

RULE MAKING ACTIVITIES

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

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

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

Office of Alcoholism and Substance Abuse Services

EMERGENCY RULE MAKING

Implementation of a Program for the Designation of Vital Access Providers

I.D. No. ASA-39-14-00002-E

Filing No. 773

Filing Date: 2014-09-11

Effective Date: 2014-09-11

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

Action taken: Addition of Part 802 to Title 14 NYCRR.

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

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

Specific reasons underlying the finding of necessity: The immediate adoption of these amendments is necessary for the preservation of the health, safety, and welfare of individuals receiving services.

Chapter 53 of the laws of 2014, provided for the commissioners of health and mental hygiene to make available funds to certain designated providers of health and behavioral health services which might be endangered due to shifting demographics and changes in health care financing (Medicaid managed care and Affordable Care Act).

The addition of Part 802, effective upon submission to the Department of State for publication is necessary to implement a process for application

and review by the Office to designate eligible programs. The promulgation of these regulations is essential to preserve the health, safety and welfare of individuals receiving services within the OASAS treatment system. If OASAS did not promulgate regulations on an emergency basis, the process for OASAS and its providers to conduct this application process and subsequent distribution of needed funding would not be implemented or would be implemented ineffectively. Further, protections for individuals receiving services would be threatened by the confusion resulting from existing regulations in other agencies for the same program which would differ from OASAS.

OASAS is not able to use the regular rulemaking process established by the State Administrative Procedure Act because there is not sufficient time to develop and promulgate regulations within the necessary timeframes.

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

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

Text of emergency rule: PART 802

VITAL ACCESS PROGRAM and PROVIDERS

802.1 Background and Intent.

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

802.2 Legal Base.

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

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

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

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

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

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

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

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

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

802.3 Definitions.

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

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

802.4 Vital Access Program.

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

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

- (1) protect or enhance access to care;
- (2) protect or enhance quality of care;
- (3) improve the cost effectiveness of the delivery of health care services; or

(4) otherwise protect or enhance the health care delivery system, as determined by the commissioner.

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

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

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

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

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

802.5 Severability.

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

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire December 9, 2014.

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

Regulatory Impact Statement

1. Statutory Authority:

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

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

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

(d) Section 25.09 of the Mental Hygiene Law authorizes the Office to

establish limits on the amount of financial support which may be advanced or reimbursed to a program for the administration of such program.

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

(f) Section 32.02 of the Mental Hygiene Law authorizes the Commissioner to adopt regulations necessary to ensure quality services to those suffering from problem gambling.

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

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

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

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

3. Needs and Benefits: OASAS is proposing to adopt this regulation because New York state has provided funding to ensure the stability and geographic distribution of health and mental hygiene services throughout the state during a period of substantial change in the health and behavioral health systems flowing from the implementation of Medicaid managed care and the federal Affordable Care Act.

This regulation would establish eligibility standards for application and a process for application review to ensure the appropriate programs are designated as Vital Access providers.

4. Costs: No additional administrative costs to the agency are anticipated; no additional costs to programs/providers are anticipated.

5. Paperwork: The proposed regulation will require providers to submit a written application either as a request for information (RFI) or a request for proposals (RFP) which will be reviewed by agency staff consistent with existing procurement reviews.

6. Local Government Mandates: There are no new local government mandates.

7. Duplication: This proposed rule does not duplicate, overlap, or conflict with any State or federal statute or rule.

8. Alternatives: Availability of budgeted funds requires a process for access by intended recipients; this regulation serves that purpose and there is no alternative to adoption of the regulation.

9. Federal Standards: This regulation does not conflict with federal standards.

10. Compliance Schedule: The regulations will be effective upon submission to the Department of State for publication in the State Register.

Regulatory Flexibility Analysis

1. Effect of the rule: This rule creates an application and approval process for the commissioner to identify and approve applicant programs which may qualify for vital access funding pursuant to Chapter 53 of the Laws of 2014. This regulation would establish eligibility standards for application and a process for application review to ensure the appropriate programs are designated as Vital Access providers.

2. Compliance requirements: The rule requires programs to submit a written application specifying certain criteria necessary for the commissioner to identify programs which may need additional funds in order to preserve essential services otherwise jeopardized by the provider's payer mix or geographic location. Vital access providers in the OASAS system are limited to eligible OASAS certified inpatient residential facilities, or such other programs as may be designated by the commissioner.

3. Professional services: No new or additional professional services will be required by the state or eligible providers.

4. Compliance costs: No costs will be incurred by the state or eligible providers beyond staff time involved in preparing and reviewing applications.

5. Economic and technological feasibility: Implementation of the rule will not require any new or additional technological resources by the state or eligible providers. No upgrades of hardware or software will be required.

6. Minimizing adverse impact: The application of the rule will not impose additional costs or operating requirements on providers on local governments or small businesses; therefore, it is designed on its face to minimize adverse impact.

7. Small business and local government participation: The proposed

rule is posted on the agency website; agency rule review process involves input from trade organizations representing providers in both public and private sectors, of all sizes and in diverse geographic locations.

8. Not applicable. (establish or modify a violation or penalties associated with a violation).

Rural Area Flexibility Analysis

1. Rural areas in which the rule will apply (types and estimated number of rural areas): OASAS services are provided in every county in New York State. 44 counties have a population less than 200,000: Allegany, Cattaraugus, Cayuga, Chautauqua, Chemung, Chenango, Clinton, Columbia, Cortland, Delaware, Essex, Franklin, Fulton, Genesee, Greene, Hamilton, Herkimer, Jefferson, Lewis, Livingston, Madison, Montgomery, Ontario, Orleans, Oswego, Otsego, Putnam, Rensselaer, St. Lawrence, Saratoga, Schenectady, Schoharie, Schuyler, Seneca, Steuben, Sullivan, Tioga, Tompkins, Ulster, Warren, Washington, Wayne, Wyoming and Yates. 9 counties with certain townships have a population density of 150 persons or less per square mile: Albany, Broome, Dutchess, Erie, Monroe, Niagara, Oneida, Onondaga and Orange.

2. Reporting, recordkeeping and other compliance requirements; and professional services: The proposed Rule would establish eligibility standards for application and a process for application review to ensure the appropriate programs are designated as Vital Access providers. Providers in the OASAS system are limited to eligible OASAS certified inpatient residential facilities, or such other programs as may be designated by the commissioner. Providers would be required to submit a written application documenting eligibility criteria as identified by the commissioner. No additional professional services are required.

3. Costs: No additional costs will be incurred for implementation by providers because no additional capital investment, personnel or equipment is needed.

4. Minimizing adverse impact: The application of the rule will not impose additional costs or operating requirements on providers in rural areas; therefore, it is designed on its face to minimize adverse impact.

5. Rural Area participation: The proposed rule is posted on the agency website; agency review process involves input from trade organizations representing providers in diverse geographic locations.

Job Impact Statement

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

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

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

EMERGENCY RULE MAKING

Criminal History Information Reviews

I.D. No. ASA-39-14-00004-E

Filing No. 801

Filing Date: 2014-09-16

Effective Date: 2014-09-16

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

Action taken: Addition of Part 805 to Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 19.09(b), 19.20, 19.20-a, 19.40 and 32.02; Executive Law, section 296(15) and (16); Corrections Law, art. 23-A; Civil Service Law, section 50; Protection of People with Special Needs Act (L. 2012, ch. 501)

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

Specific reasons underlying the finding of necessity: The immediate

adoption of these amendments is necessary for the preservation of the health, safety, and welfare of individuals receiving services.

In December, 2012 Governor Andrew Cuomo signed the Protection of People with Special Needs Act (PPSNA; chapter 501 of the Laws of 2012); the statute created the Justice Center for the Protection of People with Special Needs (Justice Center) establishing various protections for vulnerable persons, i.e., a new system for incident management in services operated or certified by OASAS; and new requirements for pre-employment background checks in OASAS certified and operated service providers, persons credentialed by the Office, and applicants for new operating certificates.

The addition of Part 805, effective June 30, 2013, and subsequently effective September 25, 2013, December 20, 2013, March 20, 2014, June 17, 2014 and September 12, 2014 is necessary to implement the criminal history background check provisions as this is a new process for OASAS. Additionally, by statute (Mental Hygiene Law sections 19.20 and 19.20-a) requires OASAS, rather than the Justice Center, to conduct reviews of criminal history information and to make recommendations regarding hiring, credentialing and certification.

The promulgation of these regulations is essential to preserve the health, safety and welfare of individuals receiving services within the OASAS treatment system. If OASAS did not promulgate regulations on an emergency basis, the process for OASAS and its providers to conduct this new process would not be implemented or would be implemented ineffectively. Further, protections for individuals receiving services would be threatened by the confusion resulting from requirements differing for other agencies covered by the Justice Center.

OASAS was not able to use the regular rulemaking process established by the State Administrative Procedure Act because there was not sufficient time to develop and promulgate regulations within the necessary timeframes.

Subject: Criminal History Information Reviews.

Purpose: To enhance protections for service recipients in the OASAS system.

Substance of emergency rule: The Proposed Rule would ADD a new Part 805 titled "Criminal History Information Reviews." The new Part incorporates into regulation requirements of sections 19.20 and 19.20-a of the mental hygiene law added by the Protection of People with Special Needs Act (Chapter 501 of the Laws of 2012) which outlines the process for the Office to conduct such reviews of prospective custodians and applicants for certification or credentialing. Amendments include:

Section 805.1 sets forth the background and intent consistent with the intent of the Protection of People with Special Needs Act (Chapter 501 of the laws of 2012).

§ 805.2 indicates those persons or "applicants" to whom this regulation is applicable and who is excluded.

§ 805.3 sets for the statutory basis for the regulation in the executive law, mental hygiene law, corrections law, and civil service law.

§ 805.4 defines terms used in this regulation: "applicant", "authorized person", "commissioner", "criminal history information", "designated fingerprinting entity", "Division" of Criminal Justice Services, "Justice Center", "natural person", "prospective employee", "prospective volunteer", "operator", "provider of services", "subject individual."

§ 805.5 sets forth in regulation the process involving the Office, a prospective employee or volunteer, the Justice Center and the Division in relation to acquiring fingerprints necessary for a criminal history information review by the Office; allows for temporary approval of an employment or volunteer applicant in some cases; requires providers to establish policies and procedures consistent with this regulation.

§ 805.6 sets forth in regulation the process involving the Office, an applicant for certification or credentialing, the Justice Center and the Division in relation to acquiring fingerprints necessary for a criminal history information review by the Office; requires providers to establish policies and procedures consistent with this regulation and to submit to the Office a criminal background check form.

§ 805.7 sets forth in regulation the process for the Office's conduct of a criminal history review for purposes of approval or denial of an application for employment, volunteering, certification or credentialing, such review to be consistent with the criteria in Article 23-A of the corrections law.

§ 805.8 sets forth standards for documentation and confidentiality.

§ 805.9 sets forth process for notification to the Office of any subsequent criminal charges or convictions related to a custodian, principal of a certified program, or credentialed person.

§ 805.10 sets forth the responsibilities of providers of services related to recordkeeping, notifications, retention and disposal of information.

A copy of the full text of the regulatory proposal is available on the OASAS website at: <http://www.oasas.ny.gov/regs/index.cfm>

This notice is intended to serve only as a notice of emergency adoption.

This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire December 14, 2014.

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

Regulatory Impact Statement

1. Statutory Authority:

(a) Protection of People with Special Needs Act, Chapter 501 of the Laws of 2012, which added Article 20 to the Executive Law and Article 11 to the Social Services Law as well as amended other laws.

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

(c) Section 19.20 of the MHL authorizes the Office to receive and review criminal history information related to employees or volunteers of treatment facilities certified, licensed, funded or operated by the Office.

(d) Section 19.20-a of the MHL authorizes the Office to receive and review criminal history information related to persons seeking to be credentialed by the Office or applicants for an operating certificate issued by the Office.

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

(f) Subdivisions (15) and (16) of Section 296 of the Executive Law identify unlawful discriminatory practices with regard to the employment and the issuance of licenses.

(g) Civil Service Law § 50 authorizes the Department of Civil Service to request criminal history checks for applicants for state employment.

(h) Article 23-A of the Corrections Law provides the factors to be considered concerning a person's previous criminal convictions in making a determination regarding employment and the issuance of a license.

2. Legislative Objectives:

The legislative objectives are the establishment of comprehensive protections for vulnerable persons against abuse, neglect and other harmful conduct. The Act created a Justice Center with responsibilities for effective incident reporting and investigation systems, fair disciplinary processes, informed and appropriate staff hiring procedures, and strengthened monitoring and oversight systems.

The Justice Center operates a 24/7 hotline for reporting allegations of abuse, neglect and significant incidents in accordance with Chapter 501's provisions for uniform definitions, mandatory reporting and minimum standards for incident management programs. Working in collaboration with the relevant state oversight agencies, the Justice Center is charged with developing and delivering appropriate training for caregivers, their supervisors and investigators.

A vulnerable persons' central register contains the names of individuals found to have committed substantiated acts of abuse or neglect using a preponderance of evidence standard. All persons found to have committed such acts have the right to a hearing before an administrative law judge to challenge those findings. Persons having committed egregious or repeated acts of abuse or neglect are prohibited from future employment caring for vulnerable persons, and may be subject to criminal prosecution. Less serious acts of misconduct are subject to progressive discipline and retraining. Applicants with criminal records who seek employment serving vulnerable persons will be individually evaluated as to suitability for such positions.

3. Needs and Benefits:

OASAS is proposing to adopt the following regulation because criminal history information reviews conducted on each prospective treatment provider, operator, employee, contractor, or volunteer of treatment facilities certified by the NYS Office of Alcoholism and Substance Abuse Services ("OASAS" or "Office") who will have the potential for, or may be permitted, regular and substantial unsupervised or unrestricted physical contact with the clients in such treatment facilities and any individual seeking to be credentialed by the Office will be sufficiently screened before such contact with patients, ensuring a safe and therapeutic environment.

The legislation is intended to enable providers of services to persons seeking treatment for substance use disorders to secure appropriate and properly trained individuals to staff their facilities and programs, by verifying criminal history information received for individuals seeking employment or volunteering their services and those credentialed by the Office.

4. Costs:

The Office will require additional staffing to review any criminal history information found to contain convictions. The Office anticipates no fiscal impact on providers or local governments, job creation or loss, because the Office will subsidize the cost of fingerprint production for applicants and prospective employees/volunteers of not-for-profit programs.

5. Paperwork:

The proposed regulation will require some additional information to be reported to the agency by providers regarding potential employees and/or volunteers, and by applicants for certification and/or credentialing. To the extent feasible, such reporting shall be made electronically to avoid unnecessary paperwork costs.

6. Local Government Mandates:

To the extent local governments already conduct criminal history information reviews on municipal employees, there are no new local government mandates.

7. Duplication:

This proposed rule does not duplicate, overlap, or conflict with any State or federal statute or rule.

8. Alternatives:

The Protection of People with Special Needs Act (Chapter 501 of the Laws of 2012) requires the adoption of this proposed regulation.

9. Federal Standards:

These amendments do not conflict with federal standards.

10. Compliance Schedule:

The regulations will be effective on June 30, 2013 and subsequently on September 25, 2013, December 20, 2013, March 20, 2014, June 17, 2014 and September 12, 2014 to ensure compliance with Chapter 501 of the Laws of 2012.

Regulatory Flexibility Analysis

1. Effect of the rule:

OASAS services are provided by programs of varying size in every county in New York State; some counties are also certified service providers. The proposed Rule has been reviewed by OASAS in consideration of its impact on service providers of all sizes and on local governments, whether or not they are certified operators; additionally this regulation has been reviewed by the OASAS Advisory Council which consists of providers and stakeholders of all sizes and municipalities.

2. Compliance requirements:

The proposed Rule requires persons who apply to the Office for certification to operate a treatment program, persons who apply to the Office for a credential, and prospective employees and volunteers of certified treatment providers to comply with the requirements of The Protection of People with Special Needs Act (Chapter 501 of the Laws of 2012) and complete a criminal history information review prior to certification, credentialing or hiring.

3. Professional services:

Providers will be required to retain documentation of fingerprint requests for employees, contractors of volunteers they ultimately employ; this will not be a significant additional recordkeeping requirement for personnel records they are already required to retain. Every region of the state has resources for gathering fingerprints, the history information collection is done electronically from a central state or federal database, and communicated electronically, so any additional recordkeeping will be minimal regardless of geographic location. No new professional services are required; no professional services will be lost.

