# 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 Civil Service

### NOTICE OF ADOPTION

**Jurisdictional Classification**

**I.D. No.** CVS-27-13-00001-A
**Filing No.** 203
**Filing Date:** 2014-03-11
**Effective Date:** 2014-03-26

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

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

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

***Subject:*** Jurisdictional Classification.

***Purpose:*** To classify positions in the exempt class.

***Text or summary was published*** in the July 3, 2013 issue of the Register, I.D. No. CVS-27-13-00001-P.

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

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

***Assessment of Public Comment***

The Civil Service Employee Association, Inc. (CSEA) and the Organization of NYS Management Confidential Employees (OMCE) submitted public comments objecting to the proposed amendment to add 120 positions of Empire State Fellows in the exempt jurisdictional class. Subsequently, the rule was placed on the Commission calendar, where it was approved, on September 10, 2013, for final adoption.

CSEA asserted that the blanket exempt-class designation was not in keeping with the merit and fitness principles of the New York State Constitution and that increasing the number of employees who lacked tenure, resulted in instability in policy-making positions. OMCE expressed general concerns regarding the erosion of the career civil service among the State's upper and middle management ranks and similarly argued that there was no consideration regarding the practicability or impracticability of examination for such positions; that attributes essential for success, such as tact, diplomacy, and sound judgment can be assessed by proven selection devices; that a strong merit-based career service is the best way to ensure that appointees are insulated against political and other external pressure; and that the State's career competitive class workforce, excluded by design from participating in the program, is replete with qualified and skilled workers.

Article V, section 6 of the Constitution requires that appointments to the classified service of the State be "made according to merit and fitness, to be ascertained, as far as practicable, by examination which, as far as practicable, shall be competitive…." However, the Legislature carved out a number of exceptions where competitive examinations are not practicable, including exempt class positions, wherein incumbents typically function in the strictest confidential capacity, performing work that requires personal traits and characteristics that are not measurable by either competitive or non-competitive examination, and where the discretion of appointment afforded by exempt jurisdictional classification is essential in selecting individuals in whom the appointing authority has complete confidence.

Commission determinations are based upon information provided by the appointing authority, as well as comments from the Division of Classification and Compensation and the Division of Staffing Services of the Department of Civil Service. In this instance, the Commission was persuaded by staff's analysis that according to the requesting agency, incumbents will work primarily with those in the Executive Chamber assigned to key policy and Cabinet-level positions; that they may rotate into agencies working directly with a Commissioner, Executive Deputy Commissioner or other high-level policy-maker, offering them an unparalleled experience collaborating with senior officials and participating in the policy-making process; that they will be exposed to, and work directly on, highly sensitive, confidential matters requiring a significant level of personal and professional discretion; and that exempt classification is warranted, as neither competitive nor non-competitive examination would be practicable to test for such traits.

### NOTICE OF ADOPTION

**Jurisdictional Classification**

**I.D. No.** CVS-33-13-00015-A
**Filing No.** 206
**Filing Date:** 2014-03-11
**Effective Date:** 2014-03-26

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

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

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

***Subject:*** Jurisdictional Classification.

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

***Text or summary was published*** in the August 14, 2013 issue of the Register, I.D. No. CVS-33-13-00015-P.

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

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

***Assessment of Public Comment***
The agency received no public comment.

## NOTICE OF ADOPTION

**Jurisdictional Classification**

**I.D. No.** CVS-33-13-00016-A
**Filing No.** 207
**Filing Date:** 2014-03-11
**Effective Date:** 2014-03-26

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:
***Action taken:*** Amendment of Appendix 1 of Title 4 NYCRR.
***Statutory authority:*** Civil Service Law, section 6(1)
***Subject:*** Jurisdictional Classification.
***Purpose:*** To classify positions in the exempt class.
***Text or summary was published*** in the August 14, 2013 issue of the Register, I.D. No. CVS-33-13-00016-P.
***Final rule as compared with last published rule:*** No changes.
***Text of 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.state.ny.us
***Assessment of Public Comment***
The agency received no public comment.

## NOTICE OF ADOPTION

**Jurisdictional Classification**

**I.D. No.** CVS-33-13-00017-A
**Filing No.** 204
**Filing Date:** 2014-03-11
**Effective Date:** 2014-03-26

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:
***Action taken:*** Amendment of Appendix 1 of Title 4 NYCRR.
***Statutory authority:*** Civil Service Law, section 6(1)
***Subject:*** Jurisdictional Classification.
***Purpose:*** To delete a subheading and positions from and classify a subheading and positions in the exempt class.
***Text or summary was published*** in the August 14, 2013 issue of the Register, I.D. No. CVS-33-13-00017-P.
***Final rule as compared with last published rule:*** No changes.
***Text of 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.state.ny.us
***Assessment of Public Comment***
The agency received no public comment.

## NOTICE OF ADOPTION

**Jurisdictional Classification**

**I.D. No.** CVS-33-13-00018-A
**Filing No.** 208
**Filing Date:** 2014-03-11
**Effective Date:** 2014-03-26

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:
***Action taken:*** Amendment of Appendix 2 of Title 4 NYCRR.
***Statutory authority:*** Civil Service Law, section 6(1)
***Subject:*** Jurisdictional Classification.
***Purpose:*** To delete positions from and classify positions in the non-competitive class.
***Text or summary was published*** in the August 14, 2013 issue of the Register, I.D. No. CVS-33-13-00018-P.
***Final rule as compared with last published rule:*** No changes.
***Text of 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.state.ny.us
***Assessment of Public Comment***
The agency received no public comment.

## NOTICE OF ADOPTION

**Jurisdictional Classification**

**I.D. No.** CVS-33-13-00019-A
**Filing No.** 205
**Filing Date:** 2014-03-11
**Effective Date:** 2014-03-26

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:
***Action taken:*** Amendment of Appendix 2 of Title 4 NYCRR.
***Statutory authority:*** Civil Service Law, section 6(1)
***Subject:*** Jurisdictional Classification.
***Purpose:*** To add a subheading and to classify a position in the non-competitive class.
***Text or summary was published*** in the August 14, 2013 issue of the Register, I.D. No. CVS-33-13-00019-P.
***Final rule as compared with last published rule:*** No changes.
***Text of 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.state.ny.us
***Assessment of Public Comment***
The agency received no public comment.

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

**Jurisdictional Classification**

**I.D. No.** CVS-12-14-00001-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 Department of Health under the subheading "Office of the Medicaid Inspector General," by adding thereto the position of Associate Counsel.
***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.state.ny.us
***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.state.ny.us
***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-12-14-00002-P

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

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

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

***Subject:*** Jurisdictional Classification.

***Purpose:*** To delete a position 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 Department of Transportation, by deleting therefrom the position of øIntermodal Transportation Specialist 3 (1) and by adding thereto the position of øCompliance Specialist 4 (1).

***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.state.ny.us

***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.state.ny.us

***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-12-14-00003-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 2 of Title 4 NYCRR.

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

***Subject:*** Jurisdictional Classification.

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

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

***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.state.ny.us

***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.state.ny.us

***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-12-14-00004-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 classify positions 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 "Gaming Commission," by increasing the number of positions of Assistant Counsel from 3 to 5 and by adding thereto the positions of Associate Counsel, Gaming Inspector General and Manager Commercial Gaming.

***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.state.ny.us

***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.state.ny.us

***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-12-14-00005-P

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

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

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

***Subject:*** Jurisdictional Classification.

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

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

***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.state.ny.us

***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.state.ny.us

***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.

# Education Department

## EMERGENCY
## RULE MAKING

**Duration of Limited Permits for Applicants Seeking Licensure as Mental Health Practitioners**

**I.D. No.** EDU-53-13-00006-E
**Filing No.** 212
**Filing Date:** 2014-03-11
**Effective Date:** 2014-03-17

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

***Action taken:*** Amendment of sections 79-9.4, 79-10.4, 79-11.4 and 79-12.4 of Title 8 NYCRR.

***Statutory authority:*** Education Law, sections 207 (not subdivided), 6501 (not subdivided), 6504 (not subdivided), 6507(2)(a), 6508(1), 8409(2); and L. 2013, ch. 485

***Finding of necessity for emergency rule:*** Preservation of public health and general welfare.

***Specific reasons underlying the finding of necessity:*** The purpose of the proposed amendment is to implement Chapter 485 of the Laws of 2013, which took effect on November 13, 2013. This amendment to the Education Law provides limited permit holders a total of four years to meet the requirements for licensure as a mental health counselor, marriage and family therapist, creative arts therapist or psychoanalyst. Prior to the enactment of Chapter 485, the law authorized a maximum duration of three years for a limited permit in mental health counseling and a maximum of two years for a limited permit in marriage and family therapy, creative arts therapy and psychoanalysis. For some applicants, this has been an insufficient time period for them to complete the supervised experience and examination requirements for licensure in these professions. When the limited permit expires, the applicant may no longer practice any of the aforementioned professions or use the restricted title, making it difficult, if not impossible for the applicant to ever qualify for licensure in New York State.

The proposed amendment was adopted as an emergency action at the December 16-17, 2013 Regents meeting, effective December 17, 2013, and has now been adopted as a permanent rule at the March 10-11, 2014 Regents meeting. Pursuant to SAPA section 203(1), the earliest effective date of the proposed amendment is March 26, 2014, the date a Notice of Adoption will be published in the State Register. However, the December emergency rule will expire on March 17, 2014. If the rule were to lapse, some applicants for licensure would be unable to obtain additional time to meet the experience and examination requirements for licensure before their limited permits expire. Once a limited permit expires, the applicant may no longer practice any of the aforementioned professions, which could make it difficult, if not impossible for such an applicant to ever qualify for licensure in New York State. To avoid the adverse effects of a lapse in the emergency rule, a second emergency action at the March 2014 Regents meeting is necessary for the preservation of the public health and general welfare to ensure that the proposed rule adopted by emergency action at the December Regents meeting to implement the requirements of Chapter 485 of the Laws of 2013 remains continuously in effect until the effective date of its permanent adoption, so that applicants for licensure as a mental health counselor, marriage and family therapist, creative arts therapist or psychoanalyst have up to a total of four years under a limited permit to meet the experience and examination requirements pursuant to statutory requirements.

***Subject:*** Duration of limited permits for applicants seeking licensure as mental health practitioners.

***Purpose:*** To conform to the Regulations of the Commissioner of Education to chapter 485 of the Laws of 2013.

***Text of emergency rule:*** 1. Subdivision (c) of section 79-9.4 of the Regulations of the Commissioner of Education is amended, effective March 17, 2014, as follows:

(c) The limited permit in mental health counseling shall be valid for a period of not more than 24 months, provided that the limited permit may be extended for [an] *no more than two* additional 12 [months] *month periods* at the discretion of the department if the department determines that the permit holder has made good faith efforts to successfully complete

the examination and/or experience requirements [within the first 24 months] but has not passed the licensing examination or completed the experience requirement, or has other good cause as determined by the department for not completing the examination and/or experience requirement [within the first 24 months], and provided further that the time authorized by such limited permit and subsequent [extension] *extensions* shall not exceed [36] *48* months total.

2. Subdivision (c) of section 79-10.4 of the Regulations of the Commissioner of Education is amended, effective March 17, 2014, as follows:

(c) The limited permit in marriage and family therapy shall be valid for a period of not more than [12] *24* months, provided that the limited permit may be extended for [an] *no more than two* additional 12 [months] *month periods* at the discretion of the department if the department determines that the permit holder has made good faith efforts to successfully complete the examination and/or experience requirements [within the first 12 months] but has not passed the licensing examination or completed the experience requirement, or has other good cause as determined by the department for not completing the examination and/or experience requirement [within the first 12 months], and provided further that the time authorized by such limited permit and subsequent [extension] *extensions* shall not exceed [24] *48* months total.

3. Subdivision (c) of section 79-11.4 of the Regulations of the Commissioner of Education is amended, effective March 17, 2014, as follows:

(c) The limited permit in creative arts therapy shall be valid for a period of not more than [12] *24* months, provided that the limited permit may be extended for [an] *no more than two* additional 12 [months] *month periods* at the discretion of the department if the department determines that the permit holder has made good faith efforts to successfully complete the examination and/or experience requirements [within the first 12 months] but has not passed the licensing examination or completed the experience requirement, or has other good cause as determined by the department for not completing the examination and/or experience requirement [within the first 12 months], and provided further that the time authorized by such limited permit and subsequent [extension] *extensions* shall not exceed [24] *48* months total.

4. Subdivision (c) of section 79-12.4 of the Regulations of the Commissioner of Education is amended, effective March 17, 2014, 2013, as follows:

(c) The limited permit in psychoanalysis shall be valid for a period of not more than [12] *24* months, provided that the limited permit may be extended for [an] *no more than two* additional 12 [months] *month periods* at the discretion of the department if the department determines that the permit holder has made good faith efforts to successfully complete the examination and/or experience requirements [within the first 12 months] but has not passed the licensing examination or completed the experience requirement, or has other good cause as determined by the department for not completing the examination and/or experience requirement [within the first 12 months], and provided further that the time authorized by such limited permit and subsequent [extension] *extensions* shall not exceed [24] *48* months total.

***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-53-13-00006-EP, Issue of December 31, 2013. The emergency rule will expire May 9, 2014.

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

***Regulatory Impact Statement***

1. STATUTORY AUTHORITY:

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

Section 6501 of the Education Law provides that, to qualify for admission to a profession, an applicant must meet the requirements prescribed in the article of the Education Law that pertains to the particular profession.

Section 6504 of the Education Law authorizes the Board of Regents to supervise the admission to and regulation of the practice of the professions.

Paragraph (a) of subdivision (2) of section 6507 of the Education Law authorizes the Commissioner of Education to promulgate regulations in administering the admission to and the practice of the professions.

Subdivision (1) of section 6508 of the Education Law authorizes the state boards for the professions to assist the Board of Regents and the State Education Department on matters of professional licensing, practice, and conduct.

