a, and 70 or, in the alternative, approvals of a financing pursuant to PSL § 69 and a transfer pursuant to PSL § 70 that affect BEC's 345 kV submarine electric transmission line routed from Bayonne, New Jersey to the Gowanus electric substation in Brooklyn, New York, owned by the Consolidated Edison Company of New York, Inc. Through the proposed transaction, Hess would sell its indirect upstream ownership interest in BEC to ALBH. The proposed financing is in a maximum amount of \$720 million. 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-0195SP1)

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

Whether to Permit the Use of the SATEC Branch Feeder Monitor BFM-136 Electric Submeter

I.D. No. PSC-25-14-00014-P

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

Proposed Action: The Public Service Commission is considering whether

to approve, deny or modify, in whole or in part, a petition filed by SATEC Incorporated for approval to use the SATEC Branch Feeder Monitor—BFM-136 electric submeter.

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

Subject: Whether to permit the use of the SATEC Branch Feeder Monitor BFM-136 electric submeter.

Purpose: Pursuant to 16 NYCRR Parts 93 and 96, is necessary to permit the use of the SATEC Branch Feeder Monitor BFM electric submeter.

Substance of proposed rule: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by SATEC Incorporated to use the SATEC Branch Feeder Monitor BFM-136 electric submeter in residential submetering applications.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.ny.gov/f96dir.htm>. For questions, contact: Deborah Swatling, Public Service Commission, Three Empire State Plaza, Albany, New York 10007, (518) 486-2659, email: Deborah.Swatling@dps.ny.gov

Data, views or arguments may be submitted to: Kathleen H. Burgess, Secretary, Public Service Commission, Three Empire State Plaza, Albany, NY 10007, (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-0203SP1)

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

Surcharges Related to the System Benefits Charge, Energy Efficiency Portfolio Standard, Retail Renewable Portfolio Standard

I.D. No. PSC-25-14-00015-P

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

Proposed Action: The Commission is considering whether to adopt, modify, or reject, in whole or in part, Multiple Intervenors' (MI) June 2, 2014 petition for expeditious relief from existing public benefit surcharges.

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

Subject: Surcharges related to the System Benefits Charge, Energy Efficiency Portfolio Standard, Retail Renewable Portfolio Standard.

Purpose: To reduce the public benefit surcharge applicable to large industrial, commercial and institutional energy consumers.

Substance of proposed rule: The Public Service Commission is considering Multiple Intervenors' (MI) June 2, 2014 petition seeking expeditious relief from the System Benefits Charge (SBC), the Energy Efficiency Portfolio Charge (EEPS) and the Renewable Portfolio Standard surcharge (RPS) for its large industrial, commercial and institutional customers. MI alleges that collecting the surcharge on a per kilowatt hour (kWh) places a disproportionate and inequitable burden on large, high-load-factor customers. MI believes that the Commission may provide the requested relief by: 1) materially reducing the overall level of surcharges; 2) modifying the current surcharge recovery method (per kWh) to reduce MI customers' share of the surcharges; 3) implementing an upper limit on the amount of surcharge imposed on a single customer or 4) some combination of these approaches. 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.
 (07-M-0548SP80)

Department of State

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Supervisory Appraiser/Trainee Appraiser Course Outline Requirements

I.D. No. DOS-25-14-00016-P

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

Proposed Action: Addition of 1103.12; and amendment of section 1103.3(e)(4) and (5) of Title 19 NYCRR.

Statutory authority: Executive Law, section 160-d and art. 6-E

Subject: Supervisory Appraiser/Trainee Appraiser Course Outline Requirements.

Purpose: To establish the required course curriculum for the Supervisory Appraiser/Trainee Appraiser Course.

Text of proposed rule: 19 NYCRR § 1103.12 is added to read as follows:
 19 NYCRR § 1103.12 *Supervisory Appraiser/Trainee Appraiser Course Outline*

The following are the required subjects to be included in the course of study and the required number of hours to be devoted to this course. All appraisal schools must utilize this course outline in conducting their programs. This course outline is not intended to substitute for specific outlines for the proposed course.

The below course must be completed by all new Supervisory Appraisers and Trainee Appraisers who become credentialed as of January 1, 2015.