4. Compliance costs:

Because every region of the state has resources for gathering fingerprints, and the history information collection is done electronically from a central state or federal database, smaller providers or municipal providers will not be affected in any way. Many municipalities already conduct criminal history information reviews on prospective employees.

Although providers will be required to retain documentation of fingerprint requests for employees, contractors, or volunteers they ultimately employ, this will not be a significant additional recordkeeping requirement because providers are already required to retain records related to such relationships. No additional professional services will be required of as a result of these amendments; nor will the amendments add to the professional service needs of local governments. Because of the electronic nature of the transactions, minimal paperwork will be involved on the part of business or local governments.

The Office will subsidize applicants for all prospective employees or volunteers of not-for-profit providers, regardless of geographic location; there will be no disparate impact on providers based on location, size of business or municipality.

5. Economic and technological feasibility:

Implementation of the rule will require computer and email capability; all providers in all regions of the state, both private and public sector, already have such capability. No upgrades of hardware or software will be required. Also because every region of the state has resources for gathering fingerprints, and the history information collection is done electronically from a central state or federal database, and increasingly communicated electronically any additional recordkeeping will be minimal regardless of geographic location.

6. Minimizing adverse impact:

The application of the rule will not impose additional costs or operating

requirements on providers on local governments or small businesses; therefore, it is designed on its face to minimize adverse impact.

7. Small business and local government participation:

The proposed rule is posted on the agency website; agency review process involves input from trade organizations representing providers in both public and private sectors, of all sizes and in diverse geographic locations. The Office has prepared webinars and guidance documents for provider use and for training of agency administration.

8. Not applicable. (establish or modify a violation or penalties associated with a violation)

Rural Area Flexibility Analysis

1. Rural areas in which the rule will apply (types and estimated number of rural areas):

OASAS services are provided in every county in New York State. 44 counties have a population less than 200,000: Allegany, Cattaraugus, Cayuga, Chautauqua, Chemung, Chenango, Clinton, Columbia, Cortland, Delaware, Essex, Franklin, Fulton, Genesee, Greene, Hamilton, Herkimer, Jefferson, Lewis, Livingston, Madison, Montgomery, Ontario, Orleans, Oswego, Otsego, Putnam, Rensselaer, St. Lawrence, Saratoga, Schoenectady, Schoharie, Schuyler, Seneca, Steuben, Sullivan, Tioga, Tompkins, Ulster, Warren, Washington, Wayne, Wyoming and Yates. 9 counties with certain townships have a population density of 150 persons or less per square mile: Albany, Broome, Dutchess, Erie, Monroe, Niagara, Oneida, Onondaga and Orange.

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

The proposed Rule requires persons who apply to the Office for certification to operate a treatment program, persons who apply to the Office for a credential, and prospective employees and volunteers of certified treatment providers to comply with the requirements of The Protection of People with Special Needs Act (Chapter 501 of the Laws of 2012) and complete a criminal history information review prior to certification, credentialing or hiring.

Providers will be required to retain documentation of fingerprint requests for employees, contractors of volunteers they ultimately employ; this will not be a significant additional recordkeeping requirement for personnel records they are already required to retain. Every region of the state has resources for gathering fingerprints, the history information collection is done electronically from a central state or federal database, and communicated electronically, so any additional recordkeeping will be minimal regardless of geographic location. No new professional services are required; no professional services will be lost.

3. Costs:

No additional costs will be incurred for implementation by providers because no additional capital investment, personnel or equipment is needed. Also, the Office will subsidize the cost of fingerprinting for all applicants for employment in not-for-profit providers; all other applicants will pay for their own processing regardless of geographic.

4. Minimizing adverse impact:

The application of the rule will not impose additional costs or operating requirements on providers in rural areas; therefore, it is designed on its face to minimize adverse impact.

5. Rural area participation:

The proposed rule is posted on the agency website; agency review process involves input from trade organizations representing providers in diverse geographic locations. The Office has prepared webinars and guidance documents for provider use and for training of agency administration.

Job Impact Statement

OASAS is not submitting a Job Impact Statement for these amendments because OASAS does not anticipate a substantial adverse impact on jobs and employment opportunities.

The proposed regulation requires persons who apply to the Office for certification to operate a treatment program, persons who apply to the Office for a credential, and prospective employees and volunteers of certified treatment providers to comply with the requirements of The Protection of People with Special Needs Act (Chapter 501 of the Laws of 2012) and complete a criminal history information review prior to certification, credentialing or hiring.

The proposed regulation will not have an adverse impact on existing jobs or the development of new employment opportunities for New York residents. It is anticipated that the proposed regulation will not have an adverse impact on existing employees in the field of fingerprinting or history review. The proposed regulations should not impact the number of criminal history information reviews requested via federal and state existing database. The Office is unable to determine what affect the proposed regulation may have on the employment of independent fingerprinting services or Office employees in the future.

The proposed regulation does not have an adverse impact on jobs or employment opportunities anywhere in the State, therefore, no region is disproportionately affected by the proposed regulation.

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

**EMERGENCY
RULE MAKING**

Patient Rights

I.D. No. ASA-39-14-00005-E

Filing No. 802

Filing Date: 2014-09-16

Effective Date: 2014-09-16

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

Action taken: Repeal of Part 815; and addition of new Part 815 to Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 19.09(b), 19.20, 19.20-a, 19.40 and 32.02; Executive Law, section 296(15) and (16); Corrections Law, art. 23-A; Civil Service Law, section 50; Protection of People with Special Needs Act (L. 2012, ch. 501)

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

Specific reasons underlying the finding of necessity: The immediate adoption of these amendments is necessary for the preservation of the health, safety, and welfare of individuals receiving services.

In December, 2012 Governor Andrew Cuomo signed the Protection of People with Special Needs Act (PPSNA; chapter 501 of the Laws of 2012); the statute created the Justice Center for the Protection of People with Special Needs (Justice Center) establishing various protections for vulnerable persons, i.e., a new system for incident management in services operated or certified by OASAS; and new requirements for pre-employment background checks in OASAS certified and operated service providers, persons credentialed by the Office, and applicants for new operating certificates.

The repeal and addition of Part 815 related to Patient Rights, effective June 30, 2013 and subsequently September 25, 2013, December 20, 2013, March 20, 2014, June 17, 2014 and September 12, 2014, is necessary to implement the criminal history background check provisions as this is a new process for OASAS and to make patients aware of additional rights. Additionally, by statute (Mental Hygiene Law sections 19.20 and 19.20-a) requires OASAS, rather than the Justice Center, to conduct reviews of criminal history information and to make recommendations regarding hiring, credentialing and certification.

The promulgation of these regulations is essential to preserve the health, safety and welfare of individuals receiving services within the OASAS treatment system. If OASAS did not promulgate regulations on an emergency basis, the processes for OASAS, its providers and service recipients would not be implemented or would be implemented ineffectively. Further, protections for individuals receiving services would be threatened by the confusion resulting from requirements differing for other agencies covered by the Justice Center.

OASAS was not able to use the regular rulemaking process established by the State Administrative Procedure Act because there was not sufficient time to develop and promulgate regulations within the necessary timeframes.

Subject: Patient Rights.

Purpose: To enhance protections for service recipients in the OASAS system.

Substance of emergency rule: The Proposed Rule would Repeal the current Part 815 and Replace it with a new Part 815. The new Part incorporates amendments related to rights and obligations of patients in OASAS certified programs consistent with statutory requirements, definitions and procedures of the Justice Center, pursuant to the Protection of People with Special Needs Act (Chapter 501 of the Laws of 2012).

The Proposed Rule also makes technical amendments to standardize formatting and language for all Office regulations. Amendments related to the Justice Center include:

Section 815.1 sets forth the background and intent and adds language consistent with statutory requirements, definitions and procedures of the Justice Center, pursuant to the Protection of People with Special Needs Act (Chapter 501 of the Laws of 2012).

§ 815.2 sets forth the statutory authority for the promulgation of the rule by the Office of Alcoholism and Substance Abuse Services ("Office"); adds The Protection of People with Special Needs Act; removes repealed statutes; adds the Vulnerable Persons Central Register in § 492 of the social services law.

§ 815.3 amends applicability of this Part to be consistent with Justice Center statute and regulations.

§ 815.4 adds to "provider requirements" language consistent with statutory requirements, definitions and procedures of the Justice Center, pursuant to the Protection of People with Special Needs Act (Chapter 501 of the Laws of 2012; requires posting of the toll-free hotline to the Vulnerable Persons Central Registry; requires policies and procedures for, and implementation of, training for all "custodians" related to requirements of the Protection of People with Special Needs Act (Chapter 501 of the Laws of 2012) including the Code of Conduct.

§ 815.5 adds language which explicitly requires provider compliance with the amended Patient Rights as a condition of receiving and maintaining an operating certificate to operate an Office service program.

§ 815.10 amends reference to a "strip search" as a reportable incident to be referenced as a "significant incident" pursuant to Justice Center definitions.

A copy of the full text of the regulatory proposal is available on the OASAS website at: <http://www.oasas.ny.gov/regs/index.cfm>

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire December 14, 2014.

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

Regulatory Impact Statement

1. Statutory Authority:

(a) Protection of People with Special Needs Act, Chapter 501 of the Laws of 2012, which added Article 20 to the Executive Law and Article 11 to the Social Services Law as well as amended other laws.

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

(c) Section 19.20 of the MHL authorizes the Office to receive and review criminal history information related to employees or volunteers of treatment facilities certified, licensed, funded or operated by the Office.

(d) Section 19.20-a of the MHL authorizes the Office to receive and review criminal history information related to persons seeking to be credentialed by the Office or applicants for an operating certificate issued by the Office.

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

(f) Subdivisions (15) and (16) of Section 296 of the Executive Law identify unlawful discriminatory practices with regard to the employment and the issuance of licenses.

(g) Civil Service Law § 50 authorizes the Department of Civil Service to request criminal history checks for applicants for state employment.

(h) Article 23-A of the Corrections Law provides the factors to be considered concerning a person's previous criminal convictions in making a determination regarding employment and the issuance of a license.

2. Legislative Objectives:

The legislative objectives are the establishment of comprehensive protections for vulnerable persons against abuse, neglect and other harmful conduct. The Act created a Justice Center with responsibilities for effective incident reporting and investigation systems, fair disciplinary processes, informed and appropriate staff hiring procedures, and strengthened monitoring and oversight systems.

The Justice Center operates a 24/7 hotline for reporting allegations of abuse, neglect and significant incidents in accordance with Chapter 501's provisions for uniform definitions, mandatory reporting and minimum standards for incident management programs. Working in collaboration with the relevant state oversight agencies, the Justice Center is charged with developing and delivering appropriate training for caregivers, their supervisors and investigators.

A vulnerable persons' central register contains the names of individuals found to have committed substantiated acts of abuse or neglect using a preponderance of evidence standard. All persons found to have committed such acts have the right to a hearing before an administrative law judge to challenge those findings. Persons having committed egregious or repeated acts of abuse or neglect are prohibited from future employment caring for vulnerable persons, and may be subject to criminal prosecution. Less serious acts of misconduct are subject to progressive discipline and retraining. Applicants with criminal records who seek employment serving vulnerable persons will be individually evaluated as to suitability for such positions.

3. Needs and Benefits:

This regulation governs the rights and responsibilities of patients in

OASAS certified treatment programs. The regulation incorporates provisions of Chapter 501 of the Laws of 2012 to the extent they relate to patients' rights to report allegations of abuse and neglect or other significant incidents to the Vulnerable Persons Hotline. The requirement for staff, operators, volunteers and contractors, if appropriate, to have completed criminal history information reviews is incorporated as a right of patients to receive treatment in an environment that is therapeutic and free from concerns about harm from staff.

OASAS is proposing to adopt the following regulation because criminal history information reviews conducted on each prospective treatment provider, operator, employee, contractor, or volunteer of treatment facilities certified by the NYS Office of Alcoholism and Substance Abuse Services ("OASAS" or "Office") who will have the potential for, or may be permitted, regular and substantial unsupervised or unrestricted physical contact with the clients in such treatment facilities and any individual seeking to be credentialed by the Office will be sufficiently screened before such contact with patients, ensuring a safe and therapeutic environment.

The legislation is intended to enable providers of services to persons seeking treatment for substance use disorders to secure appropriate and properly trained individuals to staff their facilities and programs, by verifying criminal history information received for individuals seeking employment or volunteering their services and those credentialed by the Office.

4. Costs:

The Office anticipates no fiscal impact on providers or local governments, job creation or loss, because the Office will subsidize applicants and prospective employees/volunteers in not for profit providers for the cost of fingerprint production.

5. Paperwork:

The proposed regulation will require some additional information to be reported to the agency by applicants for employment or management contractors. To the extent feasible, such reporting shall be made electronically to avoid unnecessary paperwork costs. No additional paperwork will be required as it applies to patients.

6. Local Government Mandates:

To the extent local governments already conduct criminal history information reviews on municipal employees, there are no new local government mandates if a local government was to apply for certification. Municipalities that are program operators will also need to comply with the same rights of their patients as any other certified operator.

7. Duplication:

This proposed rule does not duplicate, overlap, or conflict with any State or federal statute or rule.

8. Alternatives:

The Protection of People with Special Needs Act (Chapter 501 of the Laws of 2012) requires the adoption of this proposed regulation.

9. Federal Standards:

These amendments do not conflict with federal standards.

10. Compliance Schedule:

The regulations will be effective on June 30, 2013 and subsequently September 25, 2013, December 20, 2013, March 20, 2014, June 17, 2014 and September 12, 2014 to ensure compliance with Chapter 501 of the Laws of 2012.

Regulatory Flexibility Analysis

1. Effect of the rule:

OASAS services are provided by programs of varying size in every county in New York State; some counties are also certified service providers. The proposed Rule has been reviewed by OASAS in consideration of its impact on service providers of all sizes and on local governments, whether or not they are certified operators; additionally this regulation has been reviewed by the OASAS Advisory Council which consists of providers and stakeholders of all sizes and municipalities.

2. Compliance requirements:

The proposed regulation implements provisions of The Protection of People with Special Needs Act (Chapter 501 of the Laws of 2012) for the purpose of ensuring persons who receive services from OASAS certified providers are assured of receiving treatment from custodians who have been appropriately trained and screened for any prior abusive behavior. The proposed regulation incorporates provisions from this Act into the OASAS Patient Rights regulation which applies to all programs throughout the state in all geographic locations. Because the regulation applies only to the rights and responsibilities of patients in certified programs, there is no different application in any geographic location.

3. Professional services:

Providers will be required to retain documentation of fingerprint requests for employees, contractors of volunteers they ultimately employ; this will not be a significant additional recordkeeping requirement for personnel records they are already required to retain. Every region of the state has resources for gathering fingerprints, the history information collection is done electronically from a central state or federal database, and

communicated electronically, so any additional recordkeeping will be minimal regardless of geographic location. No new professional services are required; no professional services will be lost.

4. Compliance costs:

Because every region of the state has resources for gathering fingerprints, and the history information collection is done electronically from a central state or federal database, smaller providers or municipal providers will not be affected in any way. Many municipalities already conduct criminal history information reviews on prospective employees.

Although providers will be required to retain documentation of fingerprint requests for employees, contractors, or volunteers they ultimately employ, this will not be a significant additional recordkeeping requirement because providers are already required to retain records related to such relationships. No additional professional services will be required of as a result of these amendments; nor will the amendments add to the professional service needs of local governments. Because of the electronic nature of the transactions, minimal paperwork will be involved on the part of business or local governments.

The Office will subsidize applicants for all prospective employees or volunteers of not-for-profit providers, regardless of geographic location; there will be no disparate impact on providers based on location, size of business or municipality.

5. Economic and technological feasibility:

Implementation of the rule will require computer and email capability; all providers in all regions of the state, both private and public sector, already have such capability. No upgrades of hardware or software will be required. Also because every region of the state has resources for gathering fingerprints, and the history information collection is done electronically from a central state or federal database, and increasingly communicated electronically any additional recordkeeping will be minimal regardless of geographic location.

6. Minimizing adverse impact:

The application of the rule will not impose additional costs or operating requirements on providers on local governments or small businesses; therefore, it is designed on its face to minimize adverse impact.