Subdivision (2) of section 8409 of the Education Law, as amended by Chapter 485 of the Laws of 2013, standardizes the duration of limited permits for applicants seeking licensure as a mental health counselor, marriage and family therapist, creative arts therapist or psychoanalyst at two years for the initial permit with the possibility of up to two one-year extensions, at the discretion of the Department.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment carries out the intent of, and conforms the Regulations of the Commissioner of Education to, Chapter 485 of the Laws of 2013 that amended Article 163 of the Education Law by standardizing the duration of limited permits for applicants seeking licensure as a mental health counselor, marriage and family therapist, creative arts therapist or psychoanalyst at two years for the initial permit with the possibility of two one-year extensions, at the discretion of the Department.

3. NEEDS AND BENEFITS:

An individual seeking license in New York State as a mental health counselor, marriage and family therapist, creative arts therapist or psychoanalyst must meet requirements for education, supervised experience and examination, acceptable to the State Education Department. In order to provide clinical services in New York State to meet the experience requirements, an applicant for licensure in each of the above-referenced professions needs a limited permit from the State Education Department.

When Article 163 was enacted in 2002, the law authorized the State Education Department to issue a two-year limited permit to an applicant in mental health counseling and a one-year limited permit to an applicant in marriage and family therapy, creative arts therapy, and psychoanalysis, to practice under a qualified supervisor in an authorized setting while meeting the experience and examination requirements. The law and implementing regulations allowed the State Education Department to grant a one-year extension, upon application and payment of fee, to an applicant in any of these professions, if the applicant had made good faith efforts to meet the experience and examination requirements during the initial permit period.

While many applicants were able to complete the required experience in the time periods specified in law, there have been a number of applicants who could not do so. On November 13, 2013, the Governor signed Chapter 485 of the Laws of 2013, which provides applicants in each of these professions a total of four years under a limited permit to meet the experience and examination requirements for licensure. The initial permit will be valid for two years, and the Department may renew the permit for up to two additional one-year periods. The applicant/limited permit holder will continue to practice in a setting that is authorized to provide professional services under a supervisor who is licensed and registered to practice under the Education Law. This will protect the citizens who receive services from these applicants/limited permit holders, while providing additional time for those applicants/limited permit holders to meet the experience and examination requirements for entry into the profession. The new law became effective immediately. The proposed amendment is necessary to conform the Commissioner's Regulations with Education Law section 8409, as amended by Chapter 485 of the Laws of 2013.

4. COSTS:

(a) Costs to State government: The proposed amendment will not impose any additional cost on State government, including the State Education Department, over and above the costs imposed by Article 163 of the Education Law for administering these professions.

(b) Cost to local government: The proposed amendment relates to meeting requirements for licensure as a mental health counselor, marriage and family therapist, creative arts therapist or psychoanalyst. The regulation will not impose additional costs on local government.

(c) Cost to private regulated parties: The proposed amendment will not impose any other costs on applicants for the licenses over and above those imposed by Article 163 of the Education Law, as amended by Chapter 485 of the Laws of 2013.

(d) Cost to the regulatory agency: As stated above in Costs to State government, the proposed regulation does not impose costs on the State Education Department beyond those imposed by statute.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment implements the requirements of Chapter 485 that amended Article 163 of the Education Law in regard to the duration of limited permits that may be issued to an applicant for licensure as a mental health counselor, marriage and family therapist, creative arts therapist or psychoanalyst. The proposed amendment does not impose any program, service, duty or responsibility upon local governments.

6. PAPERWORK:

The proposed amendment imposes no additional reporting or record-keeping requirements beyond those imposed by Article 163 of the Education Law. In accordance with Article 163, applicants for licensure will be required to submit to the State Education Department an application and fee for the initial, two-year limited permit and, if appropriate, up to two one-year extensions.

7. DUPLICATION:

The proposed amendment does not duplicate other existing State or

Federal requirements, and is necessary to implement Chapter 485 of the Laws of 2013.

8. ALTERNATIVES:

The proposed amendment is necessary to conform the Regulations of the Commissioner of Education to Chapter 485 of the Laws of 2013 in regard to the duration of limited permits available to an applicant for licensure as a mental health counselor, marriage and family therapist, creative arts therapist or psychoanalyst who is practicing in an authorized setting under a supervisor who is licensed and registered to practice under the Education Law, while meeting the experience and/or examination requirements for licensure. There are no significant alternatives to the proposed amendment that would be consistent with Chapter 485 and none were considered.

9. FEDERAL STANDARDS:

Since there are no applicable federal standards for the licensure of mental health counselors, marriage and family therapists, creative arts therapists or psychoanalysts, the proposed amendment does not exceed any minimum federal standards for the same or similar subject areas.

10. COMPLIANCE SCHEDULE:

The proposed amendment is necessary to conform the Regulations of the Commissioner of Education to Chapter 485 of the Laws of 2013. The effective date of Chapter 485 of the Laws of 2013 is November 13, 2013. The proposed amendment was adopted by the Board of Regents on an emergency basis effective December 17, 2013 and is expected to be presented for permanent adoption at the March 10-11, 2014 Regents meeting, with an effective date of March 26, 2014. It is anticipated that applicants for licensure or certification will be able to comply with the proposed amendment by the effective date.

***Regulatory Flexibility Analysis***

The proposed amendment to the Regulations of the Commissioner of Education implements the provisions of Chapter 485 of the Laws of 2013, which amended Article 163 of the Education Law in regard to the duration of limited permits issued by the State Education Department to individuals seeking licensure as mental health counselors, marriage and family therapists, creative arts therapists and psychoanalysts. The amendment will not impose any new reporting, recordkeeping, or other compliance requirements, or have any adverse economic impact, on small businesses or local governments. Because it is evident from the nature of the proposed amendment that it will not adversely affect small businesses or local governments, no affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses and local governments is not required, and one has not been prepared.

***Rural Area Flexibility Analysis***

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed amendment will apply to applicants seeking licensure as mental health counselors, marriage and family therapists, creative arts therapists and psychoanalysts in New York State. The proposed amendment implements the provisions of Chapter 485 of the Laws of 2013 that, effective November 13, 2013, changed the duration of limited permits that authorize the applicant to practice the profession under the supervision of a qualified supervisor, while meeting the experience and/or examination requirements for licensure. Applicants for licensure in these fields include individuals located in the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square mile or less.

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

An individual seeking license in New York State as a mental health counselor, marriage and family therapist, creative arts therapist or psychoanalyst must meet requirements for education, supervised experience and examination, acceptable to the State Education Department. In order to provide clinical services in New York State to meet the experience requirements, an applicant for licensure in each of the above-referenced professions needs a limited permit from the State Education Department.

When Article 163 was enacted in 2002, the law authorized the State Education Department to issue a two-year limited permit to an applicant in mental health counseling and a one-year limited permit to an applicant in marriage and family therapy, creative arts therapy, and psychoanalysis, to practice under a qualified supervisor in an authorized setting while meeting the experience and examination requirements. The law and implementing regulations allowed the State Education Department to grant a one-year extension, upon application and payment of fee, to an applicant in any of these professions, if the applicant had made good faith efforts to meet the experience and examination requirements during the initial permit period.

While many applicants were able to complete the required experience in the time periods specified in law, there have been a number of applicants who could not do so. On November 13, 2013, the Governor signed Chapter 485 of the Laws of 2013, which provides applicants in each of these professions up to a possible total of four years under a limited permit to meet the experience and examination requirements for licensure. The initial permit will be valid for two years, and the Department may renew the permit for up to two additional one-year periods. The applicant/limited permit holder will continue to practice in a setting that is authorized to provide professional services under a supervisor who is licensed and registered to practice under the Education Law. This will protect the citizens who receive services from these applicants/limited permit holders, while providing additional time for those applicants/limited permit holders to meet the experience and examination requirements for entry into the profession. The new law became effective immediately.

The proposed amendment is necessary to conform the Commissioner's Regulations with Education Law section 8409, as amended by Chapter 485 of the Laws of 2013. The proposed amendment does not impose any additional reporting, recordkeeping, or other compliance requirements on licensees, including those located in rural areas, beyond those currently imposed by regulation. In addition, the proposed amendment does not require regulated parties to hire professional services in order to comply.

3. COSTS:

The proposed amendment does not impose any additional costs on regulated parties, including those in rural areas, beyond those currently required to comply with statutory and regulatory requirements for licensure as a mental health counselor, marriage and family therapist, creative arts therapist or psychoanalyst.

4. MINIMIZING ADVERSE IMPACT:

The proposed amendment is necessary to conform the Commissioner's Regulations with Education Law section 8409, as amended by Chapter 485 of the Laws of 2013. The proposed amendment extends to up to a possible total of four years the amount of time available to an applicant for licensure as a mental health counselor, marriage and family therapist, creative arts therapist or psychoanalyst in New York State to meet the supervised experience and examination requirements. These requirements are in place to ensure competency of licensed professionals and thereby safeguard the public. Due to the nature of the proposed amendment, the State Education Department does not believe it to be warranted to establish different requirements for applicants located in rural areas.

5. RURAL AREAS PARTICIPATION:

Comments on the proposed amendment were solicited from the State Board for Mental Health Practitioners and from statewide professional associations whose memberships include individuals who live or work 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 485 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 State Education 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***

Article 163 of the Education Law establishes a requirement that mental health counselors, marriage and family therapists, creative arts therapists and psychoanalysts be licensed to practice in New York State. The proposed amendment to the Regulations of the Commissioner of Education implements the requirements of Chapter 485 of the Laws of 2013 that amended Article 163 of the Education Law in regard to the duration of limited permits issued by the State Education Department. The limited permit allows an applicant for licensure as a mental health counselor, marriage and family therapist, creative arts therapist or psychoanalyst to practice their respective professions, in an authorized setting under a supervisor who is licensed and registered to practice under the Education Law, while meeting the experience and/or examination requirements for licensure in New York State. Chapter 485 of the Laws of 2013 provides applicants in each of these professions up to a possible total of four years under a limited permit to meet the experience and/or examination requirements for licensure. The amendment will not have a substantial adverse impact on jobs and employment opportunities. Because it is evident from the nature of the proposed 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.

## EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

**Science Intermediate Assessments**

**I.D. No.** EDU-12-14-00012-EP
**Filing No.** 214
**Filing Date:** 2014-03-11
**Effective Date:** 2014-03-11

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

***Proposed Action:*** 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), (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.

Because the Board of Regents meets at scheduled intervals, the earliest the proposed amendment could be presented for regular (non-emergency) adoption, after publication in the State Register and expiration of the 45-day public comment period provided for in State Administrative Procedure Act (SAPA) section 202(1) and (5), is the 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 performance test portion of the grade 8 intermediate science assessment is scheduled to be administered Wednesday May 21 through May 30, 2014 and the written test portion is scheduled to be administered on Monday June 2, 2014.

Therefore, emergency action to immediately adopt the proposed rule is necessary for the preservation of the general welfare to ensure that local educational agencies are given sufficient notice to enable them to make timely decisions on whether the affected students should take a Regents examination in science in lieu of or in addition to the grade 8 intermediate assessment in science during the 2013-14 school year, and to ensure that the science intermediate assessment will not be administered during the 2013-2014 school year to students in grade 8 who took 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.

It is anticipated that the emergency rule will be presented to the Board of Regents for adoption as a permanent rule at the June 23-24, 2014 Regents meeting, which is the first scheduled meeting after expiration of the 45-day public comment period mandated by the State Administrative Procedure Act for proposed rulemakings.

***Subject:*** 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/proposed rule:*** 1. Paragraph (4) of subdivision (d) of section 100.4 of the Regulations of the Commissioner of Education is amended, effective March 11, 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 March 11, 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 March 11, 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 as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire June 8, 2014.

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

***Data, views or arguments may be submitted to:*** Ken Slentz, Deputy Commissioner, State Education Department, Office of P-12 Education, State Education Building, 2M West, 89 Washington Ave., Albany, NY 12234, (518) 474-5520, email: NYSEDP12@mail.nysed.gov

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

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

***Regulatory Impact Statement***

1. STATUTORY AUTHORITY:

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

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

Education Law section 208 authorizes the Regents to establish examina-

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

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

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

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

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

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

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

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

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

2. LEGISLATIVE OBJECTIVES:

The proposed amendment is consistent with the above statutory authority and is necessary to implement Regents policy relating to 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, record keeping or any other compliance requirements on small businesses. Because it is evident from the nature of the proposed amendment that it does not affect small businesses, no further measures were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses is not required and one has not been prepared.

Local Governments:

1. EFFECT OF RULE:

The proposed amendment applies to 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.

## EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

### Special Education Services and Programs for Preschool Children with Disabilities

**I.D. No.** EDU-12-14-00013-EP

**Filing No.** 215

**Filing Date:** 2014-03-11

**Effective Date:** 2014-04-17

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

***Proposed Action:*** 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) and (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), (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.

Because the Board of Regents meets at fixed intervals, the earliest the proposed amendment can be presented for adoption as a permanent rule, after expiration of the required 45-day public comment period provided for in State Administrative Procedure Act (SAPA) section 202(1) and (5), 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 provisions of Chapter 545 of the Laws of 2013 become effective on April 17, 2014.

Emergency action to adopt the proposed amendment is necessary for the preservation of the general welfare in order to ensure the timely implementation of the provisions of Chapter 545 of the Laws of 2013 that: (1) require 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) require 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.

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 meeting scheduled after expiration of the 45-day public comment period provided for in State Administrative Procedure Act (SAPA) section 202(1) and (5).

***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/proposed rule:*** 1. Paragraph (3) of subdivision (c) of section 200.16 of the Regulations of the Commissioner of Education is amended, effective April 17, 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 April 17, 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 as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire June 8, 2014.

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

***Data, views or arguments may be submitted to:*** James P. DeLorenzo, Assistant Commissioner P-12, State Education Department, Office of Special Education, State Education Building, Room 309, 89 Washington Ave., Albany, NY 12234, (518) 402-3353, email: spedpubliccomment@mail.nysed.gov

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

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

***Regulatory Impact Statement***

1. STATUTORY AUTHORITY:

Education Law section 101 continues the existence of the 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(20) 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. ECONOMICAL 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, record keeping 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.