**SUPERVISORY APPRAISER / TRAINEE APPRAISER COURSE
 SCOPE OF SYLLABUS**

1.	COURSE OBJECTIVES	.25 HOUR
2.	COURSE INTRODUCTION AND OVERVIEW	.25 HOUR
3.	QUALIFICATION AND CREDENTIALING ENTITIES	.25 HOUR
4.	QUALIFICATIONS FOR APPRAISER CREDENTIALS	.5 HOUR
5.	OVERVIEW - USPAP SECTIONS RELEVANT TO TRAINEE APPRAISER	.5 HOUR
6.	OVERVIEW - SUPERVISORY APPRAISER EXPECTATIONS AND RESPONSIBILITIES	1 HOUR
7.	OVERVIEW - TRAINEE APPRAISER EXPECTATIONS AND RESPONSIBILITIES	1 HOUR
8.	SUMMARY	.25 HOUR
9.	GLOSSARY OF TERMS	
	TOTAL HOURS: 4	

19 NYCRR § 1103.3(e)(4) is amended to read as follows:

(4) Other course fees. Appraisal schools shall pay the Department an annual registration fee of \$25 for offering each of the following courses: Statistics, Modeling and Finance; Introduction to Residential Income Properties; Fair Housing, Fair Lending and Environmental Issues 15 hour course; Fair Housing, Fair Lending and Environmental Issues 20 hour course; Specialty Appraisals; Using the HP12C Financial Calculator; *Supervisory Appraiser/Trainee Appraiser Course* and any other elective approved by the Department.

19 NYCRR § 1103.3(e)(5) is amended to read as follows:

(5) Secondary locations. Appraisal schools wishing to offer an appraisal course at a location other than the primary location listed on its approval application to the Department, shall pay annual fees as follows. An

annual fee of \$250 shall be paid to the Department for each said secondary location if the initial application fee for offering the appraisal course to be offered at the secondary location was \$250. If the initial application fee for the appraisal course to be offered at the [secondary] *primary* location was \$25, the fee for offering an appraisal course at the secondary location shall be \$25.

Text of proposed rule and any required statements and analyses may be obtained from: David A. Mossberg, Esq., New York State Dept. of State, 123 William Street, 20th Fl., New York, NY 10038, (212) 417-2063, email: david.mossberg@dos.ny.gov

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

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

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

Regulatory Impact Statement

1. Statutory authority:

Executive Law section 160-d (Art. 6-E) authorizes the New York State Board of Real Estate Appraisal (the "Board") to adopt regulations in aid or furtherance of the statute. One of the purposes of Executive Law Article 6-E is to ensure the qualification of licensed and certified real estate appraisers. To meet this purpose, the Department of State (the "Department"), in conjunction with the Board, has issued rules and regulations which are found at Chapter XXXI of Title 19 of the NYCRR and is proposing this rulemaking.

2. Legislative objectives:

Pursuant to Executive Law Article 6-E, the Department, in conjunction with the Board, licenses and regulates real estate appraisers. To provide protections against unqualified appraisers, the statute requires licensees and certificate holders to satisfy minimum educational requirements. The proposed rule advances this legislative objective by ensuring that appraiser applicants satisfy the minimum educational standards required for licensure or certification.

3. Needs and benefits:

The Federal Appraisal Qualifications Board (the "AQB"), in accordance with the authority granted to said body pursuant to Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (Title XI), establishes minimum qualification standards for real property appraisers. Recent changes to the AQB requirements mandate that new appraisers seeking certification or licensure complete a basic educational course concerning supervisory and trainee appraiser responsibilities. States are required to implement appraiser standards that are no less stringent than those issued by the AQB.

By adding the regulations as proposed, the Department will meet updated AQB requirements and ensure that appraiser applicants meet federal minimum qualification standards.

4. Costs:

a. Costs to regulated parties:

The Department anticipates nominal costs to individuals seeking new licensure and/or certification in that the proposed rulemaking will require appraiser applicants to take a new educational class not previously required. The Department estimates the cost for specific approved courses to range from \$60 to \$75 for new applicants. Additionally, schools offering educational classes will have to pay the Department an annual registration fee of \$25 for course approval.

b. Costs to the Department of State:

The Department does not anticipate any additional costs to implement the rule. Existing staff will handle the processing of applications for both individual applicants and occupational schools seeking course approvals.

5. Local government mandates:

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

6. Paperwork:

In applying for an appraisal license or certification, applicants are required to complete an application establishing that they have satisfied the educational standards required by statute for the relevant license or certification. The proposed rule would retain this existing requirement.

7. Duplication:

This rule does not duplicate, overlap or conflict with any other state or federal requirement.

8. Alternatives:

The Department considered not proposing a new rule. It was determined, however, that the proposed regulatory amendments are necessary to meet the Department's obligation to ensure that licenses are granted to qualified applicants in compliance with minimum federal standards established by the AQB.