7. Small business and local government participation:

The proposed rule is posted on the agency website; agency review process involves input from trade organizations representing providers in both public and private sectors, of all sizes and in diverse geographic locations. The Office has prepared webinars and guidance documents for provider use and for training of agency administration.

Rural Area Flexibility Analysis

1. Rural areas in which the rule will apply (types and estimated number of rural areas):

OASAS services are provided in every county in New York State. 44 counties have a population less than 200,000: Allegany, Cattaraugus, Cayuga, Chautauqua, Chemung, Chenango, Clinton, Columbia, Cortland, Delaware, Essex, Franklin, Fulton, Genesee, Greene, Hamilton, Herkimer, Jefferson, Lewis, Livingston, Madison, Montgomery, Ontario, Orleans, Oswego, Otsego, Putnam, Rensselaer, St. Lawrence, Saratoga, Schoharie, Schoharie, Schuyler, Seneca, Steuben, Sullivan, Tioga, Tompkins, Ulster, Warren, Washington, Wayne, Wyoming and Yates. 9 counties with certain townships have a population density of 150 persons or less per square mile: Albany, Broome, Dutchess, Erie, Monroe, Niagara, Oneida, Onondaga and Orange.

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

The proposed regulation implements provisions of The Protection of People with Special Needs Act (Chapter 501 of the Laws of 2012) for the purpose of ensuring persons who receive services from OASAS certified providers are assured of receiving treatment from custodians who have been appropriately trained and screened for any prior abusive behavior. The proposed regulation incorporates provisions from this Act into the OASAS Patient Rights regulation which applies to all programs throughout the state in all geographic locations. Because the regulation applies only to the rights and responsibilities of patients in certified programs, there is no different application in any geographic location.

3. Costs:

No additional costs will be incurred for implementation by providers because no additional capital investment, personnel or equipment is needed. Also, the Office will subsidize the cost of fingerprinting for all applicants for employment in not-for-profit providers; all other applicants will pay for their own processing regardless of geographic.

4. Minimizing adverse impact:

The application of the rule will not impose additional costs or operating requirements on providers in rural areas; therefore, it is designed on its face to minimize adverse impact.

5. Rural area participation:

The proposed rule is posted on the agency website; agency review process involves input from trade organizations representing providers in di-

verse geographic locations. The Office has prepared webinars and guidance documents for provider use and for training of agency administration.

Job Impact Statement

OASAS is not submitting a Job Impact Statement for these amendments because OASAS does not anticipate a substantial adverse impact on jobs and employment opportunities.

The proposed regulation implements provisions of The Protection of People with Special Needs Act (Chapter 501 of the Laws of 2012) for the purpose of ensuring persons who receive services from OASAS certified providers are assured of receiving treatment from custodians who have been appropriately trained and screened for any prior abusive behavior. This regulation incorporates any relevant provisions into the OASAS Patient Rights regulation.

The proposed regulation will not have an adverse impact on existing jobs or the development of new employment opportunities for New York residents because it is narrowly related to the rights and obligations of patients while they are in OASAS certified programs. It is anticipated that the proposed regulation will not have an adverse impact on existing employees in the field of substance use disorder treatment, nor affect any reduction or increase in the number of positions available in the future.

The proposed regulation does not have an adverse impact on jobs or employment opportunities anywhere in the State, therefore, no region is disproportionately affected by the proposed regulation.

The proposed regulation will have no adverse impact on existing jobs or the development of new employment opportunities. It is not anticipated that the proposed rule will affect the number of persons applying for employment.

EMERGENCY RULE MAKING

Establishment, Incorporation and Certification of Providers of Substance Use Disorder Services

I.D. No. ASA-39-14-00006-E

Filing No. 803

Filing Date: 2014-09-16

Effective Date: 2014-09-16

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

Action taken: Repeal of Part 810 and addition of new Part 810 to Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 19.09(b), 19.20, 19.20-a, 19.40, 32.02; Executive Law, section 296(15) and (16); Corrections Law, art. 23-A; Civil Service Law, section 50; Protection of People with Special Needs Act, L. 2012, ch. 501

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

Specific reasons underlying the finding of necessity: The immediate adoption of these amendments is necessary for the preservation of the health, safety, and welfare of individuals receiving services.

In December, 2012 Governor Andrew Cuomo signed the Protection of People with Special Needs Act (PPSNA; chapter 501 of the Laws of 2012); the statute created the Justice Center for the Protection of People with Special Needs (Justice Center) establishing various protections for vulnerable persons, i.e., a new system for incident management in services operated or certified by OASAS; and new requirements for pre-employment background checks in OASAS certified and operated service providers, persons credentialed by the Office, and applicants for new operating certificates.

The amendments to Part 810, effective June 30, 2013 and subsequently September 25, 2013, December 20, 2013, March 20, 2014, June 17, 2014 and September 12, 2014, are necessary to implement the criminal history background check provisions as this is a new process for OASAS. Additionally, by statute (Mental Hygiene Law sections 19.20 and 19.20-a) requires OASAS, rather than the Justice Center, to conduct reviews of criminal history information and to make recommendations regarding hiring, credentialing and certification. Amendments will also streamline the process of program certification for needed services and is consistent with Governor Cuomo and the Sage Commission's "Lean Initiative" to improve efficiency in state government.

The promulgation of these regulations is essential to preserve the health, safety and welfare of individuals receiving services within the OASAS treatment system. If OASAS did not promulgate regulations on an emergency basis, the process for OASAS to conduct this new process would not be implemented or would be implemented ineffectively. Further,

protections for individuals receiving services would be threatened by insufficient safeguards regarding entities receiving operating certificates from the Office. If OASAS did not promulgate regulations related to the "Lean Initiative" on an emergency basis, the process for OASAS and applicants for certification of new providers would become increasingly cumbersome due to timetables, records management, and protracted reviews of submissions.

OASAS is not able to use the regular rulemaking process established by the State Administrative Procedure Act because there is not sufficient time to develop and promulgate regulations within the necessary timeframes.

Subject: Establishment, Incorporation and Certification of Providers of Substance Use Disorder Services.

Purpose: To enhance protections for service recipients in the OASAS system.

Substance of emergency rule: The Proposed Rule would Repeal the current Part 810 and Replace it with a new Part 810 titled "Establishment, Incorporation and Certification of Providers of Substance Use Disorder Services." The new Part incorporates amendments to the Office's certification and review process consistent with statutory requirements, definitions and procedures of the Justice Center, pursuant to the Protection of People with Special Needs Act (Chapter 501 of the Laws of 2012); adds a new requirement that a majority of owners or principals of an applicant must have demonstrated prior experience in substance use disorder services, and that they shall require a criminal history information review prior to any final agency decision regarding certification or re-certification; and makes amendments which adopt recommendations developed by the Office in response to Governor Cuomo and the Sage Commission's "Lean Initiative" to streamline government processes and procedures. The Proposed Rule also makes technical amendments to standardize formatting and language usage for all Office regulations.

Amendments include:

Section 810.1 sets forth the background and intent and updates language referencing "substance use disorder"; removes language no longer applicable which was required to "grandfather" programs certified pursuant to prior regulations.

§ 810.2 sets forth the statutory authority for the promulgation of the rule by the Office of Alcoholism and Substance Abuse Services ("Office"); adds The Protection of People with Special Needs Act and statutes relating to required Criminal History Information reviews for all applicants for certification.

§ 810.4 adds new definitions or amends language to be consistent with the Justice Center: "criminal history information review", updates usage.

§ 810.5 and 810.6 eliminates the requirement of a full review for a capital project proposed by a program that is not utilizing state funds from the DASNY Mental Hygiene bonding program; requires such proposals to receive an administrative review instead.

§ 810.7 requires a majority of applicants for certification or renewal to have demonstrated prior experience in substance use disorder treatment services; updates language related to corporate structure.

§ 810.8 amends requirements for the full review process of an application for certification to include required criminal history information review as a criteria for Office consideration whether or not to issue or renew and operating certificate; eliminates the "interim operating certificate" as it is not used; consolidates language related to due process for applicants denied certification; eliminates specific time frames for response and submission of documentation in a certification application and replaces them with "a reasonable time." Amendments also introduce an interim "threshold review" by the Office to reduce retention of incomplete applications and reduce staff time needed to track and follow-up on incomplete submissions.

§ 810.9 amends requirements for the administrative review process of an application for certification to include required criminal history information review as a criteria for Office consideration whether or not to issue or renew and operating certificate; eliminates the "interim operating certificate" as it is not used; consolidates language related to due process for applicants denied certification; eliminates specific timeframes for response and submission of documentation and replaces them with "a reasonable time."

§ 810.10 adds requirements for Office prior approval of any changes in programming or corporate structure post certification, including any reduction in the majority of owners or principals with prior substance use disorder treatment experience; eliminates specific timeframes for response and submission of documentation and replaces them with "a reasonable time."

§ 810.11 consolidates language requiring cooperative review of any programs requiring review by both the Office and the Department of Health.

§ 810.12 strengthens Office control of management contracts entered into by providers of services; requires administrators of contractors to

complete a criminal history information review; retains in the governing authority to authority to remove any custodian regardless of change in employment status.

§ 810.13 updates language related to the different levels of certification of substance use disorder services.

§ 810.14 adds requirement that staff credentials and employee or contractor compliance with the criminal history information review requirements are part of the inspection and review process for re-certification.

§ 810.16 consolidates language related to voluntary termination of authorized services.

§ 810.18 removes provisions for waiver; adds severability language.

A copy of the full text of the regulatory proposal is available on the OASAS website at: <http://www.oasas.ny.gov/regs/index.cfm>

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire December 14, 2014.

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

Regulatory Impact Statement

1. Statutory Authority:

(a) Protection of People with Special Needs Act, Chapter 501 of the Laws of 2012, which added Article 20 to the Executive Law and Article 11 to the Social Services Law as well as amended other laws.

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

(c) Section 19.20 of the MHL authorizes the Office to receive and review criminal history information related to employees or volunteers of treatment facilities certified, licensed, funded or operated by the Office.

(d) Section 19.20-a of the MHL authorizes the Office to receive and review criminal history information related to persons seeking to be credentialed by the Office or applicants for an operating certificate issued by the Office.

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

(f) Subdivisions (15) and (16) of Section 296 of the Executive Law identify unlawful discriminatory practices with regard to the employment and the issuance of licenses.

(g) Civil Service Law § 50 authorizes the Department of Civil Service to request criminal history checks for applicants for state employment.

(h) Article 23-A of the Corrections Law provides the factors to be considered concerning a person's previous criminal convictions in making a determination regarding employment and the issuance of a license.

2. Legislative Objectives:

The legislative objectives are the establishment of comprehensive protections for vulnerable persons against abuse, neglect and other harmful conduct. The Act created a Justice Center with responsibilities for effective incident reporting and investigation systems, fair disciplinary processes, informed and appropriate staff hiring procedures, and strengthened monitoring and oversight systems.

The Justice Center operates a 24/7 hotline for reporting allegations of abuse, neglect and significant incidents in accordance with Chapter 501's provisions for uniform definitions, mandatory reporting and minimum standards for incident management programs. Working in collaboration with the relevant state oversight agencies, the Justice Center is charged with developing and delivering appropriate training for caregivers, their supervisors and investigators.

A vulnerable persons' central register contains the names of individuals found to have committed substantiated acts of abuse or neglect using a preponderance of evidence standard. All persons found to have committed such acts have the right to a hearing before an administrative law judge to challenge those findings. Persons having committed egregious or repeated acts of abuse or neglect are prohibited from future employment caring for vulnerable persons, and may be subject to criminal prosecution. Less serious acts of misconduct are subject to progressive discipline and retraining. Applicants with criminal records who seek employment serving vulnerable persons will be individually evaluated as to suitability for such positions.

Additional amendments adopt recommendations developed by the Office in response to Governor Cuomo and the Sage Commission's "Lean Initiative" to streamline government processes and procedures. The amendments eliminate specific time frames for response and submission of documentation in a certification application and replace them with "a reasonable time." Amendments also introduce an interim "threshold

review” by the Office to reduce retention of incomplete applications and reduce staff time needed to track and follow-up on incomplete submissions. Amendments to the regulation serve as notice to the public of such changes in application processes.

3. Needs and Benefits:

OASAS is proposing to adopt the following regulation because The Protection of People with Special Needs Act (Chapter 501 of the Laws of 2012) requires that criminal history information reviews be conducted on each prospective treatment provider, operator, employee, contractor, or volunteer of treatment facilities certified by the NYS Office of Alcoholism and Substance Abuse Services (“OASAS” or “Office”) who will have the potential for, or may be permitted, regular and substantial unsupervised or unrestricted physical contact with the clients in such treatment facilities and any individual seeking to be credentialed by the Office.

This legislation adds a new requirement that a majority of owners or principals of a provider demonstrate prior experience in substance use disorder treatment and also requires principals or applicants for certification to comply with requirements for a criminal history information review. The legislation is intended to enable providers of services to persons seeking treatment for substance use disorders to secure appropriate and properly trained individuals who own and operate OASAS facilities and programs, by verifying criminal history information received for individuals to operate such programs.

OASAS is proposing to adopt these amendments to the certification application and review process because they will reduce administrative time spent tracking incomplete submissions and retaining and organizing incomplete submissions or those that are not serious about becoming providers.

The legislation also makes technical amendments to make language and format consistent throughout OASAS regulations.

4. Costs:

The Office anticipates no fiscal impact on providers or local governments, job creation or loss. No additional administrative costs to the agency are anticipated; no additional costs to programs/providers are anticipated.

5. Paperwork:

The proposed regulation will require some additional information to be reported to the agency by applicants for certification. To the extent feasible, such reporting shall be made electronically to avoid unnecessary paperwork costs. The proposed “Lean Initiative” amendments will reduce agency paperwork and storage of incomplete applications.

6. Local Government Mandates:

To the extent local governments already conduct criminal history information reviews on municipal employees, there are no new local government mandates if a local government was to apply for certification; “Lean Initiative” amendments impose no local government mandates.

7. Duplications:

This proposed rule does not duplicate, overlap, or conflict with any State or federal statute or rule.

8. Alternatives:

The Protection of People with Special Needs Act (Chapter 501 of the Laws of 2012) requires the adoption of this proposed regulation; failure to adopt the “Lean Initiative” amendments would continue to subject applicants and Office personnel to inefficient and cumbersome processes and procedures.

9. Federal Standards:

These amendments do not conflict with federal standards.

10. Compliance Schedule:

The regulations will be effective on June 30, 2013 and subsequently September 25, 2013, December 20, 2013, March 20, 2014, June 17, 2014 and September 12, 2014 to ensure compliance with Chapter 501 of the Laws of 2012 and Governor Cuomo’s “Lean Initiative” and Sage Commission mandates.

Regulatory Flexibility Analysis

1. Effect of the rule:

OASAS services are provided by programs of varying size in every county in New York State; some counties are also certified service providers. The proposed Rule has been reviewed by OASAS in consideration of its impact on applications for service providers of all sizes and on local governments; additionally this regulation has been reviewed by the OASAS Advisory Council which consists of providers and stakeholders of all sizes and municipalities.

2. Compliance requirements:

The proposed Rule requires persons who apply to the Office for certification to operate a treatment program to comply with the requirements of The Protection of People with Special Needs Act (Chapter 501 of the Laws of 2012) and complete a criminal history information review prior to certification; amendments also streamline the application review process by the agency by affording flexibility in time schedules and a threshold review prior to a substantive review.

3. Professional services:

The Office will retain documentation of such applicant review; this will not be an additional recordkeeping requirement for applicants or the Office. Every region of the state has resources for gathering fingerprints, the history information collection is done electronically from a central state or federal database, and communicated electronically, so any additional recordkeeping will be minimal regardless of geographic location. No new professional services are required; no professional services will be lost.

4. Compliance costs:

Because every region of the state has resources for gathering fingerprints, and the history information collection is done electronically from a central state or federal database, individual or municipal applicants will not be affected in any way. Many municipalities already conduct criminal history information reviews on prospective employees.

5. Economic and technological feasibility:

Implementation of the rule will require computer and email capability; all applicants in all regions of the state, both private and public sector, have such capability. No upgrades of hardware or software will be required. Also because every region of the state has resources for gathering fingerprints, and the history information collection is done electronically from a central state or federal database, and increasingly communicated electronically any additional recordkeeping will be minimal regardless of geographic location.