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

**Annual Professional Performance Reviews (APPR)**

**I.D. No.** EDU-08-14-00023-ERP

**Filing No.** 210

**Filing Date:** 2014-03-11

**Effective Date:** 2014-03-11

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

***Action Taken:*** Amendment of Subpart 30-2 of Title 8 NYCRR.

***Statutory authority:*** Education Law, sections 101(not subdivided), 207(not subdivided), 215(not subdivided), 305(1), (2) and 3012-c

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

***Specific reasons underlying the finding of necessity:*** Because the Board of Regents meets at scheduled intervals, the earliest the proposed amendment could be presented for regular (non-emergency) adoption, after publication in the State Register and expiration of the 45-day public comment period provided for in State Administrative Procedure Act (SAPA) section 202(1) and (5), is the May 2014 Regents meeting. Furthermore, pursuant to SAPA section 203(1), the earliest effective date of the proposed amendment, if adopted at the May 2014 meeting, would be June 17, 2014, the date a Notice of Adoption would be published in the State Register. However, emergency action to adopt the proposed rule is necessary now for the preservation of the general welfare to ensure that the emergency rule adopted at the February Regents meeting, and revised at the March Regents meeting, remains continuously in effect until it can be adopted as a permanent rule and so school districts and BOCES are aware of the requirements for use of an assessment that is not a traditional standardized assessment for grades kindergarten through two for the purposes of annual professional performance reviews for districts/BOCES that opt to use an assessment that is not a traditional standardized third-party assessment in these grades.

It is anticipated that the emergency rule will be presented to the Board of Regents for adoption as a permanent rule at the May 2014 Regents meeting, which is the first scheduled meeting after expiration of the 45-day public comment period mandated by the State Administrative Procedure Act for proposed rulemakings.

***Subject:*** Annual Professional Performance Reviews (APPR).

***Purpose:*** To clarify the requirements for Districts and Boards of Cooperatives Educational Services (BOCES) that opt to use an assessment that is not a traditional standardized assessment for grades K-2 for purposes of annual professional performance reviews (APPR).

***Text of emergency/revised rule:*** 1. That the emergency rule amending Subpart 30-2 of the Rules of the Board of Regents that was adopted by the Board of Regents as an emergency measure at the February 10-11 meeting is repealed, effective March 11, 2014.

2. Subdivision (b) of section 30-2.2 of the Rules of the Board of Regents shall be amended, effective March 11, 2014, to read as follows:

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

*(1) Approved Assessments in grades kindergarten through two.*

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

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

3. Paragraph (2) of subdivision (a) of section 30-2.3 of the Rules of the Board of Regents shall be amended, effective March 11, 2014, to read as follows:

(2) By July 1, 2012, the governing body of each school district and BOCES shall adopt a plan, on a form prescribed by the Commissioner, for the annual professional performance review of all of its classroom teachers and building principals in accordance with the requirements of Education Law § 3012-c and this Subpart, and shall submit such plan to the Commissioner for approval. The plan may be an annual or multi-year plan, for the annual professional performance review of all of its classroom teachers and building principals. The Commissioner shall approve or reject the plan by September 1, 2012, or as soon as practicable thereafter. The Commissioner may *also* reject a plan that does not rigorously adhere to the provisions of Education Law § 3012-c and the requirements of this Subpart. Should any plan be rejected, the Commissioner shall describe each deficiency in the submitted plan and direct that each such deficiency be resolved through collective bargaining to the extent required under article fourteen of the Civil Service Law. If any material changes are made to the plan, the school district or BOCES must submit the material changes, on a form prescribed by the Commissioner, to the Commissioner for approval. *If material changes are made to a plan that solely relate to the elimination of unnecessary assessments on students, the Commissioner shall expedite his or her review of such material changes and solely review those sections of the plan that relate to the eliminated assessments to ensure compliance with Education Law § 3012-c and this Subpart,*

*provided that the superintendent, district superintendent or chancellor shall provide a written explanation of the changes made to the plan, on a form prescribed by the commissioner, and certify that no other material changes have been made to the plan.* To the extent that by July 1, 2012 or by July 1 of any subsequent year, if all of the terms of the plan have not been finalized as a result of unresolved collective bargaining negotiations, the entire plan shall be submitted to the Commissioner upon resolution of all of its terms, consistent with Article 14 of the Civil Service Law.

4. A new paragraph (4) shall be added to subdivision (a) of section 30-2.3 of the Rules of the Board of Regents, effective March 11, 2014, to read as follows:

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

5. Subparagraph (iii) of paragraph (1) of subdivision (b) of section 30-2.5 of the Rules of the Board of Regents shall be amended, effective March 11, 2014, to read as follows:

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

6. A new subdivision (e) shall be added to section 30-2.5 of the Rules of the Board of Regents shall be amended, effective March 11, 2014, to read as follows:

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

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

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

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

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

***This notice is intended*** to serve as both a notice of emergency adoption and a notice of revised rule making. The notice of proposed rule making was published in the *State Register* on February 26, 2014, I.D. No. EDU-08-14-00023-EP. The emergency rule will expire May 9, 2014.

***Emergency rule compared with proposed rule:*** Substantial revisions were made in sections 30-2.2(b), 30-2.3(a)(4), 30-2.8(a) and (e).

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

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

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

***Revised Regulatory Impact Statement***

Since publication of a Notice of Proposed Rule Making in the State Register on February 26, 2014, the following substantial revisions were made to the proposed rule:

Section 30-2.2(b) of the Rules of the Board of Regents clarifies the definition of approved assessment. Specifically, the revised rule clarifies that an approved student assessment shall include, for grades kindergarten through two, an assessment that is not a traditional standardized assessment that meets requirements prescribed by the Commissioner in guidance. It further clarifies that effective March 2, 2014, all standardized assessments for students in kindergarten through grade two shall be removed from the actual list of approved student assessments for use in annual professional performance review plans for the 2014-2015 school year and thereafter and traditional standardized assessments in grades kindergarten through grade two will no longer be approved assessments for these grades. However, an assessment that is not a traditional standardized assessment shall be considered an approved student assessment if the superintendent, district superintendent, or chancellor of a school district/BOCES that chooses to use such assessment certifies in its APPR plan that the assessment is a not a traditional standardized assessment, as defined by the Commissioner in guidance, and that the assessment meets the minimum requirements prescribed by the Commissioner in guidance.

Section 30-2.3(a)(4) was revised to clarify that the superintendent, district superintendent or chancellor will only have to include traditional standardized third-party assessments and traditional standardized district, regional or BOCES developed assessments in their calculation of the one percent for the certification relating to instructional time and not assessments that are not a traditional standardized assessment.

Sections 30-2.8(a) and (e) of the Rules of the Board of Regents were revised to clarify that the Commissioner will remove the names of any traditional standardized assessments approved for use in kindergarten through grade two from the list of approved assessments for use in the 2014-2015 school year and thereafter. However, an assessment that is not a traditional standardized assessment may be considered an approved student assessment if the superintendent, district superintendent, or chancellor certifies in its APPR plan that the assessment is a not a traditional standardized assessment, as defined by the Commissioner in guidance, and that the assessment meets the minimum requirements prescribed by the Commissioner in guidance.

The above revisions to the proposed require revisions to Needs and Benefits and Paperwork Sections of the previously published Regulatory Impact Statement.

3. NEEDS AND BENEFITS:

The proposed amendment makes a series of changes to Subpart 30-2 of the Rules of the Board of Regents, that support the commitment made by the Board of Regents and the Commissioner to ensure that students are not unnecessarily burdened by over-testing or testing that takes away from the core instructional time in our classrooms and schools. Further, these amendments help to ensure that our youngest students in grades kindergarten through second grade are not subject to traditional standardized testing.

First, the proposed amendment provides that no APPR plan shall be approved by the Commissioner for use in the 2014-2015 school year or thereafter that provides for the administration of traditional standardized assessments to students in kindergarten through grade two that are not being used for diagnostic purposes or are required to be administered by federal law, including but not limited to assessments developed by any vendor,

third party or other comparable entity. The proposed amendment does not preclude the use of school- or BOCES-wide, group, or team results using State assessments that are administered to students in higher grades in the school or a district, regional or BOCES-developed student assessment that is developed in collaboration with a vendor, if otherwise allowed under this section or guidelines of the Commissioner.

The proposed amendment provides that effective March 2, 2014, the Department will remove all third-party assessments approved for use in kindergarten through grade two from the list of approved student assessments for use in APPR plans for the 2014-2015 school year and thereafter. However, an assessment that is not a traditional standardized assessment may be considered an approved student assessment if the superintendent, district superintendent, or chancellor certifies in its APPR plan that the assessment is a not a traditional standardized assessment, as defined by the Commissioner in guidance, and that the assessment meets the minimum requirements prescribed by the Commissioner in guidance. The proposed amendment also ensures that any APPR plan that has been approved by the Commissioner for use in the 2013-2014 school year shall remain in effect in accordance with Education Law § 3012-c(2)(l) and those districts and BOCES will be able to continue to use those assessments until a material change is made to their APPR plan to eliminate the use of such assessments.

The proposed amendment further provides that if any district or BOCES wishes to make material changes to a plan that solely relate to the elimination of unnecessary assessments that are used on students for APPR purposes, the Department shall expedite the review of such changes and will only review those sections of the plan that relate to the eliminated assessments to ensure compliance with Education Law § 3012-c and Subpart 30-2.

The proposed amendment also requires that for any APPR plan submitted to the Commissioner for approval for use in the 2014-2015 school year, the plan must include a signed certification by the superintendent, district superintendent or chancellor that attests that no more than one percent of total instructional time in each classroom or program of the district or BOCES is spent taking any locally determined traditional standardized assessments from the state's approved list or traditional standard assessments that are district, regional or BOCES developed assessments for APPR purposes. This certification does not, however, apply to assessments used for formative or diagnostic purposes.

The proposed amendment also re-defines core subject areas for the State growth or other comparable measures subcomponent to remove sixth through eighth grade social studies and sixth through seventh science from the definition. This revision will help to provide additional, no-cost options to districts and BOCES who may wish to utilize a school-wide, group, or team measure based on one or more State or Regents assessments in sixth through eight social studies and/or sixth through seventh science.

6. PAPERWORK:

The proposed amendment requires that for any APPR plan submitted to the Commissioner for approval for use in the 2014-2015 school year, the plan must include a signed certification by the superintendent, district superintendent or chancellor that attests that no more than one percent of total instructional time in each classroom or program of the district or BOCES is spent taking any locally determined traditional standardized assessments from the state's approved list or traditional standardized district, regional, or BOCES- developed assessments for APPR purposes. This certification does not, however, apply to assessments used for formative or diagnostic purposes.

***Revised Regulatory Flexibility Analysis***

Since publication of a Notice of Emergency Adoption and Proposed Rule Making in the State Register on February 26, 2014, the proposed rule was revised as set forth in the Revised Regulatory Impact Statement herewith.

The above revisions to the proposed rule require that the Compliance Cost section of the previously published Regulatory Flexibility Analysis relating to local governments be revised to read as follows:

COMPLIANCE COSTS:

The proposed amendment makes a series of changes to Subpart 30-2 of the Rules of the Board of Regents, that support the commitment made by the Board of Regents and the Commissioner to ensure that students are not unnecessarily burdened by over-testing or testing that takes away from the core instructional time in our classrooms and schools. Further, these amendments help to ensure that our youngest students in grades kindergarten through second grade are not subject to traditional standardized testing.

First, the proposed amendment provides that no APPR plan shall be approved by the Commissioner for use in the 2014-2015 school year or thereafter that provides for the administration of traditional standardized assessments to students in kindergarten through grade two that are not being used for diagnostic purposes or are required to be administered by federal law, including but not limited to assessments developed by any vendor, third party or other comparable entity. The proposed amendment does not preclude the use of school- or BOCES-wide, group, or team results using State assessments that are administered to students in higher grades in the school or a district, regional or BOCES-developed student assessment that is developed in collaboration with a vendor, if otherwise allowed under this section or guidelines of the Commissioner.

The proposed amendment provides that effective March 2, 2014, the Department will remove all third-party assessments approved for use in kindergarten through grade two from the list of approved student assessments for use in APPR plans for the 2014-2015 school year and thereafter. However, an assessment that is not a traditional standardized assessment may be considered an approved student assessment if the superintendent, district superintendent, or chancellor certifies in its APPR plan that the assessment is a not a traditional standardized assessment, as defined by the Commissioner in guidance, and that the assessment meets the minimum requirements prescribed by the Commissioner in guidance. The proposed amendment also ensures that any APPR plan that has been approved by the Commissioner for use in the 2013-2014 school year shall remain in effect in accordance with Education Law § 3012-c(2)(l) and those districts and BOCES will be able to continue to use those assessments until a material change is made to their APPR plan to eliminate the use of such assessments.

The proposed amendment further provides that if any district or BOCES wishes to make material changes to a plan that solely relate to the elimination of unnecessary assessments that are used on students for APPR purposes, the Department shall expedite the review of such changes and will only review those sections of the plan that relate to the eliminated assessments to ensure compliance with Education Law § 3012-c and Subpart 30-2.

The proposed amendment also requires that for any APPR plan submitted to the Commissioner for approval for use in the 2014-2015 school year, the plan must include a signed certification by the superintendent, district superintendent or chancellor that attests that no more than one percent of total instructional time in each classroom or program of the district or BOCES is spent taking any locally determined traditional standardized assessments from the state's approved list or traditional standard assessments that are district, regional or BOCES developed assessments for APPR purposes. This certification does not, however, apply to assessments used for formative or diagnostic purposes.

The proposed amendment also re-defines core subject areas for the State growth or other comparable measures subcomponent to remove sixth through eighth grade social studies and sixth through seventh science from the definition. This revision will help to provide additional, no-cost options to districts and BOCES who may wish to utilize a school-wide, group, or team measure based on one or more State or Regents assessments in sixth through eight social studies and/or sixth through seventh science.

***Revised Rural Area Flexibility Analysis***

Since publication of a Notice of Proposed Rule Making in the State Register on February 26, 2014, the proposed rule was revised as set forth in the Revised Regulatory Impact Statement filed herewith.

The above revisions to the proposed rule require that the Reporting, Recordkeeping, and Other Compliance Requirements; and Professional Services Section of the previously published Rural Area Flexibility Analysis be revised to read as follows:

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

The proposed amendment makes a series of changes to Subpart 30-2 of the Rules of the Board of Regents, that support the commitment made by the Board of Regents and the Commissioner to ensure that students are not unnecessarily burdened by over-testing or testing that takes away from the core instructional time in our classrooms and schools. Further, these amendments help to ensure that our youngest students in grades kindergarten through second grade are not subject to traditional standardized testing.