9. Federal standards:

The Federal Appraisal Qualifications Board (the "AQB"), in accor-

dance with the authority granted to said body pursuant to Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (Title XI), establishes minimum qualification standards for real property appraisers. States are required to implement appraiser standards that are no less stringent than those issued by the AQB.

10. Compliance schedule:

The rule will be effective September 1, 2014. Insofar as the AQB and the Department have conducted outreach to the regulated public about the relevant changes effected by this rulemaking, licensees and prospective licensees will be able to comply with the rule.

Regulatory Flexibility Analysis

1. Effect of rule:

The proposed rulemaking establishes new educational criteria for individuals applying for state licensure or certification as a real estate appraiser. To provide protections against unqualified appraisers, Article 6-E of the Executive Law requires licensees and certificate holders to satisfy minimum educational requirements. The proposed rule advances this legislative objective by ensuring that appraiser applicants satisfy the minimum educational standards required for licensure or certification as established by state and federal standards. The Federal Appraisal Qualifications Board (the "AQB"), in accordance with the authority granted to said body pursuant to Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (Title XI), establishes minimum qualification standards for real property appraisers. States are required to implement appraiser standards that are no less stringent than those issued by the AQB.

By adding the regulations as proposed, the Department will meet updated AQB requirements and ensure that appraiser applicants meet minimum qualification standards. The proposed rulemaking requires an additional 4 hours of educational training for all new Supervisory Appraisers and Trainee Appraisers who become credentialed as of January 1, 2015. The rulemaking also requires schools to pay to the Department an annual fee of \$25.00 to approve the mandated class. Finally, the proposed rulemaking cures a typographical error concerning an existing rule.

The rule does not apply to local governments.

2. Compliance requirements:

Inasmuch as the proposed rulemaking applies only to individuals seeking licensure and/or certification, small businesses and local governments will not have additional reporting, recordkeeping or other affirmative obligations with the implementation of these regulations. The existing statutes and regulations already require minimum education for licensure; the proposed rulemaking supplements these current requirements by satisfying updated AQB requirements. Further, occupational schools seeking authorization to provide the additional course will follow existing Departmental procedures and protocols for course approvals.

3. Professional services:

Small businesses and local governments will not need professional services to comply with this rule. Further, applicants seeking licensure or certification will not need to rely on any new professional services in order to comply with the rule. Applicants and licensees are already required to satisfy minimum education qualifications pursuant to Article 6-E of the Executive Law and AQB standards. Insofar as licensees must already attend and complete approved education courses, conforming the regulations to the updated AQB standards will not result in the need to rely on any new professional services. The Department expects education providers to begin offering new approved courses in accordance with this rule making.

4. Compliance costs:

The Department anticipates nominal costs to individuals seeking new licensure and/or certification in that the proposed rulemaking will require appraiser applicants to take new educational classes not previously required. The Department estimates the cost for specific approved courses to range from \$60 to \$75 for new applicants. Additionally, schools offering educational classes will have to pay the Department an annual registration fee of \$25 for course approval.

The rule does not impose any compliance costs on local governments.

5. Economic and technological feasibility:

Small businesses and local governments will not incur any significant costs as a result of the implementation of, or require technical expertise to comply with, these rules.

6. Minimizing adverse economic impact:

The Department did not identify any alternatives which would achieve the results of the proposed rules and at the same time be less restrictive and less burdensome in terms of compliance. The rule does not impose any additional reporting or recordkeeping requirements on licensees and does not require prospective licensees to take any affirmative acts to comply with the rule other than those acts that are already required pursuant to Executive Law, Article 6-E and the AQB standards.

7. Small business and local government participation:

No significant comments have been received regarding the proposed

rulemaking. On April 8, 2014 the Department and the New York State Board of Real Estate Appraisal discussed at an open meeting the updated AQB requirements and methods to establish new educational criteria to ensure compliance with federal minimum standards. In addition, the Notice of Proposed Rule Making will be published by the Department of State in the State Register. The publication of the rule in the State Register will provide notice to local governments and additional notice to small businesses of the proposed rulemaking. Additional comments will be received and entertained.

8. Compliance:

The rule will be effective September 1, 2014.

9. Cure Period:

The Department is not providing for a cure period prior to enforcement of these regulations. Prior to proposing this rule, information regarding the updated AQB requirements was provided on the Department's website and discussed at an open meeting. As such, licensees have had adequate notice of the proposed regulation. Further, the proposed rulemaking is necessary to ensure that the applicants seeking licensure and/or certification satisfy minimum standards established by federal guidelines.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:

The proposed rulemaking is not expected to have any adverse impact on rural areas. The proposed rule supplements current educational requirements for certain real estate appraiser applicants by requiring a new 4-hour training course for all new Supervisory Appraisers and Trainee Appraisers who become credentialed as of January 1, 2015. The rule also imposes an annual fee of \$25.00 on schools seeking authorization to provide instruction in the new training course. Finally, the rule cures a typographical error with an existing rule.