6. Minimizing adverse impact: The application of the rule will not impose additional costs or operating requirements on applicants, local governments or small businesses; therefore, it is designed on its face to minimize adverse impact.

7. Small business and local government participation:

The proposed rule is posted on the agency website; agency review process involves input from trade organizations representing providers in both public and private sectors, of all sizes and in diverse geographic locations. The Office has prepared webinars and guidance documents for applicant use and for training agency administration.

Rural Area Flexibility Analysis

1. Rural areas in which the rule will apply (types and estimated number of rural areas):

OASAS services are provided in every county in New York State. 44 counties have a population less than 200,000: Allegany, Cattaraugus, Cayuga, Chautauqua, Chemung, Chenango, Clinton, Columbia, Cortland, Delaware, Essex, Franklin, Fulton, Genesee, Greene, Hamilton, Herkimer, Jefferson, Lewis, Livingston, Madison, Montgomery, Ontario, Orleans, Oswego, Otsego, Putnam, Rensselaer, St. Lawrence, Saratoga, Schoenectady, Schoharie, Schuyler, Seneca, Steuben, Sullivan, Tioga, Tompkins, Ulster, Warren, Washington, Wayne, Wyoming and Yates. 9 counties with certain townships have a population density of 150 persons or less per square mile: Albany, Broome, Dutchess, Erie, Monroe, Niagara, Oneida, Onondaga and Orange.

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

The proposed Rule requires persons who apply to the Office for certification to operate a treatment program to comply with the requirements of The Protection of People with Special Needs Act (Chapter 501 of the Laws of 2012) and complete a criminal history information review prior to certification, credentialing or hiring.

The Office will retain documentation of such review; this will not be an additional recordkeeping requirement for applicants or the Office. Every region of the state has resources for gathering fingerprints, the history information collection is done electronically from a central state or federal database, and communicated electronically, so any additional recordkeeping will be minimal regardless of geographic location. No new professional services are required; no professional services will be lost.

3. Costs:

No additional costs will be incurred for implementation by providers because no additional capital investment, personnel or equipment is needed and the Office and applicants are involved, not programs. Applicants will pay for their own processing regardless of geographic.

4. Minimizing adverse impact:

The application of the rule will not impose additional costs or operating requirements on providers in rural areas; therefore, it is designed on its face to minimize adverse impact.

5. Rural area participation:

The proposed rule is posted on the agency website; agency review process involves input from trade organizations representing providers in diverse geographic locations. The Office has prepared webinars and guidance documents for provider use and for training of agency administration.

Job Impact Statement

OASAS is not submitting a Job Impact Statement for these amendments because OASAS does not anticipate a substantial adverse impact on jobs and employment opportunities.

The proposed regulation requires persons who apply to the Office for certification to operate a treatment program, or persons who are principals or operators of an entity applying for certification, to comply with the requirements of The Protection of People with Special Needs Act (Chapter 501 of the Laws of 2012) and complete a criminal history information review prior to certification. Operating certificates are also issued contingent on compliance with other laws and regulations, including those promulgated by the Justice Center.

The proposed regulation has been presented to, and approved by, the OASAS Advisory Council and to the Behavioral Health Services Advisory Council consisting of providers and other stakeholders from a range of corporate types and municipalities. It is not anticipated that this regulation will have an adverse impact on existing jobs or the development of new employment opportunities for New York residents. It is anticipated that the proposed regulation will not have an adverse impact on existing employees in the field of fingerprinting or history review. The proposed regulations should not impact the number of criminal history information reviews requested via federal and state existing database. The Office is unable to determine what affect the proposed regulation may have on the employment of independent fingerprinting services or Office employees in the future.

The proposed regulation does not have an adverse impact on jobs or employment opportunities anywhere in the State, therefore, no region is disproportionately affected by the proposed regulation. This regulation will not require additional professional staff in existing certified providers; although entities will be required to maintain some records related to staff background, these should be minimal because much of the record exchange will be accomplished electronically.

The proposed regulation will have no adverse impact on existing jobs or the development of new employment opportunities. It is not anticipated that the proposed rule will affect the number of persons or entities applying for certification as operators of treatment service providers.

EMERGENCY RULE MAKING

Credentialing of Addictions Professionals

I.D. No. ASA-39-14-00007-E

Filing No. 804

Filing Date: 2014-09-16

Effective Date: 2014-09-16

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

Action taken: Repeal of Part 853; and addition of new Part 853 to Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 19.09(b), 19.20, 19.20-a, 19.40 and 32.02; Executive Law, section 296(15) and (16); Corrections Law, art. 23-A; Civil Service Law, section 50; Protection of People with Special Needs Act (L. 2012, ch. 501)

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

Specific reasons underlying the finding of necessity: The immediate adoption of these amendments is necessary for the preservation of the health, safety, and welfare of individuals receiving services.

In December, 2012 Governor Andrew Cuomo signed the Protection of People with Special Needs Act (PPSNA; chapter 501 of the Laws of 2012); the statute created the Justice Center for the Protection of People with Special Needs (Justice Center) establishing various protections for vulnerable persons, i.e., a new system for incident management in services operated or certified by OASAS; and new requirements for pre-employment background checks in OASAS certified and operated service providers, persons credentialed by the Office, and applicants for new operating certificates.

The amendments to Part 853, effective June 30, 2013 and subsequently September 25, 2013, December 20, 2013, March 20, 2014, June 17, 2014 and September 12, 2014 are necessary to implement the new process of criminal history background checks into the credentialing process for addictions professionals credentialed by OASAS. Additionally, by statute (Mental Hygiene Law sections 19.20 and 19.20-a) requires OASAS, rather than the Justice Center, to conduct reviews of criminal history information and to make recommendations regarding hiring, credentialing and certification so OASAS will be more involved in credentialing decisions.

The promulgation of these regulations is essential to preserve the health, safety and welfare of individuals receiving services within the OASAS treatment system. If OASAS did not promulgate regulations on an emer-

gency basis, the process for OASAS to implement this new process would be implemented ineffectively. Further, protections for individuals receiving services would be threatened by the confusion resulting inconsistent credentialing standards.

OASAS was not able to use the regular rulemaking process established by the State Administrative Procedure Act because there was not sufficient time to develop and promulgate regulations within the necessary timeframes.

Subject: Credentialing of Addictions Professionals.

Purpose: To enhance protections for service recipients in the OASAS system.

Substance of emergency rule: The Proposed Rule would Repeal the current Part 853 and Replace it with a new Part 853. The new Part incorporates amendments related to required Criminal History Information reviews of all applicants for credentials issued by the Office on or after June 30, 2013, such reviews required by the Justice Center, pursuant to the Protection of People with Special Needs Act (Chapter 501 of the Laws of 2012).

The Proposed Rule also makes technical amendments to standardize formatting for all Office regulations. Amendments related to the Justice Center include:

Section 853.1 sets forth the statutory authority for the promulgation of the rule by the Office of Alcoholism and Substance Abuse Services ("Office"); adds The Protection of People with Special Needs Act.

§ 853.3 adds new definition of "Criminal history information" and "custodian" as defined in Chapter 501/2012.

§ 853.5 adds requirements for criminal history information reviews of all applicants for new, renewal or reinstated certified alcoholism and substance abuse counselor ("CASAC") credentials; adds requirement for compliance by CASACs with a Code of Conduct for "custodians" in all OASAS service providers; "grandfathers" currently credentialed persons until application for renewal or reinstatement, application for a position or a new position in an Office certified service provider.

§ 853.6 adds requirements for criminal history information reviews of all applicants for new, renewal or reinstated certified alcoholism and substance abuse counselor trainee ("CASAC-T") credentials; adds requirement for compliance by CASAC-Ts with a Code of Conduct for "custodians" in all OASAS service providers.

§ 853.7 adds requirements for criminal history information reviews of all applicants for new, renewal or reinstated credentialed prevention professional ("CPP") credentials; adds requirement for compliance by CPPs with a Code of Conduct for "custodians" in all OASAS service providers.

§ 853.8 adds requirements for criminal history information reviews of all applicants for new, renewal or reinstated credentialed prevention specialist ("CPS") credentials; adds requirement for compliance by CPSs with a Code of Conduct for "custodians" in all OASAS service providers.

§ 853.9 adds requirements for criminal history information reviews of all applicants for new, renewal or reinstated credentialed problem gambling counselor ("CPGC") credentials; adds requirement for compliance by CPGCs with a Code of Conduct for "custodians" in all OASAS service providers.

§ 853.10 sets forth the application process for all credentials, including required criminal history information reviews and compliance with Justice Center Code of Conduct.

§ 853.17 adds requirements for periodic updates of criminal history information reviews of all persons holding a credential issued by the Office.

§ 853.18 adds requirements for criminal history information reviews of all applicants for new, renewal or reinstated credentials issued by the Office.

§ 853.19 adds requirements for criminal history information reviews and compliance with the Justice Center Code of Conduct of all applicants for credentialing based on reciprocity.

§ 853.20 adds non-compliance with the Justice Center Code of Conduct to the standards for misconduct.

§ 853.22 adds reference to the Justice Center Code of Conduct in relation to penalties for misconduct.

§ 853.23 adds reference to the Justice Center Code of Conduct in relation to complaints filed against credentialed persons.

§ 853.28 adds reference to the Justice Center Code of Conduct in relation to the Affidavit of Ethical Principles.

A copy of the full text of the regulatory proposal is available on the OASAS website at: <http://www.oasas.ny.gov/regs/index.cfm>

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire December 14, 2014.

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

Regulatory Impact Statement**1. Statutory Authority:**

(a) Protection of People with Special Needs Act, Chapter 501 of the Laws of 2012, which added Article 20 to the Executive Law and Article 11 to the Social Services Law as well as amended other laws.

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

(c) Section 19.20 of the MHL authorizes the Office to receive and review criminal history information related to employees or volunteers of treatment facilities certified, licensed, funded or operated by the Office.

(d) Section 19.20-a of the MHL authorizes the Office to receive and review criminal history information related to persons seeking to be credentialed by the Office or applicants for an operating certificate issued by the Office.

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

(f) Subdivisions (15) and (16) of Section 296 of the Executive Law identify unlawful discriminatory practices with regard to the employment and the issuance of licenses.

(g) Civil Service Law § 50 authorizes the Department of Civil Service to request criminal history checks for applicants for state employment.

(h) Article 23-A of the Corrections Law provides the factors to be considered concerning a person's previous criminal convictions in making a determination regarding employment and the issuance of a license.

2. Legislative Objectives:

The legislative objectives are the establishment of comprehensive protections for vulnerable persons against abuse, neglect and other harmful conduct. The Act created a Justice Center with responsibilities for effective incident reporting and investigation systems, fair disciplinary processes, informed and appropriate staff hiring procedures, and strengthened monitoring and oversight systems.

The Justice Center operates a 24/7 hotline for reporting allegations of abuse, neglect and significant incidents in accordance with Chapter 501's provisions for uniform definitions, mandatory reporting and minimum standards for incident management programs. Working in collaboration with the relevant state oversight agencies, the Justice Center is charged with developing and delivering appropriate training for caregivers, their supervisors and investigators.

A vulnerable persons' central register contains the names of individuals found to have committed substantiated acts of abuse or neglect using a preponderance of evidence standard. All persons found to have committed such acts have the right to a hearing before an administrative law judge to challenge those findings. Persons having committed egregious or repeated acts of abuse or neglect are prohibited from future employment caring for vulnerable persons, and may be subject to criminal prosecution. Less serious acts of misconduct are subject to progressive discipline and retraining. Applicants with criminal records who seek employment serving vulnerable persons will be individually evaluated as to suitability for such positions.

The proposed Rule requires persons who apply to the Office for a credential issued by the Office comply with the requirements of The Protection of People with Special Needs Act (Chapter 501 of the Laws of 2012) regarding a criminal history information review prior to certification, credentialing or hiring, and compliance with a Code of Conduct established by the Justice Center.

3. Needs and Benefits:

OASAS is proposing to adopt the following regulation because The Protection of People with Special Needs Act (Chapter 501 of the Laws of 2012) requires that allegations of abuse and neglect, and other significant incidents be reported to the Justice Center Vulnerable Persons Central Register via the toll free hotline. OASAS credentials addiction, prevention, and compulsive gambling professionals who will be affected by the Justice Center oversight as they work in OASAS certified facilities. This legislation conforms OASAS regulations to definitions, reporting, documentation and review requirements of the Justice Center. The legislation strengthens the role of the Incident Review Committee and links compliance with reporting and investigating incidents to a providers operating certificate renewal. Criminal history information reviews will be conducted on each prospective treatment provider, operator, employee, contractor, or volunteer of treatment facilities certified by the NYS Office of Alcoholism and Substance Abuse Services ("OASAS" or "Office") who will have the potential for, or may be permitted, regular and substantial unsupervised or unrestricted physical contact with the clients in such treatment facilities and any individual seeking to be credentialed by the Office. This will include OASAS credentialed professionals who will also be required to comply to an additional Code of Conduct of the Justice Center which could subject those persons to additional reasons for limitation or loss of their credential or their future employment in other covered agencies throughout New York State.

The legislation is intended to enable the Office to more thoroughly and efficiently monitor the quality and competency of its credentialed professionals and enable providers of services to persons seeking treatment for substance use disorders to secure appropriate and properly trained individuals to staff their facilities and programs, by verifying criminal history information received for individuals seeking employment or volunteering their services and those credentialed by the Office.

The legislation also makes technical amendments to make language and format consistent throughout OASAS regulations.

4. Costs:

The Office anticipates no fiscal impact on providers, or local governments, job creation or loss.

5. Paperwork:

The proposed regulatory amendments will require limited additional information to be reported to the Justice Center by applicants and mandated reporters and documentation retained by providers. To the extent feasible, such reporting shall be made electronically to avoid unnecessary paperwork costs.

6. Local Government Mandates:

This regulation imposes no new mandates on local governments operating certified OASAS programs even if they employ OASAS credentialed professionals.

7. Duplications:

This proposed rule does not duplicate any State or federal statute or rule.

8. Alternatives:

The Protection of People with Special Needs Act (Chapter 501 of the Laws of 2012) requires the adoption of this proposed regulation.

9. Federal Standards:

These amendments do not conflict with federal standards.

10. Compliance Schedule:

The regulations will be effective on June 30, 2013 and subsequently September 25, 2013, December 20, 2013, March 20, 2014, June 17, 2014 and September 12, 2014 to ensure compliance with Chapter 501 of the Laws of 2012.

Regulatory Flexibility Analysis**1. Effect of the rule:**

OASAS credentials persons in the areas of substance use disorder counseling, problem gambling counseling, and prevention counseling to work in OASAS certified programs. Services are provided by programs of varying size in every county in New York State; some counties are also certified service providers. The proposed Rule has been reviewed by OASAS in consideration of its impact on applications for credentialed professionals, on local governments; additionally this regulation has been reviewed by the OASAS Advisory Council which consists of providers and stakeholders of all sizes and municipalities.

2. Compliance requirements:

The proposed Rule requires persons who apply to the Office for a credential issued by the Office comply with the requirements of The Protection of People with Special Needs Act (Chapter 501 of the Laws of 2012) regarding a criminal history information review prior to certification, credentialing or hiring, and compliance with a Code of Conduct established by the Justice Center. The Office will retain documentation of such review; this will not be an additional recordkeeping requirement for applicants or the Office. Every region of the state has resources for gathering fingerprints, the history information collection is done electronically from a central state or federal database, and communicated electronically, so any additional recordkeeping will be minimal regardless of geographic location. No new professional services are required; no professional services will be lost. Credentialed persons must already comply with a code of ethics; it is not anticipated that additional character and competence requirements will increase or decrease the number of applicants or have an impact on the number of employment opportunities regardless of geographic location. Because these changes are statewide no region will experience any adverse impact because of population density or geography.

3. Professional services:

The Office will retain documentation of such applicant review; this will not be an additional recordkeeping requirement for applicants or the Office. Every region of the state has resources for gathering fingerprints, the history information collection is done electronically from a central state or federal database, and communicated electronically, so any additional recordkeeping will be minimal regardless of geographic location. No new professional services are required; no professional services will be lost.

4. Compliance costs:

Because every region of the state has resources for gathering fingerprints, and the history information collection is done electronically from a central state or federal database, individual or municipal applicants will not be affected in any way. Many municipalities already conduct criminal history information reviews on prospective employees. Applicants for certification and re-certification will pay for their own processing.