First, the proposed amendment provides that no APPR plan shall be approved by the Commissioner for use in the 2014-2015 school year or thereafter that provides for the administration of traditional standardized assessments to students in kindergarten through grade two that are not being used for diagnostic purposes or are required to be administered by federal law, including but not limited to assessments developed by any vendor, third party or other comparable entity. The proposed amendment does not preclude the use of school- or BOCES-wide, group, or team results using State assessments that are administered to students in higher grades in the school or a district, regional or BOCES-developed student assessment that is developed in collaboration with a vendor, if otherwise allowed under this section or guidelines of the Commissioner.

The proposed amendment provides that effective March 2, 2014, the Department will remove all third-party assessments approved for use in kindergarten through grade two from the list of approved student assessments for use in APPR plans for the 2014-2015 school year and thereafter.

However, an assessment that is not a traditional standardized assessment may be considered an approved student assessment if the superintendent, district superintendent, or chancellor certifies in its APPR plan that the assessment is a not a traditional standardized assessment, as defined by the Commissioner in guidance, and that the assessment meets the minimum requirements prescribed by the Commissioner in guidance. The proposed amendment also ensures that any APPR plan that has been approved by the Commissioner for use in the 2013-2014 school year shall remain in effect in accordance with Education Law § 3012-c(2)(l) and those districts and BOCES will be able to continue to use those assessments until a material change is made to their APPR plan to eliminate the use of such assessments.

The proposed amendment further provides that if any district or BOCES wishes to make material changes to a plan that solely relate to the elimination of unnecessary assessments that are used on students for APPR purposes, the Department shall expedite the review of such changes and will only review those sections of the plan that relate to the eliminated assessments to ensure compliance with Education Law § 3012-c and Subpart 30-2.

The proposed amendment also requires that for any APPR plan submitted to the Commissioner for approval for use in the 2014-2015 school year, the plan must include a signed certification by the superintendent, district superintendent or chancellor that attests that no more than one percent of total instructional time in each classroom or program of the district or BOCES is spent taking any locally determined traditional standardized assessments from the state's approved list or traditional standard assessments that are district, regional or BOCES developed assessments for APPR purposes. This certification does not, however, apply to assessments used for formative or diagnostic purposes.

The proposed amendment also re-defines core subject areas for the State growth or other comparable measures subcomponent to remove sixth through eighth grade social studies and sixth through seventh science from the definition. This revision will help to provide additional, no-cost options to districts and BOCES who may wish to utilize a school-wide, group, or team measure based on one or more State or Regents assessments in sixth through eight social studies and/or sixth through seventh science.

***Revised Job Impact Statement***

Since publication of the Notice of Proposed Rule Making in the State Register on February 26, 2014, the proposed rule was revised as set forth in the Revised Regulatory Impact Statement filed herewith.

The proposed rule, as so revised, clarifies the requirements for districts/BOCES who wish to use an assessment that is not a traditional standardized third-party assessment for grades K-2 for APPR purposes. The revised rule will not have a substantial adverse impact on job or employment opportunities. Because it is evident from the nature of the revised rule that it will have no impact on jobs or employment opportunities, no further measures were taken. Accordingly, a job impact statement is not required and one has not been prepared.

***Assessment of Public Comment***

The agency received no public comment.

## NOTICE OF ADOPTION

### Teacher Certification Requirements for Career and Technical Education Titles

**I.D. No.** EDU-53-13-00005-A
**Filing No.** 211
**Filing Date:** 2014-03-11
**Effective Date:** 2014-03-26

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

***Action taken:*** Amendment of sections 52.21, 80-1.1 and 80-3.5; and addition of section 80-3.3 to Title 8 NYCRR.

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

***Subject:*** Teacher certification requirements for career and technical education titles.

***Purpose:*** To extend the availability of a Transitional A certificate to the technical titles within the career and technical education (CTE) titles and the Family and Consumer Science CTE subjects.

***Text or summary was published*** in the December 31, 2013 issue of the Register, I.D. No. EDU-53-13-00005-P.

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

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

***Initial Review of Rule***

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

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

***Assessment of Public Comment***

The agency received no public comment.

## NOTICE OF ADOPTION

### Duration of Limited Permits for Applicants Seeking Licensure As Mental Health Practitioners

**I.D. No.** EDU-53-13-00006-A
**Filing No.** 213
**Filing Date:** 2014-03-11
**Effective Date:** 2014-03-26

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

***Action taken:*** Amendment of sections 79-9.4, 79-10.4, 79-11.4 and 79-12.4 of Title 8 NYCRR.

***Statutory authority:*** Education Law, sections 207 (not subdivided), 6501 (not subdivided), 6504 (not subdivided), 6507(2)(a), 6508(1), 8409(2); L. 2013, ch. 485

***Subject:*** Duration of limited permits for applicants seeking licensure as mental health practitioners.

***Purpose:*** To conform to the Regulations of the Commissioner of Education to chapter 485 of the Laws of 2013.

***Text or summary was published*** in the December 31, 2013 issue of the Register, I.D. No. EDU-53-13-00006-EP.

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

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

***Initial Review of Rule***

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

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

***Assessment of Public Comment***

The agency received no public comment.

# Department of Environmental Conservation

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

### Sanitary Condition of Shellfish Lands

**I.D. No.** ENV-12-14-00006-P

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

***Proposed Action:*** Amendment of Part 41 of Title 6 NYCRR.

***Statutory authority:*** Environmental Conservation Law, sections 13-0307 and 13-0319

***Subject:*** Sanitary Condition of Shellfish Lands.

***Purpose:*** To reclassify underwater lands to prohibit the harvest of shellfish.

***Text of proposed rule:*** 6 NYCRR Part 41 Sanitary Condition of Shellfish Lands is amended to read as follows:

Clause 41.3(b)(1)(i)('e') is amended to read as follows:

('e') *During the period May 15 through September 30, both dates inclusive,* all that area of Great South Bay, including the Oak Island Channel, the State Boat Channel, and the ''Lead'' (local names), lying southerly and easterly of Oak Island and southerly of a line extending westerly from the westernmost point of land at Seganus Thatch at the former site of the State Channel Marina (local name), to the northernmost point of the bulkhead protecting the residence at number 58 Oak Island (said residence is a yellow, two-story house), continuing southeasterly around the northeast facing shoreline of Oak Island to its easternmost tip and continuing southwesterly to a point located immediately opposite the residence at number 8 Oak Island; and all that area lying easterly of a line extending southerly from the chimney at the western corner of the residence at number 8 Oak Island (said residence is a one-story wood shingle house with a green roof), proceeding southerly across ''the Lead'' (local name), to utility pole number 468 on the north side of Ocean Parkway, Jones Beach Island; and all that area lying northerly of a line extending easterly from utility pole number 468 to utility pole number 478 on the north side of Ocean Parkway, Jones Beach Island; and all that area lying westerly of a line extending northeasterly across the State Boat Channel to the southernmost point of land at Seganus Thatch, thence proceeding northwesterly along the shoreline to the westernmost point of land at Seganus Thatch.

Existing clause 41.3(b)(4)(vii)('a') is amended to read as follows:

('a') All that area, including tributaries, lying westerly of a line extending [northerly] *northwesterly* along the breakwater located at the entrance to Sag Harbor (local landmark) and thence continuing northerly from the northern end of the [break water] *breakwater* to the northeasternmost extremity of the timber bulkhead protecting the shoreline adjacent to *28* East Harbor Drive, North Haven (local landmark); and easterly of the westernmost portions of the fixed bridge connecting North Haven Peninsula and Sag Harbor (local landmark).

Existing clause 41.3(b)(5)(i)('a') is amended to read as follows:

('a') All that area, including tributaries, lying westerly of a line extending [northerly] *northwesterly* along the breakwater located at the entrance to Sag Harbor (local landmark) and thence continuing northerly from the northern end of the breakwater to the northeasternmost extremity of the timber bulkhead protecting the shoreline adjacent to *28* East Harbor Drive, North Haven (local landmark); and easterly of the westernmost portions of the fixed bridge connecting North Haven Peninsula and Sag Harbor (local landmark).

'Note:' All reference points in Sag Harbor in the Town of East Hampton taken from N.O.A.A. Nautical Chart No. 12358 dated [December 1, 1984] *July 9, 2011*, except as indicated as ''local landmarks.'' *N.O.A.A. charts are available from N.O.A.A.*

Existing clause 41.3(b)(5)(ix)('a') is repealed.

New clauses 41.3(b)(5)(ix)('a'), ('b') and ('c') are adopted to read as follows:

('a') *During the period January 1 through December 31, both dates inclusive, all that area of Northwest Creek and its tributaries lying south of a line extending between two orange markers located approximately 750 yards south of the inlet into Northwest Creek.*

('b') *During the period May 1 through December 14, both dates inclusive, all that area of Northwest Creek lying south of a line extending east from the northernmost tip of land, exposed at mean high water, on the western side of the inlet connecting the creek into Northwest Harbor to the opposite shoreline, and northerly of the line described in clause ('a'), above.*

('c') *In the absence of the painted markers, all of Northwest Creek is uncertified.*

Existing clause 41.3(b)(7)(iii)('c') is repealed.

New clause 41.3(b)(7)(iii)('c') is adopted to read as follows:

*('c') Wickham Creek*

*('1') All that area northwest of a line extending westerly from an orange marker on the north shore (approximately 750 feet west of the marina) to an orange marker on the opposite shoreline.*

*('2') During the period May 15 through October 31, both dates inclusive, all that area of lying southeast of a line extending westerly from an orange marker on the north shore (approximately 750 feet west of the marina) to an orange marker on the opposite shoreline.*

*('3') In the absence of the orange markers all of Wickham Creek is uncertified.*

Existing subparagraph 41.3(b)(7)(iv) is repealed.

New subparagraph 41.3(b)(7)(iv) is adopted to read as follows:

*(iv) Mattituck Inlet and Mattituck Creek*

*('a') During the period April 16 through January 14, both dates inclusive all that area north of a line extending easterly from an orange marker near the red shack on the south side of the entrance to Howards Creek (local landmark), to an orange marker near the flagpole serving the residence at 1085 West View Drive (local landmark), and the area of Howards Creek lying easterly of a line extending northwesterly from an orange marker near the dock serving the residence at 1175 Point Pleasant Road to an orange marker near the dock serving the residence located on Fox Hollow Road on the opposite shore.*

*('b') All that area south of a line extending easterly from an orange marker near the red shack on the south side of the entrance to Howards Creek (local landmark), to an orange marker near the flagpole serving the residence at 1085 West View Drive (local landmark), and the area of Howards Creek lying west of a line extending northwesterly from an orange marker near the dock serving the residence at 1175 Point Pleasant Road to an orange marker near the dock serving the residence located on Fox Hollow Road on the opposite shore.*

Clause 41.3(b)(7)(vii)(a) is amended to read as follows:

(a) During the period January 1 through December 31, both dates inclusive, all that area of Hashamomuck Pond and Long Creek lying west of a line extending southerly from the orange marker located on the shore at the Terrace Garden Colony Cottages to the opposite shoreline; and lying southerly of the line extending easterly from the orange marker located on the shoreline of the residence at [645] *1645* Mill Creek Drive to the orange marker on the opposite shore.

***Text of proposed rule and any required statements and analyses may be obtained from:*** Melissa Albino Hegeman, NYS Department of Environmental Conservation, 205 N Belle Mead Rd, Suite 1, East Setauket, NY 11733, (631) 444-0491, email: maalbino@gw.dec.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.

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

***Consolidated Regulatory Impact Statement***

1. Statutory authority:

The statutory authority for designating shellfish lands as certified or uncertified is given in Environmental Conservation Law (ECL) section 13 0307. Subdivision 1 of section 13 0307 of the ECL requires the Department of Environmental Conservation (the department) to periodically conduct examinations of all shellfish lands within the marine district to ascertain the sanitary condition of these areas. Subdivision 2 of this section requires the department to certify which shellfish lands are in such sanitary condition that shellfish may be taken for food. Such lands are designated as certified shellfish lands. All other shellfish lands are designated as uncertified.

The statutory authority for promulgating regulations with respect to the harvest of shellfish is given in ECL section 13 0319.

2. Legislative objectives:

The legislative objectives are to ensure that shellfish lands are appropriately classified as either certified or uncertified and to protect public health by preventing the harvest and consumption of shellfish from lands that do not meet the standards for a certified shellfish land.

3. Needs and benefits:

Regulations that designate shellfish lands as certified are needed to allow the harvest of shellfish from lands that meet the sanitary criteria for a certified area. Shellfish are a valuable state resource and, where possible, should be available for commercial and recreational harvest. The classification of previously uncertified shellfish lands as certified may provide additional sources of income for commercial shellfish diggers by increasing the amount of areas available for harvest. Recreational harvesters also benefit by having increased harvest opportunities and the ability to make use of a natural resource readily available to the public. The direct harvest of shellfish for use as food is allowed from certified shellfish lands only.

Regulations that designate shellfish lands as uncertified are needed to prevent the harvest and consumption of shellfish from lands that do not meet the sanitary criteria for a certified area. Shellfish harvested from uncertified shellfish lands have a greater potential to cause human illness due to the possible presence of pathogenic bacteria or viruses. These pathogens may cause the transmission of infectious disease to the shellfish consumer.

These regulations also protect the shellfish industry. Seafood wholesalers, retailers, and restaurants are adversely affected by the public reaction to instances of shellfish related illness. By prohibiting the harvest of shellfish from lands that fail to meet the sanitary criteria, these regulations can ensure that only wholesome shellfish are allowed to be sold to the shellfish consumer.

4. Costs:

There will be no costs to State or local governments. No direct costs will be incurred by regulated commercial shellfish harvesters in the form of initial capital investment or initial non capital expenses, in order to comply with these proposed regulations.

The department cannot provide an estimate of potential lost income to shellfish harvesters when areas are classified as uncertified, due to a

number of variables that are associated with commercial shellfish harvesting; nor can the potential benefits be estimated when areas are reopened. Those variables are listed in the following three paragraphs.