The Federal Appraisal Qualifications Board (the "AQB"), in accordance with the authority granted to said body pursuant to Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (Title XI), establishes minimum qualification standards for real property appraisers. States are required to implement appraiser standards that are no less stringent than those issued by the AQB.

By adding the regulations as proposed, the Department will meet updated AQB requirements and ensure that appraiser applicants meet minimum qualification standards.

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

The Department does not anticipate any additional reporting, recordkeeping or other compliance requirements of this rule or that professional services are likely to be needed in rural areas to comply with the rule. Existing statutes and regulations already require minimum education requirements for licensure, the rulemaking will not impose any new reporting, recordkeeping or other compliance requirements on public or private entities in rural areas other than those acts that are already required pursuant to Executive Law, Article 6-E and the AQB standards.

3. Costs:

The proposed rulemaking does not impose any costs on rural areas to comply with this rule.

4. Minimizing adverse impact:

The Department did not identify any alternatives which would achieve the results of the proposed rule and at the same time be less restrictive and less burdensome.

5. Rural area participation:

No significant comments have been received regarding the proposed rulemaking. On April 8, 2014 the Department and the New York State Board of Real Estate Appraisal discussed at an open meeting the updated AQB requirements and methods to establish new educational criteria to ensure compliance with federal minimum standards. In addition, the Notice of Proposed Rule Making will be published by the Department of State in the State Register. The publication of the rule in the State Register will provide notice to interested parties in rural areas of the proposed rulemaking. Additional comments will be received and entertained.

Job Impact Statement

1. Nature of impact:

The proposed rulemaking will not have an adverse impact on employment opportunities. The proposed rule supplements current educational requirements for certain real estate appraiser applicants by requiring a new 4-hour training course. The rule also imposes an annual fee of \$25.00 on schools seeking authorization to provide instruction in the new training course. Finally, the rule cures a typographical error with an existing rule.

The Federal Appraisal Qualifications Board (the "AQB"), in accordance with the authority granted to said body pursuant to Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (Title XI), establishes minimum qualification standards for real property appraisers. States are required to implement appraiser standards that are no less stringent than those issued by the AQB. By adding the regulations

as proposed, the Department will meet updated AQB requirements and ensure that appraiser applicants meet minimum qualification standards.

While the Department anticipates nominal costs to individuals who will now be required to complete the additional class and to schools seeking authorization to offer the new course, such costs will not have any adverse impact on employment opportunities.

2. Categories and numbers affected:

The proposed rulemaking will not have any adverse impact on employment opportunities. The instant rulemaking merely conforms existing education regulations to updated minimum standards established by the AQB. The rulemaking will not have any foreseeable impact on jobs or employment opportunities for real estate appraisers.

3. Regions of adverse impact:

The proposed rulemaking will not have any disproportionate regional adverse impact on jobs or employment opportunities.

4. Minimizing adverse impact:

The proposed rulemaking will not have any adverse impact on employment opportunities. Moreover, the Department did not identify any alternatives which would achieve the results of the proposed rules and at the same time be less restrictive and less burdensome in terms of compliance.

Department of Transportation

NOTICE OF ADOPTION

Financial Security Requirements (insurance and Bonding) for Permits to Perform Work on State Highways

I.D. No. TRN-07-14-00001-A

Filing No. 485

Filing Date: 2014-06-10

Effective Date: 2014-07-01

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

Action taken: Repeal of section 125.3 and Part 127; and addition of new Part 127; and amendment of section 129.3 of Title 17 NYCRR.

Statutory authority: Highway Law, sections 10 and 52; Vehicle and Traffic Law, sections 1182 and 1182-a.

Subject: Financial security requirements (insurance and bonding) for permits to perform work on state highways.

Purpose: To set minimum standards for insurance, bonding and other alternative means of protection for permitted activity.

Text or summary was published in the February 19, 2014 issue of the Register, I.D. No. TRN-07-14-00001-P.

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

Text of rule and any required statements and analyses may be obtained from: David E. Winans, Esq., Associate Counsel, NYS Department of Transportation, 50 Wolf Rd., Albany, NY 12232, (518) 457-5793, email: david.winans@dot.ny.gov

Assessment of Public Comment

The agency received no public comment.