5. Economic and technological feasibility:

Implementation of the rule will require computer and email capability; all applicants in all regions of the state, both private and public sector, have such capability. No upgrades of hardware or software will be required. Also because every region of the state has resources for gathering fingerprints, and the history information collection is done electronically from a central state or federal database, and increasingly communicated electronically any additional recordkeeping will be minimal regardless of geographic location.

6. Minimizing adverse impact:

The application of the rule will not impose additional costs or operating requirements on applicants, local governments or small businesses; therefore, it is designed on its face to minimize adverse impact.

7. Small business and local government participation:

The proposed rule is posted on the agency website; agency review process involves input from trade organizations representing providers in both public and private sectors, of all sizes and in diverse geographic locations. The Office has prepared webinars and guidance documents for applicant use and for training agency administration.

Rural Area Flexibility Analysis

1. Rural areas in which the rule will apply (types and estimated number of rural areas):

OASAS services are provided in every county in New York State. 44 counties have a population less than 200,000: Allegany, Cattaraugus, Cayuga, Chautauqua, Chemung, Chenango, Clinton, Columbia, Cortland, Delaware, Essex, Franklin, Fulton, Genesee, Greene, Hamilton, Herkimer, Jefferson, Lewis, Livingston, Madison, Montgomery, Ontario, Orleans, Oswego, Otsego, Putnam, Rensselaer, St. Lawrence, Saratoga, Schoenectady, Schoharie, Schuyler, Seneca, Steuben, Sullivan, Tioga, Tompkins, Ulster, Warren, Washington, Wayne, Wyoming and Yates. 9 counties with certain townships have a population density of 150 persons or less per square mile: Albany, Broome, Dutchess, Erie, Monroe, Niagara, Oneida, Onondaga and Orange.

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

The proposed Rule requires persons who apply to the Office for a credential issued by the Office comply with the requirements of The Protection of People with Special Needs Act (Chapter 501 of the Laws of 2012) regarding a criminal history information review prior to certification, credentialing or hiring, and compliance with a Code of Conduct established by the Justice Center. The Office will retain documentation of such review; this will not be an additional recordkeeping requirement for applicants or the Office. Every region of the state has resources for gathering fingerprints, the history information collection is done electronically from a central state or federal database, and communicated electronically, so any additional recordkeeping will be minimal regardless of geographic location. No new professional services are required; no professional services will be lost. Credentialed persons must already comply with a code of ethics; it is not anticipated that additional character and competence requirements will increase or decrease the number of applicants or have an impact on the number of employment opportunities regardless of geographic location. Because these changes are statewide no region will experience any adverse impact because of population density or geography.

3. Costs:

No additional costs will be incurred for implementation by providers because no additional capital investment, personnel or equipment is needed because the Office and applicants are involved, not programs. Applicants will pay for their own processing regardless of geographic location.

4. Minimizing adverse impact:

The application of the rule will not impose additional costs or operating requirements on providers in rural areas; therefore, it is designed on its face to minimize adverse impact. Credentialed persons must already comply with a code of ethics; it is not anticipated that additional character and competence requirements will increase or decrease the number of applicants or have an impact on the number of employment opportunities regardless of geographic location. Because these changes are statewide no region will experience any adverse impact because of population density or geography.

5. Rural area participation:

The proposed rule is posted on the agency website; agency review process involves input from trade organizations representing providers in diverse geographic locations. The Office has prepared webinars and guidance documents for provider use and for training of agency administration.

Job Impact Statement

OASAS is not submitting a Job Impact Statement for these amendments because OASAS does not anticipate a substantial adverse impact on jobs and employment opportunities.

The proposed regulation requires persons who apply to the Office for

any credential issued by the Office to comply with the requirements of The Protection of People with Special Needs Act (Chapter 501 of the Laws of 2012) and complete a criminal history information review prior to certification, credentialing or hiring. The proposed Rule also requires compliance with a Code of Conduct established by the Justice Center.

The proposed regulation will not have an adverse impact on existing jobs or the development of new employment opportunities for New York residents. It is anticipated that the proposed regulation will not have an adverse impact on existing employees in the field of substance use disorder treatment (certified alcoholism and substance abuse counselors and trainees), substance use disorder prevention counseling (prevention professionals and specialists), or problem gambling counseling. The proposed regulations should not impact the number of criminal history information reviews requested via federal and state existing database. The Office is unable to determine what effect the proposed regulation may have on the employment of independent fingerprinting services or Office employees in the future, but does not anticipate that the proposed rule will increase or decrease the number of applicants for certification.

The proposed regulation does not have an adverse impact on jobs or employment opportunities anywhere in the State; therefore, no region is disproportionately affected by the proposed regulation.

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

Assessment of Public Comment

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

EMERGENCY RULE MAKING

Incident Reporting in OASAS Certified, Licensed, Funded or Operated Programs

I.D. No. ASA-39-14-00008-E

Filing No. 805

Filing Date: 2014-09-16

Effective Date: 2014-09-16

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

Action taken: Repeal of Part 836; and addition of new Part 836 to Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 19.09(b), 19.20, 19.20-a, 19.40 and 32.02; Executive Law, section 296(15) and (16); Corrections Law, art. 23-A; Civil Service Law, section 50; Protection of People with Special Needs Act (L. 2012, ch. 501)

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

Specific reasons underlying the finding of necessity: The immediate adoption of these amendments is necessary for the preservation of the health, safety, and welfare of individuals receiving services.

In December, 2012 Governor Andrew Cuomo signed the Protection of People with Special Needs Act (PPSNA; chapter 501 of the Laws of 2012); the statute created the Justice Center for the Protection of People with Special Needs (Justice Center) establishing various protections for vulnerable persons, i.e., a new system for incident management in services operated or certified by OASAS; investigation of allegations of abuse and neglect and significant incidents; and new requirements for pre-employment background checks in OASAS certified and operated service providers, persons credentialed by the Office, and applicants for new operating certificates.

The amendments to Part 836, effective June 30, 2013 and subsequently September 25, 2013, December 20, 2013, March 20, 2014, June 17, 2014 and September 12, 2014 are necessary to implement the incident reporting and management provisions required by the statute and to ensure compliance with the criminal history background check provisions to further enhance patient safety.

The promulgation of these regulations is essential to preserve the health, safety and welfare of individuals receiving services within the OASAS treatment system. If OASAS did not promulgate regulations to report and manage incidents of abuse and neglect or other significant incidents, these requirements would not be implemented or would be implemented ineffectively. Further, protections for individuals receiving services would be threatened by the confusion resulting from similar functions performed but differing among the other agencies covered by the Justice Center.

OASAS was not able to use the regular rulemaking process established by the State Administrative Procedure Act because there was not suf-

efficient time to develop and promulgate regulations within the necessary timeframes.

Subject: Incident Reporting in OASAS Certified, Licensed, Funded or Operated Programs.

Purpose: To enhance protections for service recipients in the OASAS system.

Substance of emergency rule: The Proposed Rule would Repeal the current Part 836 and Replace it with a new Part 836. The new Part incorporates amendments related to incident reporting consistent with statutory requirements, definitions and procedures of the Justice Center, pursuant to the Protection of People with Special Needs Act (Chapter 501 of the Laws of 2012).

The Proposed Rule also makes technical amendments to standardize formatting for all Office regulations. Amendments related to the Justice Center include:

Section 836.1 sets forth the background and intent and adds language referencing the purpose for establishing the Justice Center and for coordinating agency incident reviews with the Justice Center.

§ 836.2 sets forth the statutory authority for the promulgation of the rule by the Office of Alcoholism and Substance Abuse Services (“Office”); adds The Protection of People with Special Needs Act; removes repealed statutes; adds the Vulnerable Persons Central Register in § 492 of the social services law.

§ 836.3 amends applicability of this Part to be consistent with Justice Center statute and regulations.

§ 836.4 adds new definitions or amends to be consistent with the Justice Center: “Reportable incident”, “physical abuse”, “psychological abuse”, “deliberate inappropriate use of restraints”, “use of aversive conditioning”, “obstruction of reports of reportable incidents”, “unlawful use or administration of a controlled substance”, “neglect”, “significant incident”, “custodian”, “facility or provider agency”, “mandated reporter”, “human services professional”, “physical injury”, “delegate investigatory entity”, “Justice Center”, “Person receiving services”, “Personal representative”, “Abuse or neglect”, “subject of the report”, “other persons named in the report”, “Vulnerable Persons Central Register”, “vulnerable person”, “intentionally and recklessly”, “clinical records”, “Incident management programs”, “Incident report”, “Missing client”, “qualified person”, “staff”, “Incident review Committee”.

§ 836.5 adds requirements for providers of services’ policies and procedures related to, and implementation of, an Incident Management Program consistent with the requirements of Chapter 501 of the Laws of 2012.

§ 836.6 adds requirements for incident reporting, notice and investigation to incorporate changes in processes necessitated by Chapter 501 of the Laws of 2012.

§ 836.7 adds requirements for additional notice and reporting requirements for reportable and significant incidents necessitated by Chapter 501 of the Laws of 2012 such as: reporting “immediately” upon discovery of an incident; required reporting to the Justice Center Vulnerable Persons Central Register, Office and regional Field Office; includes all “custodians” as “mandated reporters” for purposes of this regulation.

§ 836.8 adds requirements for configuration of Incident Review Committees consistent with requirements of Chapter 501 of the Laws of 2012.

§ 836.9 adds requirements for recordkeeping and release of records to qualified persons consistent with requirements of Chapter 501 of the Laws of 2012.

§ 836.10 adds to a provider’s duty to cooperate regarding inspection of facilities by permitting the Justice Center access for purposes of an investigation of a reportable or significant incident consistent with requirements of Chapter 501 of the Laws of 2012.

A copy of the full text of the regulatory proposal is available on the OASAS website at: <http://www.oasas.ny.gov/regs/index.cfm>

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire December 14, 2014.

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

Regulatory Impact Statement

1. Statutory Authority:

(a) Protection of People with Special Needs Act, Chapter 501 of the Laws of 2012, which added Article 20 to the Executive Law and Article 11 to the Social Services Law as well as amended other laws.

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

(c) Section 19.20 of the MHL authorizes the Office to receive and

review criminal history information related to employees or volunteers of treatment facilities certified, licensed, funded or operated by the Office.

(d) Section 19.20-a of the MHL authorizes the Office to receive and review criminal history information related to persons seeking to be credentialed by the Office or applicants for an operating certificate issued by the Office.

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

(f) Subdivisions (15) and (16) of Section 296 of the Executive Law identify unlawful discriminatory practices with regard to the employment and the issuance of licenses.

(h) Civil Service Law § 50 authorizes the Department of Civil Service to request criminal history checks for applicants for state employment.

(i) Article 23-A of the Corrections Law provides the factors to be considered concerning a person’s previous criminal convictions in making a determination regarding employment and the issuance of a license.

2. Legislative Objectives:

The legislative objectives are the establishment of comprehensive protections for vulnerable persons against abuse, neglect and other harmful conduct. The Act created a Justice Center with responsibilities for effective incident reporting and investigation systems, fair disciplinary processes, informed and appropriate staff hiring procedures, and strengthened monitoring and oversight systems.

The Justice Center operates a 24/7 hotline for reporting allegations of abuse, neglect and significant incidents in accordance with Chapter 501’s provisions for uniform definitions, mandatory reporting and minimum standards for incident management programs. Working in collaboration with the relevant state oversight agencies, the Justice Center is charged with developing and delivering appropriate training for caregivers, their supervisors and investigators.

A vulnerable persons’ central register contains the names of individuals found to have committed substantiated acts of abuse or neglect using a preponderance of evidence standard. All persons found to have committed such acts have the right to a hearing before an administrative law judge to challenge those findings. Persons having committed egregious or repeated acts of abuse or neglect are prohibited from future employment caring for vulnerable persons, and may be subject to criminal prosecution. Less serious acts of misconduct are subject to progressive discipline and retraining. Applicants with criminal records who seek employment serving vulnerable persons will be individually evaluated as to suitability for such positions.

3. Needs and Benefits:

OASAS is proposing to adopt the following regulation because The Protection of People with Special Needs Act (Chapter 501 of the Laws of 2012) requires that allegations of abuse and neglect, and other significant incidents be reported to the Justice Center Vulnerable Persons Central Register via the toll free hotline. This legislation conforms OASAS regulations to definitions, incident reporting, documentation and review requirements of the Justice Center. The legislation strengthens the role of the Incident Review Committee and links compliance with reporting and investigating incidents to a providers operating certificate renewal. Criminal history information reviews will be conducted on each prospective treatment provider, operator, employee, contractor, or volunteer of treatment facilities certified by the NYS Office of Alcoholism and Substance Abuse Services (“OASAS” or “Office”) who will have the potential for, or may be permitted, regular and substantial unsupervised or unrestricted physical contact with the clients in such treatment facilities and any individual seeking to be credentialed by the Office. The cost of fingerprinting will be subsidized by the Office.

This legislation requires patients and staff be notified of the toll free Vulnerable Persons Central Register for purposes of reporting allegations of abuse and neglect in OASAS certified programs and by OASAS custodians, and that staff receive regular training in their obligations as custodians regarding regulatory requirements for prompt and thorough investigations, staff oversight, confidentiality laws, record keeping, timing of reporting and investigating, content of reports, and procedures for corrective action plan implementation. Training will be provided by the Office or the Justice Center.

The legislation is intended to enable providers of services to persons seeking treatment for substance use disorders to secure appropriate and properly trained individuals to staff their facilities and programs, by verifying criminal history information received for individuals seeking employment or volunteering their services and those credentialed by the Office.

The legislation also makes technical amendments to make language and format consistent throughout OASAS regulations.

4. Costs:

The Office anticipates no fiscal impact on providers or local governments, job creation or loss, because the process of reporting incidents will not require any additions or reductions in staffing. OASAS will subsidize the fingerprinting process for not-for-profit providers.

5. Paperwork:

The proposed regulatory amendments will require limited additional information to be reported to the Justice Center by mandated reporters and documentation retained by providers. To the extent feasible, such reporting shall be made electronically to avoid unnecessary paperwork costs.

6. Local Government Mandates:

This regulation imposes no new mandates on local governments operating certified OASAS programs.

7. Duplication:

This proposed rule does not duplicate any State or federal statute or rule.

8. Alternatives:

The Protection of People with Special Needs Act (Chapter 501 of the Laws of 2012) requires the adoption of this proposed regulation.

9. Federal Standards:

These amendments do not conflict with federal standards.

10. Compliance Schedule:

The regulations will be effective on June 30, 2013 and subsequently September 25, 2013, December 20, 2013, March 20, 2014, June 17, 2014 and September 12, 2014 to ensure compliance with Chapter 501 of the Laws of 2012.

Regulatory Flexibility Analysis

1. Effect of the rule:

OASAS services are provided by programs of varying size in every county in New York State; some counties are also certified service providers. The proposed Rule has been reviewed by OASAS in consideration of its impact on service providers of all sizes and on local governments, whether or not they are certified operators; additionally this regulation has been reviewed by the OASAS Advisory Council which consists of providers and stakeholders of all sizes and municipalities.

2. Compliance requirements:

The proposed regulation implements provisions of The Protection of People with Special Needs Act (Chapter 501 of the Laws of 2012) for the purpose of ensuring persons who receive services from OASAS certified providers are assured of receiving treatment from custodians who have been appropriately trained and screened for any prior abusive behavior. The proposed rule will incorporate the Justice Center incident reporting mechanism and database into the OASAS system so all reporting will be centralized and tracked for patterns and abuse and neglect allegations and other significant incidents. These regulations have been reviewed by the OASAS Advisory council consisting of stakeholders from all regions of the state, providers of all sizes and municipalities.

The Rule sets forth criteria for incident reporting to the Justice Center, investigations, corrective action and penalties for programs and individuals who are not compliant with these, or other applicable, regulations. Incidents will be reported electronically via a toll-free hotline.

3. Professional services:

The proposed Rule has been reviewed by OASAS in consideration of its impact on service providers of all sizes and on local governments, whether or not they are certified operators. OASAS has determined that the new regulations will not require any new staff or any reductions in staff, any new reporting requirements or technology. No additional professional services will be required of as a result of these amendments; nor will the amendments add to the professional service needs of local governments. Because of the electronic nature of the reporting transactions, minimal paperwork will be involved on the part of business or local governments. Because every region of the state has certified programs, and requirements for staffing and training are uniform already, programs will not be affected in any way because of their size or corporate status.