As of September 17, 2013, the department had issued 1,725 New York State shellfish digger's permits. The actual number of those individuals who harvest shellfish commercially full time is not known. Recreational harvesters who wish to harvest more than the daily recreational limit of 100 hard clams, with no intent to sell their catch, can only do so by purchasing a New York State digger's permit. The number of individuals who hold shellfish diggers permits for that type of recreational harvest is unknown. The department's records do not differentiate between full time and part-time commercial or licensed recreational shellfish harvesters.

The number of harvesters working in a particular area cannot be estimated for the reason stated above. In addition, the number of harvesters in a particular area is dependent upon the season, the amount of shellfish resource in the area, the price of shellfish and other economic factors, unrelated to the department's proposed regulatory action. When a particular area is classified as uncertified (closed to shellfish harvesting), harvesters can shift their efforts to other certified areas.

Estimates of the existing shellfish resource in a particular embayment are not known. Recent shellfish population assessments have not been conducted by the department. Without this information, the department cannot determine the effect a closure or reopening would have on the existing shellfish resource.

The department's actions to classify areas as certified or uncertified are not dependent on the shellfish resources in a particular area. They are based solely on the results of water quality analyses, the need to protect public health, and statutory requirements.

There is no cost to the department. Administration and enforcement of the proposed amendment are covered by existing programs.

5. Local government mandates:

The proposed rule does not impose any mandates on local government.

6. Paperwork:

No new paperwork is required.

7. Duplication:

The proposed amendment does not duplicate any state or federal requirement.

8. Alternatives:

There are no acceptable alternatives. ECL section 13 0307 stipulates that when the department has determined that a shellfish land meets the sanitary criteria for certified shellfish lands, the department must designate the land as certified and open to shellfish harvesting. All other shellfish lands must be designated as uncertified and closed to shellfish harvesting. These actions are necessary to protect public health.

9. Federal standards:

There are no federal standards regarding the certification of shellfish lands. New York and other shellfish producing and shipping states participate in the National Shellfish Sanitation Program (NSSP) which provides guidelines intended to promote uniformity in shellfish sanitation standards among members. NSSP is a cooperative program consisting of the federal government, states and the shellfish industry. Participation in the NSSP is voluntary; each state adopts its own regulations to implement a shellfish sanitation program consistent with the NSSP. The U.S. Food and Drug Administration (FDA) evaluates state programs and standards relative to NSSP guidelines. Substantial non conformity with NSSP guidelines can result in sanctions being taken by FDA, including removal of a state's shellfish shippers from the Interstate Certified Shellfish Shippers List. This would effectively bar a non conforming state's shellfish products from interstate commerce.

10. Compliance schedule:

Compliance with any new regulations designating areas as certified or uncertified does not require additional capital expense, paperwork, record keeping or any action by the regulated parties. Immediate compliance with any regulation designating shellfish lands as uncertified is necessary to protect public health. Shellfish harvesters are notified of changes in the classification of shellfish lands by mail either prior to, or concurrent with, the adoption of new regulations. Therefore, immediate compliance can be readily achieved.

***Consolidated Regulatory Flexibility Analysis***

1. Effect on small business and local government:

As of September 17, 2013 there were 1,725 licensed shellfish diggers in New York State. The numbers of permits issued for areas in the State are as follows: New York City, 44; Westchester, 4; Town of Hempstead, 94; Town of Oyster Bay, 115; Town of North Hempstead, 5; Town of Babylon, 53; Town of Islip, 132; Town of Brookhaven, 290; Town of Southampton, 169; Town of East Hampton, 265; Town of Shelter Island, 39; Town of Southold, 235; Town of Riverhead, 61; Town of Smithtown, 33; Town of Huntington, 165; other, 21.

Any change in the designation of shellfish lands may have an effect on shellfish diggers. Each time shellfish lands or portions of shellfish lands are designated as uncertified, there may be some loss of income for shellfish diggers who are harvesting shellfish from the lands to be closed. This loss may be determined by the acreage to be closed, the type of closure (whether year-round or seasonal), the species of shellfish present in the area, the area's productivity, and the market value of the shellfish resource in the particular area.

When uncertified shellfish lands are found to meet the sanitary criteria for a certified shellfish land, and are then designated as certified, there is also an effect on shellfish diggers. More shellfish lands are made available for the harvest of shellfish, and there is a potential for an increase in income for shellfish diggers. Again, the effect of the re opening of a harvesting area is determined by the shellfish species present, the area's productivity, and the market value of the shellfish resource in the area.

Local governments on Long Island exercise management authority and share law enforcement responsibility for shellfish with the State and the counties of Nassau and Suffolk. These include the towns of Hempstead, North Hempstead and Oyster Bay in Nassau County and the towns of Babylon, Islip, Brookhaven, Southampton, East Hampton, Southold, Shelter Island, Riverhead, Smithtown and Huntington in Suffolk County. Changes in the classification of shellfish lands impose no additional requirements on local governments above what level of management and enforcement that they normally undertake; therefore, there should be no effect on local governments.

2. Compliance requirements:

There are no reporting or recordkeeping requirements for small businesses or local governments.

3. Professional services:

Small businesses and local governments will not require any professional services to comply with proposed rules.

4. Compliance costs:

There are no capital costs which will be incurred by small businesses or local governments.

5. Economic and technological feasibility:

There are no reporting, recordkeeping, or affirmative actions that small businesses or local governments must undertake to comply with the proposed rules. Similarly, small businesses and local governments will not have to retain any professional services or incur any capital costs to comply with such rules. As a result, it should be economically and technically feasible for small businesses and local governments to comply with rules of this type.

6. Minimizing adverse impact:

The designation of shellfish lands as uncertified may have an adverse impact on commercial shellfish diggers. All diggers in the towns affected by proposed closures will be notified by mail of the designation of shellfish lands as uncertified prior to the date the closures go into effect. Shellfish lands which fail to meet the sanitary criteria during specified times of the year will be designated as uncertified only during those times. At other times, shellfish may be harvested from those lands (seasonally certified). To further minimize any adverse effects of proposed closures, towns may request that uncertified shellfish lands be considered for conditionally certified designation or for a shellfish transplant project. Shellfish diggers will also be able to shift harvesting effort to nearby certified shellfish lands. There should be no significant adverse impact on local governments from most changes in the classification of shellfish lands.

7. Small business and local government participation:

Impending shellfish closures are discussed at regularly scheduled Shellfish Advisory Committee meetings. This committee, organized by the New York State Department of Environmental Conservation (the department), is comprised of representatives of local baymen's associations, shellfish shippers and local town officials. Through their representatives, shellfish harvesters and shippers can express their opinions and give recommendations to the department concerning shellfish land classification. Local governments, state legislators, and baymen's organizations are notified by mail and given the opportunity to comment on any proposed rule making prior to filing the Notice of Adoption with the Department of State.

8. Cure period or other opportunity for ameliorative action:

Pursuant to SAPA 202-b (1-a)(b), no such cure period is included in the rule because of the potential adverse impact that could have on the health of shellfish consumers. Immediate compliance is required to ensure the general welfare of the public is protected.

***Consolidated Rural Area Flexibility Analysis***

Amendments to 6 NYCRR Part 41 will not impose an adverse impact on rural areas. Only the State's marine district will be directly affected by regulatory amendments to open or close shellfish lands. The Department of Environmental Conservation has determined that there are no rural areas within the marine district, and no shellfish lands within the marine district are located adjacent to any rural areas of the state. The proposed regulations will not impose reporting, record keeping, or other compliance

requirements on public or private entities in rural areas. Since no rural areas will be affected by amendments of Part 41 ''Sanitary Condition of Shellfish Lands'' of Title 6 NYCRR, the Department of Environmental Conservation has determined that a Rural Area Flexibility Analysis is not required.

***Consolidated Job Impact Statement***

1. Nature of impact:

Environmental Conservation Law section 13-0307 requires that the New York State Department of Environmental Conservation (the department) examine shellfish lands and certify which shellfish lands are in such sanitary condition that shellfish may be taken for use as food. Shellfish lands that do not meet the criteria for certified (open) shellfish lands must be designated as uncertified (closed) to protect public health.

Rule makings to amend 6 NYCRR 41, Sanitary Condition of Shellfish Lands, can potentially have a positive or negative effect on jobs for shellfish harvesters. Amendments to reclassify areas as certified may increase job opportunities, while amendments to reclassify areas as uncertified may limit harvesting opportunities.

The department does not have specific information regarding the locations in which individual diggers harvest shellfish, and therefore is unable to assess the specific job impacts on individual shellfish diggers. In general terms, amendments of 6 NYCRR Part 41 to designate areas as uncertified can have negative impacts on harvesting opportunities. The extent of the impact will be determined by the acreage closed, the type of closure (year-round or seasonal), the area's productivity, and the market value of the shellfish. In general, any negative impacts are small because the department's actions to designate areas as uncertified typically only affect a small portion of the shellfish lands in the state. Negative impacts are also diminished in many instances by the fact that shellfish harvesters are able to redirect effort to adjacent certified areas.

2. Categories and numbers affected:

Licensed commercial shellfish diggers can be affected by amendments to 6 NYCRR Part 41. Most harvesters are self-employed, but there are some who work for companies with privately controlled shellfish lands or who harvest surf clams or ocean quahogs in the Atlantic Ocean.

As of September 17, 2013 there were 1,725 licensed shellfish diggers in New York State. The numbers of permits issued for areas in the State are as follows: New York City, 44; Westchester, 4; Town of Hempstead, 94; Town of Oyster Bay, 115; Town of North Hempstead, 5; Town of Babylon, 53; Town of Islip, 132; Town of Brookhaven, 290; Town of Southampton, 169; Town of East Hampton, 265; Town of Shelter Island, 39; Town of Southold, 235; Town of Riverhead, 61; Town of Smithtown, 33; Town of Huntington, 165; other, 21.

It is estimated that ten (10) to twenty-five (25) percent of the diggers are full-time harvesters. The remainders are seasonal or part-time harvesters.

3. Regions of adverse impact:

Certified shellfish lands that could potentially be affected by amendments to 6 NYCRR Part 41 are located in or adjacent to Nassau County, Suffolk County, and a portion of the Long Island Sound north and east of New York City. There is no potential adverse impact to jobs in any other areas of New York State.

4. Minimizing adverse impact:

Shellfish lands are designated as uncertified to protect public health as required by the Environmental Conservation Law. Some impact from rule makings to close areas that do not meet the criteria for certified shellfish lands is unavoidable.

To minimize the impact of closures of shellfish lands, the department evaluates areas to determine whether they can be opened seasonally during periods of improved water quality. The department also operates conditional harvesting programs at the request of, and in cooperation with, local governments. Conditional harvesting programs allow harvest in uncertified areas under prescribed conditions, determined by studies, when bacteriological water quality is acceptable. Additionally, the department operates shellfish transplant harvesting programs which allow removal of shellfish from closed areas for cleansing in certified areas, thereby recovering a valuable resource. Conditional harvesting and shellfish transplant programs increase harvesting opportunities by making the resource in a closed area available under controlled conditions.

5. Self-employment opportunities:

A large majority of shellfish harvesters in New York State are self-employed. Rule makings to change the classification of shellfish lands can have an impact on self-employment opportunities. The impact is dependent on the size and productivity of the affected area and the availability of adjacent lands for shellfish harvesting.

# Department of Health

## EMERGENCY RULE MAKING

### Medicaid Managed Care Programs

**I.D. No.** HLT-53-13-00001-E
**Filing No.** 217
**Filing Date:** 2014-03-11
**Effective Date:** 2014-03-11

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

***Action taken:*** Repeal of Subparts 360-10, 360-11, sections 300.12 and 360-6.7; and addition of new Subpart 360-10 to Title 18 NYCRR.

***Statutory authority:*** Public Health Law, sections 201 and 206; and Social Services Law, sections 363-a, 364-j and 369-ee

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

***Specific reasons underlying the finding of necessity:*** Chapter 59 of the laws of 2011 enacted a number of proposals recommended by the Medicaid Redesign Team established by the Governor to reduce costs and increase quality and efficiency in the Medicaid program. The changes to Social Services Law section 364-j to expand mandatory enrollment into Medicaid managed care by eliminating many of the prior exemptions and exclusions from enrollment began to be phased in as of April 1, 2011. Paragraph (t) of section 111 of Part H of Chapter 59 authorizes the Commissioner to promulgate, on an emergency basis, any regulations needed to implement such law. The Commissioner has determined it necessary to file these regulations on an emergency basis to achieve the savings intended to be realized by the Chapter 59 provisions regarding expansion of Medicaid managed care enrollment.

***Subject:*** Medicaid Managed Care Programs.

***Purpose:*** To repeal old and outdated regulations and to consolidate all managed care regulations to make them consistent with statute.

***Substance of emergency rule:*** The proposed rule repeals various sections of Title 18 NYCRR that contain managed care regulations and replaces them with a new Subpart 360-10 that consolidates these managed care regulations in one place and makes the regulations consistent with Section 364-j of the Social Services Law (SSL). Section 364-j of the SSL contains the Medicaid managed care program standards. The new Subpart 360-10 will also apply to the Family Health Plus (FHP) program authorized in Section 369-ee of the Social Services Law. FHP-eligible individuals must enroll in a managed care organization (MCO) to receive services and FHP MCOs must comply with most of the programmatic requirements of Section 364-j of the SSL.

The new Subpart 360-10 identifies the Medicaid populations required to enroll and those that are exempt or excluded from enrollment, defines good cause reasons for changing/disenrolling from an MCO, or changing primary care providers (PCPs), adds enrollee fair hearing rights, adds marketing/outreach and enrollment guidelines, and identifies unacceptable practices and the actions to be taken by the State when an MCO commits an unacceptable practice.

The proposed rule repeals the existing Subparts 360-10 and 360-11 and Sections 300.12 and 360-6.7 of Title 18 NYCRR. Section 300.12 applied to the Monroe County Medicap program, a managed care demonstration project that was undertaken in the mid-1980s and that no longer exists. Section 360-6.7 addresses processes and timeframes for disenrollment from the various types of MCOs and these provisions are included in the new Subpart 360-10. Subpart 360-11 implemented provisions relating to special care plans formerly contained in SSL Section 364-j; these provisions were added by Chapter 165 of the Laws of 1991 and later removed by Chapter 649 of the Laws of 1996.