4. Compliance costs:

No additional costs will be incurred for implementation by providers because no additional capital investment, personnel or equipment is needed regardless of size or corporate status.

5. Economic and technological feasibility:

Implementation of the rule will require computer and email capability; all providers in all regions of the state, both private and public sector, already have such capability. No upgrades of hardware or software will be required.

6. Minimizing adverse impact:

The application of the rule will not impose additional costs or operating requirements on providers on local governments or small businesses; therefore, it is designed on its face to minimize adverse impact.

7. Small business and local government participation:

The proposed rule is posted on the agency website; agency review process involves input from trade organizations representing providers in both public and private sectors, of all sizes and in diverse geographic locations. The Office has prepared webinars and guidance documents for provider use and for training of agency administration.

Providers will be required to retain documentation of fingerprint requests for employees, contractors of volunteers they ultimately employ;

this will not be a significant additional recordkeeping requirement for personnel records they are already required to retain. Every region of the state has resources for gathering fingerprints, the history information collection is done electronically from a central state or federal database, and communicated electronically, so any additional recordkeeping will be minimal regardless of geographic location. No new professional services are required; no professional services will be lost.

Rural Area Flexibility Analysis

1. Rural areas in which the rule will apply (types and estimated number of rural areas):

OASAS services are provided in every county in New York State. 44 counties have a population less than 200,000: Allegany, Cattaraugus, Cayuga, Chautauque, Chemung, Chenango, Clinton, Columbia, Cortland, Delaware, Essex, Franklin, Fulton, Genesee, Greene, Hamilton, Herkimer, Jefferson, Lewis, Livingston, Madison, Montgomery, Ontario, Orleans, Oswego, Otsego, Putnam, Rensselaer, St. Lawrence, Saratoga, Schoenectady, Schoharie, Schuyler, Seneca, Steuben, Sullivan, Tioga, Tompkins, Ulster, Warren, Washington, Wayne, Wyoming and Yates. 9 counties with certain townships have a population density of 150 persons or less per square mile: Albany, Broome, Dutchess, Erie, Monroe, Niagara, Oneida, Onondaga and Orange.

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

The proposed regulation implements provisions of The Protection of People with Special Needs Act (Chapter 501 of the Laws of 2012) for the purpose of establishing a uniform incident reporting process via a state centralized hotline (Vulnerable Persons Central Register). The proposed regulation incorporates provisions from this Act into the OASAS incident reporting regulation which applies to all programs throughout the state in all geographic locations. Because the regulation applies to incident reporting and incident management in OASAS certified, operated, funded or licensed programs, there is no different application in any geographic location. The proposed regulation incorporates the OASAS incident reporting process into a larger oversight and enforcement entity under the Justice Center. These requirements apply to OASAS providers in all geographic regions. Reporting will be done electronically via telephone or other secure means which are not limited by geography. The new rule does not require any additional staff, although training will be required statewide and be largely provided by the Office or the Justice Center.

The Rule sets forth criteria for incident reporting to the Justice Center, investigations, corrective action and penalties for programs and individuals who are not compliant with these, or other applicable, regulations. The proposed Rule has been reviewed by OASAS in consideration of its impact on service providers in rural areas. Because every region of the state has certified programs, and requirements for staffing, training and incident reporting are uniform already, programs will not be affected in any way because of their geographic location in a rural area.

3. Costs:

No additional costs will be incurred for implementation by providers because no additional capital investment, personnel or equipment is needed.

4. Minimizing adverse impact: The application of the rule will not impose additional costs or operating requirements on providers in rural areas; therefore, it is designed on its face to minimize adverse impact.

5. Rural area participation: The proposed rule is posted on the agency website; agency review process involves input from trade organizations representing providers in diverse geographic locations. The Office has prepared webinars and guidance documents for provider use and for training of agency administration.

Job Impact Statement

OASAS is not submitting a Job Impact Statement for these amendments because OASAS does not anticipate a substantial adverse impact on jobs and employment opportunities.

The proposed regulation implements provisions of The Protection of People with Special Needs Act (Chapter 501 of the Laws of 2012) for the purpose of ensuring persons who receive services from OASAS certified providers are assured of receiving treatment from custodians who have been appropriately trained and screened for any prior abusive behavior. The proposed rule incorporates definitions and procedures for reporting incidents to the Justice Center and highlights the role of investigations and a provider Incident Review Committee to be responsible for quality assurance, implementing corrective action plans related to repetitive incidents or patterns of lack of oversight. It also strengthens the link to program certification through the requirement for staff background checks and record retention and the review by OASAS quality assurance staff.

The Rule sets forth criteria for incident reporting to the Justice Center, investigations, corrective action and penalties for programs and individuals who are not compliant with these, or other applicable, regulations. The proposed regulation requires criminal history information reviews of any

employee, contractor, or volunteer in treatment facilities certified by the Office who will have the potential for, or may be permitted, regular and substantial unsupervised or unrestricted physical contact with the clients in such treatment facilities.

OASAS has evaluated this proposal considering its impact on existing jobs or the development of new employment opportunities for New York residents. It is anticipated that the proposed regulation will not have an adverse impact on existing employees in the field of substance use disorder treatment, nor affect any reduction or increase in the number of positions available in the future. OASAS providers are already required to report incidents, but the role of a new oversight agency will help to consolidate and streamline that process.

The proposed regulation will have no adverse impact on existing jobs or the development of new employment opportunities because programs are already required to report incidents; new regulations will not require any new staff or any reductions in staff. It is not anticipated that the proposed rule will affect the number of persons applying for employment within the OASAS system.

Assessment of Public Comment

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

NOTICE OF ADOPTION

Repeal of 14 NYCRR Part 1034: Requirements for the Operation of Inpatient Substance Abuse Treatment and Rehabilitation Programs

I.D. No. ASA-08-14-00005-A

Filing No. 774

Filing Date: 2014-09-11

Effective Date: 2014-10-01

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

Action taken: Repeal of Part 1034 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 19.07(c), 19.09(b), 19.40, 32.07(a) and 32.02

Subject: Repeal of 14 NYCRR Part 1034: requirements for the operation of inpatient substance abuse treatment and rehabilitation programs.

Purpose: To repeal an outdated regulation.

Text or summary was published in the February 26, 2014 issue of the Register, I.D. No. ASA-08-14-00005-P.

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

Revised rule making(s) were previously published in the State Register on February 26, 2014

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Implementation of a Program for the Designation of Vital Access Providers

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

Filing No. 771

Filing Date: 2014-09-10

Effective Date: 2014-09-10

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

Action taken: Addition of Part 802 to Title 14 NYCRR.

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

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

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

Text or summary was published in the July 23, 2014 issue of the Register, I.D. No. ASA-29-14-00002-P.

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

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

Assessment of Public Comment

The agency received no public comment.

Education Department

EMERGENCY RULE MAKING

Certification As a Clinical Nurse Specialist (CNS)

I.D. No. EDU-15-14-00003-E

Filing No. 813

Filing Date: 2014-09-16

Effective Date: 2014-09-27

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

Action taken: Amendment of sections 52.12, 64.4 and 64.8 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207(not subdivided), 212(3), 6504(not subdivided), 6507(2)(a), 6910(1), (2), (3), (4), (5), 6911(1) and (2); and L. 2013, ch. 364

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

Specific reasons underlying the finding of necessity: The proposed rule is necessary to implement Chapter 364 of the Laws of 2013, which added Education Law section 6911 and will become effective on September 27, 2014. The proposed rule establishes certification for clinical nurse specialists, and protects the title "clinical nurse specialist" and the designation "CNS", in order to protect the public by ensuring that only those properly educated and prepared to be clinical nurse specialists perform clinical nurse specialist services.

Because the Board of Regents meets at fixed intervals, the earliest the proposed amendment can be presented for adoption, 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 September 15-16, 2014 Regents meeting. Furthermore, pursuant to SAPA section 203(1), the earliest effective date of the proposed amendment, if adopted at the September meeting, would be October 1, 2014, the date a Notice of Adoption would be published in the State Register. However, the provisions of Chapter 364 of the Laws of 2013 will become effective on September 27, 2014.

Therefore, emergency action is necessary at the September 2014 Regents meeting for the preservation of the public health and general welfare in order to ensure that the rule is in effect on the effective date of Chapter 364 of the Laws of 2013 so that the Chapter may be timely implemented.

Subject: Certification as a clinical nurse specialist (CNS).

Purpose: To implement Chapter 364 of the Laws of 2013.

Text of emergency rule: 1. Paragraph (3) of subdivision (b) of section 52.12 of the Regulations of the Commissioner of Education is added, effective September 27, 2014, to read as follows:

(3) *Clinical nurse specialist education programs.*

(i) *Registration. A clinical nurse specialist education program is a master's degree, doctoral degree or post master's certificate program, which prepares graduates to practice as a clinical nurse specialist as permitted by section 6911 of the Education Law. No clinical nurse specialist education program shall be offered in this State until such program has been registered by the department.*

(ii) *Admission. A clinical nurse specialist education program sponsor shall ensure that each student holds a baccalaureate degree in nursing and an unrestricted license and current registration as a registered professional nurse in New York State prior to enrolling the student in any preceptorship, course or other activity that includes clinical practice.*

(iii) *Curriculum. The curriculum shall include, in addition to the requirements of section 52.2(c) of this Title, clinical practice education of at least five hundred hours which is supervised by a clinical nurse special-*

ist, nurse practitioner or physician practicing in the specialty area of the clinical nurse specialist program.

(iv) *Credentialed.* Upon satisfactory completion of all components of the registered clinical nurse specialist education program, a certificate of completion of a course of study for clinical nurse specialists shall be issued to each individual by the education program sponsor.

2. Subdivision (b) of section 64.4 of the Regulations of the Commissioner of Education is amended, effective September 27, 2014, as follows:

(b) Professional study. To meet the professional education requirements for certification as a nurse practitioner in this State, the applicant shall present evidence of:

- (1) ...
- (2) ...

3. Paragraph (1) of subdivision (c) of section 64.4 of the Regulations of the Commissioner of Education is repealed, and paragraphs (2) and (3) of subdivision (c) are renumbered as paragraphs (1) and (2), respectively, effective September 27, 2014.

4. Subdivision (d) of section 64.4 of the Regulations of the Commissioner of Education is repealed, and subdivision (e) of section 64.4 is relettered as subdivision (d), effective September 27, 2014.

5. Section 64.8 of the Regulations of the Commissioner of Education is added, effective September 27, 2014, to read as follows:

§ 64.8 Clinical nurse specialist certification.

(a) *Requirements for certification.* An applicant for certification as a clinical nurse specialist shall:

(1) submit an application, together with the required fee, to the department;

(2) hold an unrestricted license and current registration to practice as a registered professional nurse in New York State; and

(3) present evidence, satisfactory to the department, of meeting all applicable professional education and experience requirements for certification as a clinical nurse specialist.

(b) *Professional education and experience criteria.* To meet the professional education and experience requirements for certification as a clinical nurse specialist in this State, the applicant shall present evidence of having met the criteria in one of the four paragraphs below:

(1) completion of a clinical nurse specialist education program registered by the department; or

(2) completion of an education program determined by the department to be equivalent to a clinical nurse specialist education program registered by the department and current certification as a clinical nurse specialist by a national certifying body acceptable to the department; or

(3) holding a license or certification as a clinical nurse specialist issued by another state or country and meeting the substantial equivalent of the New York State requirements for certification, as determined by the department; or

(4) submitting an application and the required fee for certification as a clinical nurse specialist to the department prior to September 15, 2015 and satisfactorily meeting, as determined by the department, the criteria set forth in subparagraph (i) or (ii) of this paragraph prior to September 15, 2017:

(i) completion of a master's degree program in clinical nursing practice, which is determined by the department to be substantially equivalent to the preparation provided by a registered clinical nurse specialist education program, and completion, on or after January 1, 2011, of at least three thousand hours of clinical practice as a registered professional nurse in a clinical nurse specialty area in a general hospital licensed pursuant to article 28 of the Public Health Law; or

(ii) current certification as a clinical nurse specialist by a national certifying body acceptable to the department.

(c) *Certificates.*

(1) A clinical nurse specialist certificate issued to a registered professional nurse shall reflect the nurse's specialty area of clinical nurse specialist academic preparation.

(2) A registered professional nurse may apply for certification as a clinical nurse specialist in more than one specialty area of practice. A complete application and fee shall be required for each certificate.

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-15-14-00003-P, Issue of April 16, 2014. The emergency rule will expire December 14, 2014.

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

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.

Subdivision (3) of section 212 of the Education Law authorizes the State Education Department ("Department") to determine and set fees for certifications and permits.

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.

Section 6910 of the Education Law defines requirements for certification as a nurse practitioner and authorizes the standards for such certification to be included in regulations promulgated by the Commissioner of Education.

Subdivision (1) of section 6911 of the Education Law, as added by Chapter 364 of the Laws of 2013, establishes the criteria for certification as a clinical nurse specialist, including license and education requirements, application filing, and certification fees.

Subdivision (2) of section 6911 of the Education Law, as added by Chapter 364 of the Laws of 2013, establishes that only certified persons may use the title "clinical nurse specialist" and/or the designation "CNS."

2. LEGISLATIVE OBJECTIVES:

The proposed rule carries out the intent of Chapter 364 of the Laws of 2013 that amended Article 139 of the Education Law by adding a new section 6911, which establishes the criteria for certification as a clinical nurse specialist and protects the title "clinical nurse specialist" and the designation "CNS" to ensure that only those properly educated and properly prepared to be clinical nurse specialists hold themselves out as such. Specifically, the proposed rule establishes the requirements for clinical nurse specialist education programs, which include registration, admission, curriculum and credential requirements for clinical nurse specialist education programs offered in New York State. The proposed rule also establishes requirements for certification as a clinical nurse specialist, which include, but are not limited to, professional education and clinical experience requirements. The proposed rule requires an applicant for certification as a clinical nurse specialist to submit an application, together with the required fee, to the Department. It further requires the applicant to be currently licensed and registered in New York State and either a graduate of a clinical nurse specialist education program registered by the Department or able to meet alternative criteria acceptable to the Department relating to professional certification, education or clinical experience.

Finally, the proposed amendment will also repeal certain regulatory provisions relating to nurse practitioner certification in section 64.4 of the Regulations of the Commissioner of Education, as those provisions no longer have any application.

3. NEEDS AND BENEFITS:

The purpose of the proposed rule is to ensure that only those registered professional nurses who are properly educated and prepared to be clinical nurse specialists hold themselves out as such by establishing requirements for clinical nurse specialist certification. The proposed rule is necessary to conform the Regulations of the Commissioner to Chapter 364 of the Laws of 2013.

As required by statute, the proposed rule is also needed to establish the requirements for clinical nurse specialist education programs.

4. COSTS:

(a) **Costs to State government:** The proposed rule implements statutory requirements and establishes standards as directed by statute, and will not impose any additional costs on State government beyond those imposed by the statutory requirements.

(b) **Costs to local government:** There are no additional costs to local governments.

(c) **Cost to private regulated parties.** The proposed rule does not impose any additional costs on regulated parties beyond those imposed by statute. As required by Education Law section 6911(1)(d), those individuals seeking certification as a clinical nurse specialist must pay a fee to the Department of \$50 for each initial certificate authorizing clinical nurse specialist practice and a triennial registration fee of \$30. Higher education institutions that seek to register clinical nurse specialist education programs with the Department, including those in rural areas, may incur costs related to the development and maintenance of such education programs and their registration. It is anticipated that such costs will be minimal because many higher education institutions are already offering courses that would or could, with slight adjustments, meet the registration requirements for a clinical nurse specialist education program, and that higher education institutions should be able to use their existing staffs and resources to revise their courses and curricula to meet the clinical nurse specialist certification requirements.

(d) **Cost to the regulatory agency:** The proposed rule does not impose any additional costs on the Department beyond those imposed by statute. Any associated costs to the Department will be offset by the fees charged to applicants and no significant cost will result to the Department.

5. LOCAL GOVERNMENT MANDATES:

The proposed rule implements the requirements of section 6911 of the Education Law, as added by Chapter 364 of the Laws of 2013, by establishing standards for individuals to be certified to practice as a clinical nurse specialist and standards for clinical nurse specialist education programs provided by institutions of higher education, and protects the title "clinical nurse specialist" and the designation "CNS" to ensure that only those properly educated and prepared to be clinical nurse specialists hold themselves out as such. It does not impose any program, service, duty, or responsibility upon local governments.

6. PAPERWORK:

The proposed rule imposes no new reporting or other paperwork requirements beyond those imposed by the statute.

7. DUPLICATION:

The proposed rule is necessary to implement Chapter 364 of the Laws of 2013. There are no other state or federal requirements on the subject matter of this proposed rule. Therefore, the proposed rule does not duplicate other existing state or federal requirements.

8. ALTERNATIVES:

The proposed rule is necessary to conform the Regulations of the Commissioner of Education to Chapter 364 of the Law of 2013 and repeal certain regulatory provisions in section 64.4 of the Regulations of the Commissioner of Education, as those provisions no longer have any application. There are no significant alternatives to the proposed rule and none were considered.

9. FEDERAL STANDARDS:

Since, there are no applicable federal standards for clinical nurse specialist certification and clinical nurse specialist education programs, the proposed rule does not exceed any minimum federal standards for the same or similar subject areas.

10. COMPLIANCE SCHEDULE:

The proposed rule is necessary to conform the Regulations of the Commissioner of Education to Chapter 364 of the Laws of 2013. Registered professional nurses seeking certification as clinical nurse specialists from the Department must comply with the certification requirements on the effective date of the authorizing statute, September 27, 2014. It is anticipated that registered professional nurses seeking such certification will be able to comply with the proposed rule by the effective date so that no additional period of time will be necessary to enable regulated parties to comply.

Regulatory Flexibility Analysis

The proposed rule implements the requirements of section 6911 of the Education Law, as added by Chapter 364 of the Laws of 2013, by establishing standards for individuals to be certified to practice as a clinical nurse specialist and standards for clinical nurse specialist education programs provided by institutions of higher education, and protects the title "clinical nurse specialist" and the designation "CNS" to ensure that only those properly educated and prepared to be clinical nurse specialists hold themselves out as such. The proposed rule will not impose any reporting, recordkeeping, or other compliance requirements or costs, or have an adverse impact, on small businesses or local governments. Because it is evident from the nature of the proposed rule that it will not affect small businesses or local governments, no affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis is not required and one has not been prepared.

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

The proposed rule will apply to registered professional nurses, who voluntarily apply to the State Education Department (Department) for certification as clinical nurse specialists and to higher education institutions that seek to register clinical nurse specialist education programs with the Department, 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. Of the approximately 282,000 registered professional nurses who are registered to practice in New York State, approximately 30,100 reported their permanent address of record in a rural county of the State. Additionally, advanced degree granting nurse education programs are located in many, but not all, rural counties.

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

As required by Chapter 364 of the Laws of 2013, which will become effective September 27, 2014, the proposed rule establishes certification for clinical nurse specialists to protect the title "clinical nurse specialist" and the designation "CNS" by ensuring that only those properly educated and prepared to be clinical nurse specialists hold themselves out as such. The proposed amendment to 52.12 of the Regulations of the Commissioner of Education and addition of section 64.8 to the Regulations of the Commissioner of Education implement the clinical nurse specialist certification requirements of Chapter 364.

The proposed amendment to section 52.12 of the Regulations of the

Commissioner establishes the requirements for clinical nurse specialist education programs. These requirements include registration, admission, curriculum and credential requirements for clinical nurse specialist education programs offered in New York State.

The proposed addition of section 64.8 to the Regulations of the Commissioner establishes requirements for certification as a clinical nurse specialist, which include, but are not limited to, professional education and clinical experience requirements. The proposed rule requires an applicant for certification as a clinical nurse specialist to submit an application, together with the required fee, to the Department. It also requires the applicant to be currently licensed and registered in New York State and either a graduate of a clinical nurse specialist education program registered by the Department or able to meet alternative criteria acceptable to the Department relating to professional certification, education or clinical experience.

In addition, the proposed amendment will repeal certain regulatory provisions relating to nurse practitioner certification in section 64.4 of the Regulations of the Commissioner of Education, as those provisions no longer have any application.

The proposed rule will not require any higher education institution to offer an education program that prepares registered professional nurses to practice as clinical nurse specialists. The proposed rule will not impose any reporting, recordkeeping or other requirements on higher education institutions in rural areas, unless they seek to register a clinical nurse specialist education program with the Department. Such higher education institutions will have reporting and record keeping obligations related to the development and maintenance of their clinical nurse specialist education programs, as well as the registration of such programs with the Department.

The proposed rule will not impose any additional professional services requirements on entities in rural areas.

3. COSTS:

The proposed rule will not require any registered professional nurse to become certified as a clinical nurse specialist. With respect to registered professional nurses seeking certification from the Department as clinical nurse specialists, including those in rural areas, the proposed rule does not impose any additional costs beyond those required by statute. As required by Education Law section 6911(1)(d), those individuals seeking certification as a clinical nurse specialist must pay a fee to the Department of \$50 for each initial certificate authorizing clinical nurse specialist practice and a triennial registration fee of \$30.

The proposed rule will not require higher education institutions to offer education programs that prepare registered professional nurses to practice as clinical nurse specialists and does not impose any costs on them. However, higher education institutions that seek to register clinical nurse specialist education programs with the Department, including those in rural areas, may incur costs related to the development and maintenance of such education programs and their registration. It is anticipated that such costs will be minimal because many higher education institutions are already offering courses that would or could, with slight adjustments, meet the registration requirements for a clinical nurse specialist education program, and that higher education institutions should be able to use their existing staffs and resources to revise their courses and curricula to meet the clinical nurse specialist certification requirements.

4. MINIMIZING ADVERSE IMPACT:

The proposed rule implements the clinical nurse specialist certification requirements of Chapter 364. The statutory requirements do not make exceptions for individuals who live or work in rural areas. Nor do they make exceptions for higher education institutions located in rural areas. Thus, the Department has determined that the proposed rule's requirements should apply to all registered professional nurses seeking certification as clinical nurse specialists and all higher education institutions seeking to register clinical nurse specialist education programs with the Department, regardless of geographic location, to help ensure continuing competency across the State. The Department has also determined that uniform standards for the Department's review of prospective registered clinical nurse specialist education programs are necessary to ensure quality clinical nurse specialist education in all parts of the State. Because of the nature of the proposed rule, alternative approaches for rural areas were not considered.

5. RURAL AREA PARTICIPATION:

Comments on the proposed rule were solicited from statewide organizations representing all parties having an interest in the practice of registered professional nursing. These organizations included the State Board for Nursing and professional associations representing the nursing profession and nursing educators. These groups have members who live or work or provide nursing education 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 rule is necessary to implement statutory requirements in section 6911 of the Education Law, as added by Chapter 364 of the Laws of 2013, and therefore the substantive provisions of the proposed rule cannot be repealed or modified unless there is a further statutory change. Accordingly, there is no need for a shorter review period. The Department invites public comment on the proposed five year review period for this rule. Comments should be sent to the agency contact listed in item 10 of the Notice of Proposed Rule Making published herewith, and must be received within 45 days of the State Register publication date of the Notice.

Job Impact Statement

Section 6911 of the Education Law, as added by Chapter 364 of the Laws of 2013, effective September 27, 2014, establishes certification for clinical nurse specialists and protects the title "clinical nurse specialist" and the designation "CNS" to ensure that only those properly educated and prepared to be clinical nurse specialists hold themselves out as such. The proposed amendment to section 52.12 of the Regulations of the Commissioner and addition of section 64.8 to the Regulations of the Commissioner of Education implement Chapter 364 of the Laws of 2013 by establishing criteria for certification as a clinical nurse specialist, including: registration, admission, curriculum and credential requirements for clinical nurse specialist education programs; an application filing requirement; and license and education requirements.

The proposed amendment would also repeal certain regulatory provisions relating to nurse practitioner certification in section 64.4 of the Regulations of the Commissioner of Education, as those provisions no longer have any application.

The proposed amendment to section 52.12 of the Regulations of the Commissioner and addition of section 64.8 of the Regulations to the Commissioner of Education implement specific statutory requirements and directives. Therefore, any impact on jobs and employment opportunities created by establishing certification requirements for clinical nurse specialists is attributable to the statutory requirement, not the proposed amendment and rule, which simply establish standards that conform to the requirements of the statute.

The proposed rule will not have a substantial adverse impact on jobs and employment opportunities. Because it is evident from the nature of the proposed rule that they will have no adverse impact on jobs or employment opportunities attributable to their adoption or only a positive impact, no affirmative steps were needed to ascertain these facts and none were taken. Accordingly, a job impact statement is not required and one was not prepared.

EMERGENCY RULE MAKING

Termination Decisions for Probationary Teachers Based on Annual Professional Performance Reviews (APPR)

I.D. No. EDU-27-14-00015-E

Filing No. 818

Filing Date: 2014-09-16

Effective Date: 2014-09-22

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

Action taken: Amendment of section 30-2.1(d) 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) for revised rule makings, is the September 2014 Regents meeting. Furthermore, pursuant to SAPA section 203(1), the earliest effective date of the proposed amendment, if adopted at the September 2014 meeting, would be October 1, 2014, the date a Notice of Adoption would be published in the State Register. Therefore, emergency action to adopt the proposed rule is necessary now for the preservation of the general welfare in order to ensure that school districts and boards of cooperative educational services are notified of the clarifying definition of performance for termination decisions made based on APPR results for the 2013-2014 school year and thereafter and to ensure that the emergency rule

adopted at the June Regents meeting remains continuously in effect until it can be adopted as a permanent rule.

Subject: Termination Decisions for Probationary Teachers Based on Annual Professional Performance Reviews (APPR).

Purpose: To define performance for purposes of termination decisions for probationary teachers related to APPRs.

Text of emergency rule: 1. Subdivision (d) of section 30-2.1 of the Rules of the Board of Regents is amended effective September 22, 2014, to read as follows:

(d) Annual professional performance reviews of classroom teachers and building principals conducted pursuant to this Subpart shall be a significant factor for employment decisions, including but not limited to, promotion, retention, tenure determinations, termination and supplemental compensation, in accordance with Education Law section 3012-c(1). Nothing herein shall be construed to affect the statutory right of a school district or BOCES to terminate a probationary teacher or principal for statutorily and constitutionally permissible reasons other than the performance of the teacher or principal in the classroom or school, including but not limited to misconduct. *For purposes of this subdivision, section 30-2.11(c) of this Subpart, and Education Law section 3012-c(1) and (5)(b), performance shall mean a teacher's or principal's overall composite rating pursuant to an annual professional performance review conducted under this Subpart.*

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-27-14-00015-EP, Issue of July 9, 2014. The emergency rule will expire November 14, 2014.

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

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

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

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

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

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

2. LEGISLATIVE OBJECTIVES:

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

3. NEEDS AND BENEFITS:

The purpose of the proposed rule is to clarify that the references to "performance" of the teacher or principal in the classroom or school for purposes of Education Law § 3012-c(1) and (5)(b) and section 30-2.1(d) and 30-2.11(c) of the Rules of the Board of Regents are references to the teacher's or principal's performance on the APPR, as measured by the teacher's or principal's overall composite rating. Accordingly, where a board of education has not yet completed an APPR for a probationary teacher or principal, it may terminate the probationary teacher for any statutorily and constitutionally permissible reasons. Those reasons may include the quality of the instruction or services provided by the probationary teacher or principal based on evidence other than the composite APPR rating. Once it has completed an annual professional performance review, the board of education must consider the APPR rating as a significant factor to retain or terminate the employee, unless the employee is being terminated for statutorily and constitutionally permissible reasons other than the teacher's or principal's composite APPR rating, such as misconduct, insubordination, time and attendance issues and the like.

4. COSTS:

(a) Costs to State government: none.

(b) Costs to local government: none.

(c) Costs to private regulated parties: none.

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

5. LOCAL GOVERNMENT MANDATES:

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

6. PAPERWORK:

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

7. DUPLICATION:

The rule does not duplicate existing State or Federal requirements.

8. ALTERNATIVES:

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

9. FEDERAL STANDARDS:

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

10. COMPLIANCE SCHEDULE:

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

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

The purpose of the proposed rule is to clarify that the references to "performance" of the teacher or principal in the classroom or school for purposes of Education Law § 3012-c(1) and (5)(b) and section 30-2.1(d) and 30-2.11(c) of the Rules of the Board of Regents are references to the teacher's or principal's performance on the APPR, as measured by the teacher's or principal's overall composite rating. Accordingly, where a board of education has not yet completed an APPR for a probationary teacher or principal, it may terminate the probationary teacher for any statutorily and constitutionally permissible reasons. Those reasons may include the quality of the instruction or services provided by the probationary teacher or principal based on evidence other than the composite APPR rating. Once it has completed an annual professional performance review, the board of education must consider the APPR rating as a significant factor to retain or terminate the employee, unless the employee is being terminated for statutorily and constitutionally permissible reasons other than the teacher's or principal's composite APPR rating, such as misconduct, insubordination, time and attendance issues and the like.

The proposed rule does not impose any reporting, recordkeeping or other compliance requirements, and will not have an adverse economic impact, on small business. Because it is evident from the nature of the amendment that it does not affect small businesses, no further steps were needed to ascertain that fact and one were taken. Accordingly, a regulatory flexibility analysis for small businesses is not required and one has not been prepared.

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

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

2. COMPLIANCE REQUIREMENTS:

The purpose of the proposed rule is to clarify that the references to "performance" of the teacher or principal in the classroom or school for purposes of Education Law § 3012-c(1) and (5)(b) and section 30-2.1(d) and 30-2.11(c) of the Rules of the Board of Regents are references to the teacher's or principal's performance on the APPR, as measured by the teacher's or principal's overall composite rating. Accordingly, where a board of education has not yet completed an APPR for a probationary teacher or principal, it may terminate the probationary teacher for any statutorily and constitutionally permissible reasons. Those reasons may include the quality of the instruction or services provided by the probationary teacher or principal based on evidence other than the composite APPR rating. Once it has completed an annual professional performance review, the board of education must consider the APPR rating as a significant factor to retain or terminate the employee, unless the employee is being terminated for statutorily and constitutionally permissible reasons other than the teacher's or principal's composite APPR rating, such as misconduct, insubordination, time and attendance issues and the like.

3. PROFESSIONAL SERVICES:

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

4. COMPLIANCE COSTS:

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

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The rule does not impose any additional technological requirements on

school districts or BOCES. Economic feasibility is addressed above under Compliance Costs.

6. MINIMIZING ADVERSE IMPACT:

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

7. LOCAL GOVERNMENT PARTICIPATION:

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

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

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

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

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

The purpose of the proposed rule is to clarify that the references to "performance" of the teacher or principal in the classroom or school for purposes of Education Law § 3012-c(1) and (5)(b) and section 30-2.1(d) and section 30-2.11(c) of the Rules of the Board of Regents are references to the teacher's or principal's performance on the APPR, as measured by the teacher's or principal's overall composite rating. Accordingly, where a board of education has not yet completed an APPR for a probationary teacher or principal, it may terminate the probationary teacher for any statutorily and constitutionally permissible reasons. Those reasons may include the quality of the instruction or services provided by the probationary teacher or principal based on evidence other than the composite APPR rating. Once it has completed an annual professional performance review, the board of education must consider the APPR rating as a significant factor to retain or terminate the employee, unless the employee is being terminated for statutorily and constitutionally permissible reasons other than the teacher's or principal's composite APPR rating, such as misconduct, insubordination, time and attendance issues and the like.

3. COSTS:

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

4. MINIMIZING ADVERSE IMPACT:

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

5. RURAL AREA PARTICIPATION:

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

Job Impact Statement

The purpose of the proposed rule is to clarify that the references to "performance" of the teacher or principal in the classroom or school for purposes of Education Law § 3012-c(1) and (5)(b) section 30-2.1(d) and 30-2.11(c) of the Rules of the Board of Regents are references to the teacher's or principal's performance on the APPR, as measured by the teacher's or principal's overall composite rating. Accordingly, where a board of education has not yet completed an APPR for a probationary teacher or principal, it may terminate the probationary teacher for any statutorily and constitutionally permissible reasons. Those reasons may include the quality of the instruction or services provided by the probationary teacher or principal based on evidence other than the composite APPR rating. Once it has completed an annual professional performance review, the board of education must consider the APPR rating as a significant factor to retain or terminate the employee, unless the employee is being terminated for statutorily and constitutionally permissible reasons other than the teacher's or principal's composite APPR rating, such as misconduct, insubordination, time and attendance issues and the like.