360-10.1 Introduction

This section provides an introduction to the managed care program. Section 364-j of Social Services Law provides the framework for the Statewide Medicaid managed care program. Certain Medicaid recipients are required to receive services from Medicaid managed care organizations. Section 369-ee added the Family Health Plus (FHP) program to Social Services Law. Individuals eligible for FHP are required to receive services from a managed care plan unless they are participating in the Family Health Plus premium assistance program.

360-10.2 Scope

This section identifies the topics addressed by the Subpart.

360-10.3 Definitions

This section includes definitions necessary to understand the regulations.

360-10.4 Individuals required to enroll in a Medicaid managed care organization

This section identifies the individuals who will be required to enroll in an MCO.

360-10.5 Individuals exempt or excluded from enrolling in a Medicaid mandatory managed care organization

This section identifies the circumstances in which a Medicaid recipient is exempt or excluded from enrollment in a mandatory managed care program. The section also includes the procedures for requesting an exemption or exclusion and the timeframes for processing the request. This section also describes the notices that must be provided to a Medicaid recipient if his/her request is denied.

360-10.6 Good cause for changing or disenrolling from an MCO

This section describes the good cause reasons for an enrollee to change MCOs and the process for requesting a change or disenrollment. This section also identifies the timeframes for processing the request and the notices that must be provided to the enrollee regarding his/her request.

360-10.7 Good cause for changing primary care providers

This section describes the good cause reasons for a managed care enrollee to change primary care providers, the process through which the enrollee may request such a change and the timeframes for processing the request.

360-10.8 Fair Hearing Rights

This section identifies the circumstances in which a Medicaid or FHP enrollee may request a fair hearing. Enrollees may request a fair hearing for enrollment decisions made by the local social services district and decisions made by an MCO or its management contractor about services. The section describes the notices that must be sent to advise the enrollee of his/her of her fair hearing rights. The section also explains when aid continuing is available for managed care issues and how the enrollee requests it when requesting a fair hearing.

360-10.9 Marketing/Outreach

This section defines marketing/outreach and establishes marketing/outreach guidelines for MCOs including requiring MCOs to submit a marketing/outreach plan, requiring MCOs to get approval of materials before distribution, and establishing limits for marketing/outreach representative reimbursement.

360-10.10 MCO unacceptable practices

This section identifies additional unacceptable practices for MCOs. These are generally related to marketing/outreach.

360-10.11 MCO sanctions and due process

This section identifies the actions the Department is authorized to take when an MCO commits an infraction.

***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. HLT-53-13-00001-P, Issue of December 31, 2013. The emergency rule will expire May 9, 2014.

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

***Regulatory Impact Statement***

Statutory Authority:

Social Services Law (SSL) section 363-a and Public Health Law section 201(1)(v) provide that the Department of Health is the single state agency responsible for supervising the administration of the State's medical assistance ("Medicaid") program and for adopting such regulations, not inconsistent with law, as may be necessary to implement the State's Medicaid program.

Legislative Objectives:

Section 364-j of the SSL governs the Medicaid managed care program, under which certain Medicaid recipients are required or allowed to enroll in and receive services through managed care organizations (MCOs). Section 369-ee of Social Services Law authorized the State to implement the Family Health Plus (FHP) program, a managed care program for individuals aged 19 to 64 who have income too high to qualify for Medicaid. The intent of the Legislature in enacting these programs was to assure that low-income citizens of the State receive quality health care and that they obtain necessary medical services in the most effective and efficient manner.

Chapter 59 of the Laws of 2011 amended SSL section 364-j to expand mandatory enrollment into Medicaid managed care by eliminating many of the exemptions and exclusions from enrollment previously contained in the statute.

Needs and Benefits:

The proposed regulations reflect current program practices and requirements, consolidate all managed care regulations in one place, and conform the regulations to the provisions of SSL section 364-j, including the amendments made by Chapter 59 of the Laws of 2011. The proposed regulations identify the individuals required to enroll in Medicaid managed care and identify the populations who are exempt or excluded from enrollment.

The proposed regulations also contain provisions, which apply to both the Medicaid managed care and the FHP programs: specifying good cause criteria for an enrollee to change MCOs or to change their primary care provider; explaining enrollees' rights to challenge actions of their MCO or social services district through the fair hearing process; establishing marketing/outreach guidelines for MCOs; and identifying unacceptable practices and sanctions for MCOs that engage in them.

Costs:

The proposed regulations do not impose any additional costs on local social services districts beyond those imposed by law. The current managed care program operates under a federal Medicaid waiver pursuant to section 1115 of the Social Security Act. Through the waiver, the State receives federal dollars for its Safety Net and FHP populations. Administrative costs associated with implementation of the managed care program incurred at start-up were covered by planning grants. Since 2005, administrative costs for the managed care program have been included with all other Medicaid administrative costs and there is no local share for administrative costs over and above the Medicaid administrative cap.

Local Government Mandates:

The proposed regulations do not create any additional burden to local social services districts beyond those imposed by law.

Paperwork:

Social Services Law requires that Medicaid recipients be advised in writing regarding enrollment, benefits and fair hearing rights. In compliance with the law, the proposed regulations describe the circumstances under which a Medicaid managed care participant should be provided with such notices, who is responsible for sending the notice and what should be included in the notice. Medicaid managed care program reporting requirements for social service districts and MCOs have been in place since 1997 when the mandatory Medicaid managed care program began. The social services district is required to report on exemptions granted, complaints received and other enrollment issues. MCOs must submit network data, complaint reports, financial reports and quality data. There are no new requirements for the social services districts or the MCOs in the proposed regulations.

Duplication:

The proposed regulations do not duplicate any State or federal requirements unless necessary for clarity.

Alternative Approaches:

The Department is required by SSL section 364-j to promulgate regulations to implement a statewide managed care program. The proposed regulations implement the provisions of SSL section 364-j in a way which balances the needs of MA recipients, managed care providers and local social services districts. No alternatives were considered.

Federal Standards:

Federal managed care regulations are in 42 CFR 438. The proposed regulations do not exceed any minimum standards of the federal government.

Compliance Schedule:

The mandatory Medicaid managed care program has been in operation since 1997. As a result, all counties in the State have some form of managed care. The requirements in the proposed rules have been implemented through the contract between the State and participating MCOs.

***Regulatory Flexibility Analysis***

Effect on Small Businesses and Local Governments:

Section 364-j of Social Services Law (SSL) authorizes a Statewide Medicaid managed care program that includes mandatory enrollment of most Medicaid beneficiaries. In 1997, the State applied for and received approval of a Federal waiver under Section 1115 of the Social Security Act to implement mandatory enrollment. Section 369-ee of SSL authorizes the Family Health Plus (FHP) program and requires eligible persons to receive services through managed care organizations (MCOs). Counties with a choice of MCOs were eligible to run a mandatory Medicaid managed care program, while counties with only one MCO ran a voluntary program until such time as at least one additional MCO began operating in the county. As of November 2012, all sixty-two counties operate a mandatory Medicaid managed care program. All counties also operate a FHP program.

As a result of the implementation of the Medicaid managed care and FHP programs, most Medicaid recipients and all FHP eligible persons are required to enroll and receive services from providers who contract with a managed care organization (MCO). MCOs must have a provider network

that includes a sufficient array and number of providers to serve enrollees, but they are not required to contract with any willing provider. Consequently, local providers may lose some of their patients. However, this loss may be offset by an increase in business as a result of the implementation of FHP.

The proposed regulations do not impose any additional requirements beyond those in law and the benefits of the program outweigh any adverse impact.

Compliance Requirements:

No new requirements are imposed on local governments beyond those included in law and there are no requirements for small businesses.

Professional Services:

No professional services will be necessitated as a result of this rule. However, the services of a professional enrollment broker will be available to counties that choose to access them. The costs of these services are shared by the State and the local districts.

Compliance Costs:

No additional costs for compliance will be incurred as a result of this rule beyond those imposed by law. Administrative costs associated with implementation of the managed care program incurred at start-up were covered by planning grants. Since 2005, administrative costs for the managed care program have been included with all other Medicaid administrative costs and there is no local share for administrative costs over and above the Medicaid administrative cap. Additionally, the 1115 waiver reduced local government costs by authorizing Federal participation for the Safety Net and Family Health Plus (FHP) populations.

Economic and Technological Feasibility:

Administrative costs incurred at program start-up were covered by planning grants. Since 2005, administrative costs for the managed care program are included with all other Medicaid administrative costs and there is no local share for administrative costs over and above the Medicaid administrative cap.

The Medicaid managed care program utilizes existing state systems for operation (Welfare Management System, eMedNY, etc.).

The Department provides ongoing technical assistance to counties to assist in all aspects of planning, implementing and operating the local program.

Minimizing Adverse Impact:

The mandatory Medicaid managed care program is implemented only when there are adequate resources available in a local district to support the program. No new requirements are imposed beyond those included in law.

The benefits of the managed care program outweigh any adverse effects. Managed care programs are designed to improve the relationship between individuals and their health care providers and to ensure the proper delivery of preventive medical care. Such programs help avoid the problem of individuals not receiving needed medical care until the onset of advanced stages of illness, at which time the individual would require higher levels of medical care such as emergency room care or inpatient hospital care. The State has many years of Quality Data that demonstrate that Medicaid beneficiaries enrolled in managed care receive better quality care than those in fee-for-service Medicaid.

Small Business and Local Government Participation:

The regulations do not introduce a new program. Rather, they codify current program policies and requirements and make the regulations consistent with section 364-j of SSL. During the development of the 1115 waiver application and the design of the managed care program, input was obtained from many interested parties.

***Rural Area Flexibility Analysis***

Effect on Rural Areas:

All rural counties with managed care programs will be affected by this rule. As of April 2011, all rural counties have a Medicaid managed care and Family Health Plus (FHP) program.

Compliance Requirements:

This rule imposes no additional compliance requirements other than those already contained in Section 364-j of the Social Services Law (SSL).

Professional Services:

No professional services will be necessitated as a result of this rule. However, the services of a professional enrollment broker will be available to counties that choose to access them. The costs of these services are shared by the State and the local districts.

Compliance Costs:

No additional costs for compliance will be incurred as a result of this rule beyond those imposed by law. The administrative costs incurred by local governments for implementing the Statewide managed care program are included with all other Medicaid administrative costs and beginning in 2005, there was no local share for administrative costs over and above the administrative cost base of the Medicaid administrative cap. Additionally, the Federal Section 1115 waiver which allowed the State to implement mandatory enrollment, reduced local government costs by authorizing Federal participation for the Safety Net and FHP populations.

Minimizing Adverse Impact:

The benefits of the managed care program outweigh any adverse effects. Managed care programs are designed to improve the relationship between individuals and their health care providers and to ensure the proper delivery of preventive medical care. Such programs help avoid the problem of individuals not receiving needed medical care until the onset of advanced stages of illness, at which time the individual would require higher levels of medical care such as emergency room care or inpatient hospital care. The State has many years of Quality Data that demonstrate that Medicaid beneficiaries enrolled in managed care receive better quality care than those in fee-for-service Medicaid.

Feasibility Assessment:

Administrative costs incurred at program start-up were covered by planning grants. Since 2005, administrative costs for the managed care program are included with all other Medicaid administrative costs and there is no local share for administrative costs over and above the Medicaid administrative cap.

The Medicaid managed care program utilizes existing state systems for operation (Welfare Management System, eMedNY, etc.).

The Department provides ongoing technical assistance to counties to assist in all aspects of planning, implementing and operating the local program.

Rural Area Participation:

The proposed regulations do not reflect new policy. Rather, they codify current program policies and requirements and make the regulations consistent with section 364-j of the SSL. During the development of the 1115 waiver application and the design of the managed care program, input was obtained from many interested parties.

***Job Impact Statement***

Nature of Impact:

The rule will have no negative impact on jobs and employment opportunities. The mandatory Medicaid managed care program authorized by Section 364-j of the Social Services Law (SSL) will expand job opportunities by encouraging managed care plans to locate and expand in New York State.

Categories and Numbers Affected:

Not applicable.

Regions of Adverse Impact:

None.

Minimizing Adverse Impact:

Not applicable.

Self-Employment Opportunities:

Not applicable.

## NOTICE OF ADOPTION

### Definition of Pediatric Severe Sepsis Update

**I.D. No.** HLT-49-13-00005-A

**Filing No.** 219

**Filing Date:** 2014-03-11

**Effective Date:** 2014-03-26

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

***Action taken:*** Amendment of section 405.4 of Title 10 NYCRR.

***Statutory authority:*** Public Health Law, sections 2800 and 2803

***Subject:*** Definition of Pediatric Severe Sepsis Update.

***Purpose:*** Updates pediatric severe sepsis definition to be consistent with generally accepted medical standards and to reflect current practice.

***Text or summary was published*** in the December 4, 2013 issue of the Register, I.D. No. HLT-49-13-00005-P.

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

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

The agency received no public comment.

## NOTICE OF ADOPTION

**Hospital Indigent Care Pool Payment Methodology**

**I.D. No.** HLT-50-13-00001-A
**Filing No.** 218
**Filing Date:** 2014-03-11
**Effective Date:** 2014-03-26

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

***Action taken:*** Addition of section 86-1.47 to Title 10 NYCRR.

***Statutory authority:*** Public Health Law, section 2807-k(5-d)

***Subject:*** Hospital Indigent Care Pool Payment Methodology.

***Purpose:*** To establish the methodology for indigent care pool payments to general hospitals for the 3 year period 1/1/13 through 12/31/15.

***Text or summary was published*** in the December 11, 2013 issue of the Register, I.D. No. HLT-50-13-00001-P.

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

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

***Assessment of Public Comment***

The agency received no public comment.

## NOTICE OF ADOPTION

**Advance Directives**

**I.D. No.** HLT-50-13-00005-A
**Filing No.** 216
**Filing Date:** 2014-03-11
**Effective Date:** 2014-03-26

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

***Action taken:*** Amendment of section 400.21; and repeal of sections 405.43 and 700.5 of Title 10 NYCRR.

***Statutory authority:*** Public Health Law, sections 2803, 2993 and 2994-t

***Subject:*** Advance Directives.

***Purpose:*** To establish a decision making process to allow competent adults to appoint an agent to decide about health care treatment.

***Text or summary was published*** in the December 11, 2013 issue of the Register, I.D. No. HLT-50-13-00005-P.

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

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

The comment period ended on January 27, 2014 and the Department received one comment from the MOLST Statewide Implementation Team.

COMMENT:

The Medical Orders for Life-Sustaining Treatment (MOLST) Statewide Implementation Team expressed general support for this proposal and stated that the regulation has great merit as it officially recognizes the MOLST for the first time in regulation. They did, however offer some suggestions. They believe that: (1) the regulation should expressly refer to the MOLST as an actionable Medical Order, not an Advance Directive, (2) it should refer to the MOLST as both a "form and process", and recognize the eMOLST application, and (3) should require health care facilities to include the MOLST form and process within their existing policies and procedures on Do Not Resuscitate (DNR) Orders and/or Palliative Care. They also suggested that future proposals should be considered to address other health care settings that would not be covered by this one (such as home care, hospice and assisted living facilities).

RESPONSE:

In response to those suggestions, the Department will be able to cover those first three points in a Notification of Adoption letter to the providers that is meant to educate and clarify this new rule. The Department agrees that it is a good idea to explore the promulgation of future proposals to address the other health care settings that would not be covered by this rule.

## PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

**NYS Medical Indemnity Fund**

**I.D. No.** HLT-12-14-00014-P

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

***Proposed Action:*** Addition of Subpart 69-10 to Title 10 NYCRR.

***Statutory authority:*** Public Health Law, section 2999-j

***Subject:*** NYS Medical Indemnity Fund.

***Purpose:*** To provide the structure within which the NYS Medical Indemnity Fund will operate.

***Substance of proposed rule (Full text is posted at the following State website:www.health.ny.gov):*** As required by section 2999-j(15) of the Public Health Law ("PHL"), the New York State Commissioner of Health, in consultation with the Superintendent of Financial Services, has promulgated these regulations to provide the structure within which the New York State Medical Indemnity Fund ("Fund") will operate. Included are (a) critical definitions such as "birth-related neurological injury" and "qualifying health care costs" for purposes of coverage, (b) what the application process for enrollment in the Fund will be, (c) what qualifying health care costs will require prior approval, (d) what the claims submission process will be, (e) what the review process will be for claims denials, (f) what the review process will be for prior approval denials, and (g) how and when the required actuarial calculations will be done.

The application process itself has been developed to be as streamlined as possible. Submission of (a) a completed application form, (b) a signed release form, (c) a certified copy of a judgment or court-ordered settlement that finds or deems the plaintiff to have sustained a birth-related neurological injury, (d) documentation regarding the specific nature and degree of the applicant's neurological injury or injuries at present, (e) copies of medical records that substantiate the allegation that the applicant sustained a "birth-related neurological injury," and (f) documentation of any other health insurance the applicant may have are required for actual enrollment in the Fund.

The parent or other authorized person must submit the name, address, and phone number of all providers providing care to the applicant at the time of enrollment for purposes of both claims processing and case management. To the extent that documents prepared for litigation and/or other health related purposes contain the required background information, such documentation may be submitted to meet these requirements as well, provided that this documentation still accurately describes the applicant's condition and treatment being provided.

Those expenses that will or can be covered as qualifying health care costs are defined very broadly. Prior approval is required only for very costly items, items that involve major construction, and/or out of the ordinary expenses. Such prior approval requirements are similar to the prior approval requirements of various Medicaid waiver programs and to commercial insurance prior approval requirements for certain items and/or services.

Reviews of denials of claims and denials of requests for prior approval will provide enrollees with full due process and prompt decisions. Enrollees are entitled to a conference with the Fund Administrator or his or her designee and a review, which will involve either a hearing before or a document review by a Department of Health hearing officer. In all reviews, the hearing officer will make a recommendation regarding the issue and the Commissioner or his designee will make the final determination. An expedited review procedure has also been developed for emergency situations.

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

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

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

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

***Regulatory Impact Statement***

Statutory Authority:

Title 4 of Article 29 of the Public Health Law (PHL) creates the New York State Medical Indemnity Fund (Fund) to provide a source of funding for all future qualifying health care costs of a plaintiff or claimant who sustained birth-related neurological injuries as the result of medical malpractice in order to reduce premium costs for medical malpractice insurance coverage.

Subdivision 3 of section 2999-h of the PHL sets forth a broad definition of "qualifying health care costs" for services and supplies provided to qualified plaintiffs and provides authority for the Commissioner of Health (Commissioner) to further define such qualifying health care costs in regulation.

Section 2999-i of the PHL requires the Superintendent of Insurance (Superintendent) to administer the Fund and the Commissioner of Taxation and Finance to be the custodian of the Fund for which a special account is created pursuant to section 99-t of the State Finance Law. Subdivision 2 of section 2999-i of the PHL authorizes the Superintendent to enter into a contract to administer the Fund (Administrator) and subdivision 6 requires the Superintendent to conduct actuarial calculations of the estimated liabilities of the Fund and suspend enrollment in the Fund if the estimated liabilities equal or exceed 80% of the Fund's assets.

Section 2999-j of the PHL governs payments from the Fund and includes broad standards for the Fund enrollment process, payment of costs by collateral sources, rates to be paid to providers of qualifying health care services, prior authorization for certain services, and the claims processing requirements for reimbursement of qualifying health care costs. Subdivision 2 of section 2999-j of the PHL requires any applicable prior authorization requirements to be promulgated by the Commissioner in regulation and subdivision 4 of such section requires the Commissioner to define in regulation "the basis of one hundred percent of the usual and customary rates" to be paid for services provided by private physician practices and for all other services, any rates of payment to be paid on a basis other than Medicaid rates.

Lastly, subdivision 15 of section 2999-j of the PHL specifically states that the Commissioner, in consultation with the Superintendent, " shall promulgate. . . all rules and regulations necessary for the proper administration of the fund in accordance with the provisions of this section, including, but not limited to those concerning the payment of claims and concerning the actuarial calculations necessary to determine, annually, the total amount to be paid into the fund as otherwise needed to implement this title."

Legislative Objectives:

The Legislature delegated the details of the Fund's operation to the Department of Financial Services (DFS) and the Department of Health (DOH), the two State agencies that have the appropriate expertise to develop, implement and enforce all aspects of the Fund's operations. These proposed regulations reflect the collaboration of both agencies in providing the administrative details of the manner in which the Fund will operate. Specifically, the regulations provide a clear process for enrollment of plaintiffs or claimants who sustained birth-related neurological injuries as the result of medical malpractice. And they create standards governing the qualifying health care costs to be paid by the Fund and the rates at which they will be paid, keeping in mind the two Legislative objectives of lifetime coverage for all current and future enrollees and reducing premium costs for medical malpractice insurance coverage.

Needs and Benefits:

These regulations are needed because Title 4 of Article 29 of the PHL provides only broad standards governing operation of the Fund, some of which include a specific requirement to further define criteria in regulation, and to provide the details necessary to make the Fund operationally successful for all parties, including qualified plaintiffs, Fund enrollees, providers of qualifying health care services, the Administrator, and the two agencies charged with operating the Fund. All parties will benefit from specific standards governing their respective roles regarding the Fund by providing: (1) a smooth application and enrollment process, including specific requirements for the actuarial calculations to be made by DFS and any ensuing suspension of enrollment in the Fund; (2) a clear concept of the qualifying health care costs for which the Fund will pay and their applicable rates of payment; (3) a step-by-step prior approval process required only for certain costly services, including environmental modifications, vehicle modifications, assistive technology, private duty nursing, transportation for medical care and services, treatment with a specialty drug, and experimental treatment; (4) a claims submission process that allows timely payment to providers; and (5) a fair review process if an enrollee's claims or prior authorization requests are denied, including document based reviews and hearings conducted by DOH.

Costs to Regulated Parties:

There are no costs imposed on regulated parties by these regulations. Qualified plaintiffs will not incur any costs in connection with applying for enrollment in the Fund or coverage by the Fund.

Costs to the Administering Agencies, the State, and Local Governments:

Costs to administering agencies and the State associated with the Fund will be covered by applicable appropriations, as provided in subdivisions 3 through 5 of section 2999-i of the PHL. There are no costs imposed on local governments by these regulations.

Local Government Mandates:

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

Paperwork:

The proposed regulations impose paperwork requirements on regulated parties by requiring (1) a qualified applicant, person authorized to act on behalf of a qualified applicant, or certain defendants to submit an application and supporting documentation for a qualified applicant's enrollment into the Fund; (2) an enrollee to submit electronic or manual claims for reimbursement of qualified health care services, documentation to support any prior approval request and payment thereof, a review request form for denial of a claim or prior approval request, and notice of a change in address; (3) DOH to issue a notice of hearing, if applicable; and (4) DFS to issue a notice of any suspension or reinstatement of enrollment into the Fund.

Duplication:

There are no other State or Federal requirements that duplicate, overlap, or conflict with the statute and the proposed regulations. Although some of the services to be provided by the Fund are the same as those available under certain Medicaid waivers, the waivers have limited slots and the Fund becomes the primary payer for dually enrolled individuals. Coordination of benefits will be one of the responsibilities of the Fund Administrator. Health care services, equipment, medications or other items that any commercial insurer providing coverage to a qualified plaintiff is legally obligated to provide will not be covered by the Fund (except for copayments and/or deductibles) nor will the Fund cover any health care service, equipment, or other item that is potentially available through another State or Federal program (except Medicaid and Medicare) or similar program in another country, if applicable, such as the Early Intervention Program or as part of an Individualized Education Plan unless the parent or guardian can demonstrate that he or she has made a reasonable effort to obtain such service, equipment or item for the qualified plaintiff through the applicable program.

Alternatives:

DFS and DOH have considered multiple alternatives to the proposed regulatory requirements and have made recent changes to the Express Terms to reflect more reasonable approaches to certain situations enrollees might face. For example:

(1) In the case of divorced parents, the regulations used to allow environmental modifications only to the primary residence of a custodial parent. The agencies considered the limitation placed on a child's ability to spend time at the home of the noncustodial parent and changed the Express Terms to allow environmental modifications to the primary residence of a noncustodial parent.

(2) When the Administrator received a request for approval of environmental modifications to a home that had yet to be built, the regulations had no process to allow for such approval. The agencies considered the benefit to families in having adaptations built in for their child making the home move-in ready on completion, in addition to the cost effectiveness of environmental modifications made during construction, as opposed to after construction, and changed the Express Terms to provide an approval process for these types of requests.

(3) The prior approval process for assistive technology used to require 3 acceptable bids for every item requested. The agencies considered this process to be cumbersome for less costly items, especially when prices are readily available in catalogues or online, and changed the Express Terms to allow for the submission of 3 prices in lieu of 3 bids for items costing less than $2500.

Federal Standards:

There are no minimum Federal standards regarding this subject.

Compliance Schedule:

The Fund was statutorily required to be operational by October 1, 2011.

***Regulatory Flexibility Analysis***

No regulatory flexibility analysis is required pursuant to section 202-b(3)(a) of the State Administrative Procedure Act. The proposed amendment does not impose an adverse economic impact on small businesses or local governments, and it does not impose reporting, record keeping or other compliance requirements on small businesses or local governments.

Cure Period:

Chapter 524 of the Laws of 2011 requires agencies to include a "cure period" or other opportunity for ameliorative action to prevent the imposition of penalties on the party or parties subject to enforcement when developing a regulation or explain in the Regulatory Flexibility Analysis why one was not included. This regulation creates no new penalty or sanction. Hence, a cure period is not necessary.

***Rural Area Flexibility Analysis***

No rural area flexibility analysis is required pursuant to section 202-bb(4)(a) of the State Administrative Procedure Act. The proposed amendment does not impose an adverse impact on rural areas, and it does not impose reporting, record keeping or other compliance requirements on public or private entities in rural areas.

*Job Impact Statement*
No job impact statement is required pursuant to section 201-a(2)(a) of the State Administrative Procedure Act. It is apparent, from the nature of the proposed amendment, that it will not have an adverse impact on jobs and employment opportunities.

# New York State Joint Commission on Public Ethics

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

**Source of Funding Reporting**

**I.D. No.** JPE-43-13-00021-ERP
**Filing No.** 201
**Filing Date:** 2014-03-10
**Effective Date:** 2014-03-10

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

***Action Taken:*** Amendment of Part 938 of Title 19 NYCRR.

***Statutory authority:*** Legislative Law, art. 1-A, sections 1-j(c)(4) and 1-h(c)(4); Executive Law, section 94(9)(c)

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

***Specific reasons underlying the finding of necessity:*** The Public Integrity Reform Act of 2011 ("PIRA") was enacted in August 2011. PIRA established the new "source of funding" disclosure requirement, which became effective on June 1, 2012. The purpose of source of funding disclosure requirements is to promote transparency so that the public can appreciate the actual parties in interest who are substantially influencing the governmental decision making process.

The Source of Funding disclosure requirement was created by amending the Legislative Law to include a requirement that Client Filers, which are lobbyists and clients of lobbyists who spend at least $50,000 in reportable compensation and expenses and 3% of total expenditures on lobbying activities in New York State in a calendar year or twelve-month period (the "$50,000/3% expenditure threshold"), disclose the sources of funding over $5,000 from each single source used for such lobbying activities in New York State. PIRA mandates that JCOPE promulgate regulations implementing this new disclosure requirement. PIRA also provides that JCOPE shall specify a procedure for filers to seek an exemption if disclosure of a particular single source—or, in the case of certain organizations with tax-exempt status under I.R.C. § 501(c)(4), a class of sources—would cause harm, threats, harassment, or reprisals to the single source or to individuals or property affiliated with the single source, as well as an appeal procedure from denials of requests for such exemptions.

This emergency re-adoption is necessary because the source of funding reporting requirement is continuous and ongoing. The first filings under the new disclosure requirements occurred in January 2013. The next filing deadline is July 15, 2014, which covers the period January 1, 2014 through June 30, 2014. JCOPE seeks to amend this emergency rule and keep it in effect until it adopts as final a version of the regulations, which will be informed by the revised rulemaking process.

By setting forth when and how sources of funding must be disclosed by Client Filers, as well as the narrow standards for exemptions from the mandated disclosure, this emergency rule provides the clarity that is imminently needed by the public and regulated population to ensure compliance with PIRA's statutory provisions and effective dates.

***Subject:*** Source of Funding reporting.

***Purpose:*** To implement reporting that will inform the public of efforts to influence government decision making by lobbying entities.

***Substance of emergency/revised rule:*** The Public Integrity Reform Act of 2011 ("PIRA") authorizes JCOPE to exercise the powers and duties set forth in Executive Law Section 94 with respect to lobbyists and clients of lobbyists as such terms are defined in article one-A of the Legislative Law. PIRA also amended the Legislative Law to include a requirement that lobbyists and clients of lobbyists who spend at least $50,000 in reportable compensation and expenses and 3% of total expenditures on lobbying activities in New York State in a calendar year or twelve-month period (the "expenditure threshold"), disclose the sources of funding over $5,000 from each source used for such lobbying activities in New York State. PIRA mandates that JCOPE promulgate regulations implementing this new disclosure requirement. PIRA also provides that JCOPE shall specify a procedure in these regulations for filers to seek an exemption if the filer can establish that there is a substantial likelihood that disclosure of a particular source - or, in the case of certain organizations with tax-exempt status under I.R.C. § 501(c)(4), a class of sources - would cause harm, threats, harassment, or reprisals to the source(s) or to individuals or property affiliated with the source(s). Finally, with respect to filers who do have tax-exempt status under I.R.C. § 501(c)(4), PIRA provides an appeal from denials of a request for an exemption. Thus, these regulations provide comprehensive reporting requirements that set forth when and how sources of funding must be disclosed by lobbyists and clients who meet the expenditure threshold, articulate narrow standards for exempting sources from disclosure and establish an appeal process for certain denials of requests for such exemptions.

***This notice is intended*** to serve as both a notice of emergency adoption and a notice of revised rule making. The notice of proposed rule making was published in the *State Register* on October 23, 2013, I.D. No. JPE-43-13-00021-EP. The emergency rule will expire May 8, 2014.

***Emergency rule compared with proposed rule:*** Substantial revisions were made in section 938.6(a).

***Text of rule and any required statements and analyses may be obtained from:*** Robert Cohen, Director of Ethics and Lobbying Compliance, Joint Commission on Public Ethics, 540 Broadway, Albany, New York 12207, (518) 408-3976, email: regs@jcope.ny.gov

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

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

***Revised Regulatory Impact Statement***

1. Statutory authority: Legislative Law Section 1-h(c)(4) requires certain registered lobbyists whose lobbying activity is performed on its own behalf and not pursuant to retention by a client, and who meet the "$50,000-3% Expenditure Threshold" (referred to herein), to report the names of each source of funding over $5,000 from a single source used to fund lobbying activities in New York State. Similarly, Legislative Law Section 1-j(c)(4) requires certain clients who have retained, employed or designated a registered lobbyist, and who meet the "$50,000-3% Expenditure Threshold," to report the names of each source of funding over $5,000 from a single source used to fund lobbying activities in New York State. These lobbyists and clients are referred to in the proposed revised regulation and herein as "Client Filers." The statute also provide that, in certain circumstances, Client Filers can seek an exemption from disclosing one or more of their single sources provided certain criteria for exemption are met. Legislative Law Sections 1-h(c)(4) and 1-j(c)(4) direct the Joint Commission on Public Ethics ("JCOPE") to promulgate regulations to implement these requirements. More generally, Executive Law Section 94(9)(c) directs JCOPE to adopt, amend, and rescind rules and regulations to govern JCOPE procedures.

2. Legislative objectives: The Public Integrity Reform Act of 2011 ("PIRA") established JCOPE. PIRA authorizes JCOPE to exercise the powers and duties set forth in Executive Law Section 94 with respect to lobbyists and clients of lobbyists as such terms are defined in article one-A of the Legislative Law. PIRA also amended the Legislative Law to include a requirement that Client Filers who spend at least $50,000 in reportable compensation and expenses and 3% of total expenditures on lobbying activities in New York State in a calendar year or twelve-month period (the "$50,000/3% Expenditure Threshold"), disclose the sources of funding over $5,000 from each single source used for such lobbying activities in New York State. PIRA mandates that JCOPE promulgate regulations implementing this new disclosure requirement. PIRA also provides that JCOPE shall specify a procedure for filers to seek an exemption if disclosure of a particular single source—or, in the case of certain organizations with tax-exempt status under I.R.C. § 501(c)(4), a class of sources—would cause harm, threats, harassment, or reprisals to the single source or to individuals or property affiliated with the single source, as well as an appeal procedure from denials of requests for such exemptions. By setting forth when and how sources of funding must be disclosed by lobbyists and clients who meet the statutory conditions, as well as the narrow standards for exempting single sources from disclosure, these rules provide comprehensive reporting requirements for lobbyists and clients.

3. Needs and benefits: The proposed revised rulemaking is limited in its scope. Under the current rule, Part 938.6(a) provides that any entity whose request for exemption is denied is entitled to an appeal before an independent hearing officer. The proposed revision tracks the statutory language in that it amends the rule to provides that the only entities entitled to an appeal are those requesting an exemption pursuant to Part 938.4(a). Enti-

ties that have tax exempt status under I.R.C. § 501(c)(4) and apply for an exemption pursuant to Part 938.4(b) will, under the proposed revision, not be entitled to an appeal before an independent hearing officer.

4. Costs:

a. costs to regulated parties for implementation and compliance: Minimal.

b. costs to the agency, state and local government: No costs to state and local governments. Moderate administrative costs to the agency during the implementation phase.

c. cost information is based on the fact that there will be no costs to regulated parties and state and local government. The cost to the agency is based on the estimated increase in staff resources to implement the regulations.

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

6. Paperwork: This proposed revised regulation may require the preparation of additional forms or paperwork. Such additional paperwork is expected to be minimal, and many filers will complete any additional forms online.

7. Duplication: This proposed revised regulation does not duplicate any existing federal, state or local regulations.

8. Alternatives: PIRA created an affirmative duty on JCOPE's part to promulgate these regulations, therefore there is no alternative to conducting a formal rulemaking.

9. Federal standards: The proposed revised rulemaking pertains to a new lobbying disclosure requirement that specifically relates to lobbying activity in New York State. These regulations do not exceed any federal minimum standard with regard to a similar subject area.

10. Compliance schedule: Compliance will take effect upon adoption.

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

Changes made to the last published rule do not necessitate revision to the previously published Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement.

***Assessment of Public Comment***

The Public Integrity Reform Act of 2011 ("PIRA") amended the Legislative Law to require source of funding disclosure for certain lobbyists and clients who devote substantial resources to lobbying in New York State. PIRA also mandated that the Commission promulgate regulations to implement this new disclosure requirement. The regulations were published as a final rule in the State Register on August 14, 2013. The regulations were then amended and adopted on an emergency basis on October 8, 2013. The Notice of Emergency Adoption and Proposed Rulemaking was published in the State Register on October 23, 2013. On January 6, 2014 the regulations were readopted on an emergency basis. The Notice of Emergency Adoption was published in the State Register on January 22, 2014.

Subsequent to the publication of the October 23, 2013 Notice, the Commission received comments from two entities during the public comment period. One entity criticized the amendment to Part 938.8 that made materials submitted in support of an exemption publicly available. According to the comment, the change creates a "chilling effect" on an entity's ability to meet the requirements for an exemption. The entity also was critical of what it saw as an "overly politicized" exemption process. The regulations provide a mechanism by which an applicant for an exemption can request that certain materials be kept confidential. This provision, in the Commission's view, is sufficient to ensure that entities will not be deterred from applying for an exemption.

The other entity criticized the inclusion of "clear and convincing evidence" in Part 938.4(a). According to the comment, the "clear and convincing" language is not found in the statute and "makes the threshold for obtaining a donor exemption too high." Additionally, the entity opined that Part 938.4(b) should be amended to include the following language: "its primary activities involve areas of public concern, including the area of civil rights and civil liberties." Notably, the proposed amendments to Part 938 published on October 23, 2013 did not pertain to Part 938.4. The entity also commented that "the proposed Section 938.8 is problematic because it fails to contain explicit protection for any donor names that may be included within an application for exemption from donor disclosure requirements." This comment is unclear and appears to be based on a misapprehension of the regulations. Finally, the entity noted that the regulations do not include any deadline within which the Commission is obliged to act upon an application for an exemption. The entity suggested a 45-day deadline for such action by the Commission. The Commission rejected the recommendation as untenable.

# Office for People with Developmental Disabilities

## NOTICE OF ADOPTION

**Updates to SSI Offset and SNAP Benefit Offset**

**I.D. No.** PDD-02-14-00007-A
**Filing No.** 209
**Filing Date:** 2014-03-11
**Effective Date:** 2014-03-26

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

***Action taken:*** Amendment of sections 671.7 and 686.17 of Title 14 NYCRR.

***Statutory authority:*** Mental Hygiene Law, sections 13.09(b), 41.25, 41.36(c) and 43.02

***Subject:*** Updates to SSI Offset and SNAP Benefit Offset.

***Purpose:*** To adjust reimbursement to affected providers for rent and food costs.

***Text or summary was published*** in the January 15, 2014 issue of the Register, I.D. No. PDD-02-14-00007-EP.

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

***Text of rule and any required statements and analyses may be obtained from:*** Barbara Brundage, Director, 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***

The agency received no public comment.

# Public Service Commission

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

**Transfer of Water Supply Assets**

**I.D. No.** PSC-12-14-00007-P

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

***Proposed Action:*** The PSC is considering a Joint Petition filed March 3, 2014 by Yellow Barn Water Company, Inc. and the Town of Dryden for approval of the transfer of all of the water supply assets serving the Yellow Barn Subdivision and the Town of Dryden.

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

***Subject:*** Transfer of water supply assets.

***Purpose:*** Transfer the water supply assets of Yellow Barn Water Company, Inc. to the Town of Dryden.

***Text of proposed rule:*** The Commission is considering a joint petition filed March 3, 2014 by Yellow Barn Water Company (Yellow Barn) and the Town of Dryden (Town), Tomkins County, for approval of the transfer of all the water supply assets serving the Yellow Barn Subdivision to the Town. Yellow Barn serves approximately 78 households in the Yellow Barn subdivision and adjacent households located on Ferguson Road in the Town. The subdivision is fully developed and no expansion of the water service is contemplated at this time. Yellow Barn does not provide fire protection service. The Commission may approve or reject, in whole or in part, or modify the company's request.

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

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

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

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

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

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

(14-W-0080SP1)

## PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

**Authority to Transfer Property**

**I.D. No.** PSC-12-14-00008-P

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

***Proposed Action:*** The Commission is considering whether to approve, deny, or modify a petition filed by New York American Water Company, Inc. (f/k/a Long Island Water Corporation) for authority to transfer property.

***Statutory authority:*** Public Service Law, section 89-f

***Subject:*** Authority to transfer property.

***Purpose:*** To approve or deny New York American Water Company authority to transfer property.

***Substance of proposed rule:*** The Commission is considering whether to approve, deny, or modify, in whole or in part, a petition by New York American Water Company, Inc. (f/k/a Long Island Water Corporation) seeking authorization to sell certain property located at 733 Sunrise Highway, to Sunrise Realty, LLC. The Commission shall consider all other related matters.

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

***Data, views or arguments may be submitted to:*** Kathleen H. Burgess, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-4535, email: secretary@dps.ny.gov

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

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

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

(14-W-0072SP1)

## PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

**Minor Electric Rate Filing**

**I.D. No.** PSC-12-14-00009-P

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

***Proposed Action:*** The Public Service Commission is considering a tariff filing by the Village of Wellsville requesting approval to increase its annual revenues by approximately $217,052 or 7.8% in P.S.C. No. 1 — Electricity to become effective July 1, 2014.

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

***Subject:*** Minor electric rate filing.

***Purpose:*** For approval to increase annual revenues by approximately $217,052 or 7.8%.

***Substance of proposed rule:*** The Commission is considering whether to approve, modify or reject, in whole or in part, a tariff filing submitted by the Village of Wellsville, requesting approval to increase its annual revenues by approximately $217,052 or 7.8% to P.S.C. No. 1 — Electricity. The proposed filing has an effective date of July 1, 2014.

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

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

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

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

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

(14-E-0083SP1)

## PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

**Proposed Transfer of a Bridge from Consolidated Edison to the New York City Economic Development Corporation**

**I.D. No.** PSC-12-14-00010-P

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

***Proposed Action:*** The Commission is considering whether to grant, modify or reject, in whole or in part, a petition filed by Consolidated Edison Company of New York, Inc. and New York City Economic Development Corporation to transfer a bridge that traverses the Bronx Kill.

***Statutory authority:*** Public Service Law, section 70

***Subject:*** Proposed transfer of a bridge from Consolidated Edison to the New York City Economic Development Corporation.

***Purpose:*** Whether to transfer a bridge from Consolidated Edison to the New York City Economic Development Corporation.

***Substance of proposed rule:*** The Public Service Commission is considering whether to grant, deny, or modify, in whole or in part, the joint petition of Consolidated Edison Company of New York, Inc., and the New York City Economic Development Corporation, pursuant to Public Service Law Section 70, to transfer certain property consisting of a single-span truss bridge supported on driven piles that traverses the Bronx Kill located at Block 2583, Lot 2, and Block 2543, Lot 1, Bronx, New York and Block 1819, Lot 203, New York, New York for a purchase price of $2.2 million.

***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-M-0078SP1)

## PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

**Approval of Stock Purchase Agreement**

**I.D. No.** PSC-12-14-00011-P

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

***Proposed Action:*** The Commission is considering whether to approve, deny, or modify a petition filed by New York American Water Company, Inc. (f/k/a Long Island Water Corporation) for a 100% stock purchase agreement with Mt. Ebo Water Works, Inc.

***Statutory authority:*** Public Service Law, section 89-f

***Subject:*** Approval of stock purchase agreement.

***Purpose:*** To approve or deny New York American Water Company's petition for a stock purchase agreement.

***Substance of proposed rule:*** The Public Service Commission is considering whether to approve, deny, or modify, in whole or in part, a petition by New York American Water Company, Inc. (f/k/a Long Island Water Corporation) to purchase 100% stock of Mt. Ebo Water Works, Inc. The Commission shall consider all other related matters.

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

***Data, views or arguments may be submitted to:*** Kathleen H. Burgess, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-4535, email: secretary@dps.ny.gov

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

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

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

(14-W-0067SP1)