The proposed rule will have no impact on the number of jobs or employment opportunities in New York State, no further steps were needed to

ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

Assessment of Public Comment

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

EMERGENCY RULE MAKING

Outsourcing Facilities Engaged in the Compounding of Sterile Drugs

I.D. No. EDU-27-14-00017-E

Filing No. 816

Filing Date: 2014-09-16

Effective Date: 2014-09-22

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

Action taken: Amendment of sections 29.2, 29.7, 63.6 and 63.8 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207(not subdivided), 212(3), 215(not subdivided), 6504(not subdivided), 6507(2)(a), 6509(1-11), 6802(1-23), 6808(1), (5), (6), (7), 6808-b(1), (4)(f), 6810(14), 6811(26), 6811-a(1), (2), 6812(1), 6817(1) and 6831(1-14); and L. 2014, ch. 60, part D

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

Specific reasons underlying the finding of necessity: The purpose of this amendment is to implement Part D of Chapter 60 of the Laws of 2014, which becomes effective June 29, 2014. The amendments to the Education Law provide for the registration and regulation of outsourcing facilities, a new category of establishment recognized by the Federal Food and Drug Administration pursuant to the Drug Quality and Security Act (DQSA) of 2013. DQSA's provisions are designed to ensure the safety of compounded drugs and our nation's pharmaceutical supply chain in order to prevent a future public health crisis like the 2012 meningitis outbreak tied to the New England Compounding Center. DQSA, *inter alia*, provides for comprehensive oversight of outsourcing facilities, which seek to compound and distribute sterile drugs and products to hospitals and medical practices without first obtaining patient-specific prescriptions. Part D of Chapter 60 of the Laws of 2014 conforms the Education Law to the requirements of DQSA.

Because the Board of Regents meets at fixed intervals, the earliest the proposed amendment can be presented for adoption on a non-emergency basis, after expiration of the required 45-day public comment provided for in the State Administrative Procedure Act (SAPA) section 202(1) and (5), would be the September 15-16 Regents meeting. Furthermore, pursuant to SAPA section 203(1), the earliest effective date of the proposed amendment, if adopted at the September meeting, would be October 1, 2014, the date the Notice of Adoption would be published in the State Register. However, the provisions of Part D of Chapter 60 of the Laws become effective June 29, 2014.

Subject: Outsourcing facilities engaged in the compounding of sterile drugs.

Purpose: To implement L. 2014, ch. 60, part D by establishing criteria for registration of outsourcing facilities.

Substance of emergency rule: The Commissioner of Education proposes to amend sections 29.2 and 29.7 of the Rules of the Board of Regents and sections 63.6 and 63.8 of the Regulations of the Commissioner of Education, relating to the registration and regulation of resident and nonresident establishments seeking registration as outsourcing facilities. The following is a summary of the substance of the proposed amendment:

Subdivision (a) of section 29.2 of the Rules of the Board of Regents is amended to add a new paragraph (14) to include in the definition of unprofessional conduct the failure to adhere to applicable practice guidelines, as determined by the Commissioner, for the compounding of sterile drugs and products.

Paragraph (17) of subdivision (a) of section 29.7 of the Rules of the Board of Regents is amended to clarify that the term "beyond use date" means the expiration date of a drug. This clarification is needed to conform terms used in other federal and State provisions and to provide clarity to regulated parties.

Paragraphs (2) and (4) of subdivision (a) of section 63.6 of the Regulations of the Commissioner of Education are amended to add "outsourcing facilities" to the list of establishments that require a registration and to

require such establishments to be equipped with proper sanitary appliances and kept in a clean and orderly manner.

Subdivision (c) of section 63.6 of the Regulations of the Commissioner of Education is amended to update and clarify the educational preparation needed for persons designated to supervise establishments that are registered as manufacturers or wholesalers, and to require that outsourcing facilities be under the supervision of a licensed pharmacist at all times. The amendment to subdivision (c) also defines the requirements for registration and renewal of registrations of outsourcing facilities that are located within New York State, including a requirement that each outsourcing facility must first become registered as such a facility with the federal Food and Drug Administration (FDA) under the provisions of the federal Food, Drug and Cosmetic Act and be subject to annual inspections. The amendment to this subdivision includes a requirement that, if the facility seeks to fill patient specific prescriptions, it must also be registered as a pharmacy; it defines record-keeping and reporting requirements to the Department, establishes the need to maintain registration with the FDA pursuant to the Food, Drug and Cosmetic Act for renewal of its registration. It also requires outsourcing facilities to comply with good manufacturing practices as specified in 21 CFR 210 and 211.

Section 63.8 of the Regulations of the Commissioner of Education is amended to add "outsourcing facilities" to the list of nonresident establishments that must be registered by the Department and sets forth the registration requirements for nonresident outsourcing facilities. The amendment to this section also requires that for a renewal of registration in New York State, such facilities must maintain both registrations with the FDA and with the state in which they are physically located/state of residence. The amendment to this section also subjects nonresident outsourcing facilities to annual inspections. Further, the amendment to this section provides that if the facility seeks to fill patient specific prescriptions, that it must also be registered as a pharmacy; it defines record-keeping and reporting requirements to the Department, and requires nonresident outsourcing facilities to comply with good manufacturing practices as specified in 21 CFR 210 and 211, and as enforced by the FDA for the preparation of compounded sterile drugs and products. In addition, the proposed amendment requires nonresident outsourcing facilities to notify the Department, on forms prescribed by the Department not less than 30 days prior to the expected relocation or discontinuance, and provide any information and/or reports to the Department upon the Commissioner's request.

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-27-14-00017-EP, Issue of July 9, 2014. The emergency rule will expire November 14, 2014.

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

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.

Subdivision (3) of section 212 of the Education Law authorizes the State Education Department (Department) to determine and set fees for certifications and permits.

Section 215 of the Education Law grants the Board of Regents, or the Commissioner of Education, or their representatives, the authority to require, any institution in the university and any school or institution under the educational supervision of the state, to submit reports giving such information and in such form as the Board of Regents or the Commissioner of Education shall prescribe.

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

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

Section 6509 of the Education Law authorizes the Board of Regents to promulgate rules regarding professional misconduct in certain professions.

Part D of Chapter 60 of the Laws of 2014 amends various provisions of the Education Law to implement Title I of the federal Drug Quality and Security Act. Part D of Chapter 60 of the Laws of 2014 provides for the Department's registration and regulation of both resident and nonresident outsourcing facilities by the Department and includes several reporting and compliance requirements for outsourcing facilities.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment implements Part D of Chapter 60 of the Laws of 2014 by establishing the registration and regulatory requirements for both resident and nonresident outsourcing facilities.

3. NEEDS AND BENEFITS:

The purpose of the proposed amendment is to ensure the safety of compounded drugs by establishing requirements for the registration and regulation of both resident and nonresident outsourcing facilities that seek to compound and distribute sterile drugs and products without first obtaining patient-specific prescriptions. The proposed amendment is necessary to conform the Regulations of the Commissioner of Education to Part D of Chapter 60 of the Laws of 2014, which implements the requirements of Title I of DSQA relating to the registration and regulation of outsourcing facilities.

4. COSTS:

(a) Costs to State government. The proposed amendment implements statutory requirements and establishes standards as directed by statute. The amendment will not impose any additional cost on State government, over and above the cost imposed by the statutory requirements.

(b) Costs to local government. There are no additional costs to local government.

(c) Cost to private regulated parties. A resident or nonresident establishment seeking registration as an outsourcing facility by the Department would be required to pay the Department a registration fee. Such fee would be paid once as part of the establishment's application for initial registration, which, if granted, would be for a three-year period. After initial registration and once every three years thereafter, a resident or nonresident establishments seeking renewal of its registration would be required to pay the Department a fee of \$520 to defray the cost of its review, upon submission of the establishment's application. Therefore, the annualized cost for a facility's initial registration is \$275 and the annualized cost for a facility's subsequent registration or registrations is \$173.33.

The Department estimates that it would require a staff member to spend about eight hours to complete the initial and renewal of registration applications. Based on an hourly rate of \$37 per hour (including fringe benefits), the Department estimates that the cost of completing either one of these applications to be \$296. An application would have to be completed once every three years. Therefore, the annualized cost of completing the application is estimated to be \$98.

The proposed amendment does not impose any costs beyond those imposed by Part D of Chapter 60 of the Laws of 2014; except the proposed amendment requires that outsourcing facilities submit, upon initial registration and at least annually thereafter, the results of an inspection by either representatives of the FDA, the Department or a third party acceptable to the Department. Regulated facilities will not be required to pay any additional fees for an inspection by the Department. To date, the Department has not approved any third parties to perform these inspections. Therefore, it does not have any estimate of costs for inspections performed by third parties.

(d) Cost to the regulatory agency. The proposed amendment does not impose additional costs on the Department beyond those imposed by statute and the Department estimates that any costs incurred by the Department to inspect these facilities will be absorbed by existing staff and the registration and renewal fees paid by the outsourcing facilities.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment implements the requirements of Part D of Chapter 60 of the Laws of 2014 relating to the registration and regulation of both resident and nonresident outsourcing facilities. It does not impose any programs, service, duty, or responsibility upon local governments.

6. PAPERWORK:

The proposed amendment requires outsourcing facilities to submit, upon initial registration and at least annually thereafter, the results of an inspection by either representatives of the FDA, the Department or a third party acceptable to the Department. The proposed amendment further requires outsourcing facilities submit a report, on a form prescribed by the Commissioner, to the Executive Secretary to the State Board upon initial registration and every six months thereafter, identifying the drugs compounded by the facility during the 6-month period and providing certain information relating to such drugs. It requires outsourcing facilities to maintain quality control records for determining beyond use dating and stability for five years and to make such records available to the Department for review and copying upon request. The proposed amendment also requires non-resident outsourcing facilities to notify the Department on forms prescribed by the Department at least 30 days prior to the expected date of relocation or discontinuance. However, the Department intends to accept electronic submissions for some or all of the above-referenced reporting requirements.

7. DUPLICATION:

The proposed amendment does not duplicate other existing state or federal requirements.

8. ALTERNATIVES:

The proposed amendment is necessary to implement Part D of Chapter 60 of the Laws of 2014, which in turn, implements the requirements of Title I of DSQA relating to the registration and regulation of outsourcing

facilities that seek to compound sterile drugs and products without first obtaining patient-specific prescriptions. There are no viable alternatives to the proposed amendments and none were considered.

9. FEDERAL STANDARDS:

The proposed amendment implements Title I of the federal Drug Safety and Security Act.

10. COMPLIANCE SCHEDULE:

The proposed amendment is necessary to conform to the requirements of Part D of Chapter 60 of the Laws of 2014, which becomes effective on June 29, 2014. It is anticipated that outsourcing facilities that wish to compound sterile drugs and products in this State will be able to comply with the proposed amendment by the effective date. Therefore, no additional period of time will be necessary to enable regulated parties to comply.

Regulatory Flexibility Analysis**(a) Small Businesses:****1. EFFECT OF RULE:**

The purpose of the proposed amendment is to implement the requirements of Part D of Chapter 60 of the Laws of 2014 by establishing registration and regulation requirements for both resident and nonresident establishments seeking to compound and/or distribute sterile drugs and products in New York State, without first obtaining patient-specific prescriptions. Such establishments are referred to as outsourcing facilities.

The Department does not know the exact number of establishments that are small businesses that might potentially apply for registration as outsourcing facilities. However, the Department is aware of five resident establishments that have applied to the Federal Food and Drug Administration to be recognized by that agency as outsourcing facilities, which is a pre-requisite for New York State registration. Of these five establishments, it appears that four of them are small businesses.

2. COMPLIANCE REQUIREMENTS:

There are compliance requirements for resident and nonresident establishments seeking registration as outsourcing facilities. Among other requirements, the proposed amendment requires that outsourcing facilities submit, upon initial registration and at least annually thereafter, the results of an inspection by either representatives of the FDA, the Department or a third party acceptable to the Department. The proposed amendment further requires that a New York registered pharmacist be present at all times when an outsourcing facility is open for business and that outsourcing facilities submit a report, on a form prescribed by the Commissioner, to the Executive Secretary to the State Board upon initial registration and every six months thereafter, identifying the drugs compounded by the facility during the 6-month period and providing certain information relating to such drugs. It requires outsourcing facilities to maintain quality control records for determining beyond use dating and stability for five years and to make such records available to the Department for review and copying upon request. It further requires all outsourcing facilities to comply with the special provisions relating to outsourcing facilities set forth in Education Law § 6831 and to comply with good manufacturing practices as defined by the FDA for such facilities. The proposed amendment also requires nonresident outsourcing facilities to notify the Department on forms prescribed by the Department at least 30 days prior to the expected date of relocation or discontinuance.

The proposed amendment also provides that an outsourcing facility's failure to adhere to applicable practice guidelines for the compounding of sterile drugs and products is unprofessional misconduct and clarifies that holding for sale, offering for sale, or selling any drug later than the beyond use date, which means the expiration date of the drug, constitutes unprofessional misconduct.

The proposed amendment is necessary to implement Part D of Chapter 60 of the Laws of 2014, which implements the requirements of Title I of DSQA.

3. PROFESSIONAL SERVICES:

No professional services are expected to be required by small businesses to comply with the proposed amendment. The regular staff of small businesses will be able to complete the application for registration as an outsourcing facility needed for review by the Department. The regular staff of small businesses will further be able to comply with the reporting and maintenance of quality control record requirements for such facilities.

4. COMPLIANCE COSTS:

A resident or nonresident establishment seeking registration as an outsourcing facility by the Department would be required to pay the Department a registration fee. Such fee would be paid once as part of the establishment's application for initial registration, which, if granted, would be for a three-year period. After initial registration and once every three years thereafter, a resident or nonresident establishments seeking renewal of its registration would be required to pay the Department a fee of \$520 to defray the cost of its review, upon submission of the establishment's application. Therefore, the annualized cost for a facility's initial registration is \$275 and the annualized cost for a facility's subsequent registration or registrations is \$173.33.

The Department estimates that it would require a staff member to spend about eight hours to complete the initial and renewal of registration applications. Based on an hourly rate of \$37 per hour (including fringe benefits), the Department estimates that the cost of completing either one of these applications to be \$296. An application would have to be completed once every three years. Therefore, the annualized cost of completing the application is estimated to be \$98.

The proposed amendment does not impose any costs beyond those imposed by Part D of Chapter 60 of the Laws of 2014; except the proposed amendment requires that outsourcing facilities submit, upon initial registration and at least annually thereafter, the results of an inspection by either representatives of the FDA, the Department or a third party acceptable to the Department. The Department estimates that any costs incurred by the Department to inspect these facilities will be absorbed by existing staff and the registration and renewal fees paid by the outsourcing facilities. Regulated facilities will not be required to pay any additional fees for an inspection by the Department. To date, the Department has not approved any third parties to perform these inspections. Therefore, it does not have any estimate of costs for inspections performed by third parties.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The proposed rule will not impose technological requirements on regulated parties. See above "Compliance Costs" for the economic impact of the regulation.

6. MINIMIZING ADVERSE IMPACT:

The Department believes that requirements for registration and regulation of resident and nonresident outsourcing facilities are reasonable, and that uniform standards should apply, regardless of the size of such facility, in order to ensure the safety of compounded sterile drugs and products and our state's and nation's pharmaceutical supply chain and to implement Part D of Chapter 60 of the Laws of 2014.

7. SMALL BUSINESS PARTICIPATION:

The Department has shared the proposed amendment with the Pharmacists Society of the State of New York and the New York State Council of Health System Pharmacists; which have members who work in small businesses. The Department has also shared the proposed amendment with the five establishments located in New York that are currently registered by the FDA as an outsourcing facility and who would be affected by this regulation if they seek registration in New York.

(b) Local Governments:

The proposed amendment establishes registration and regulation requirements for both resident and nonresidents establishments seeking to compound and/or distribute sterile drugs and products in New York State, without first obtaining patient-specific prescriptions. It will not impose any reporting, recordkeeping, or other compliance requirements, or have any adverse economic impact on local governments. Accordingly, a regulatory flexibility analysis for small businesses and local governments is not required and one has not been prepared. Because it is evident from the nature of the proposed amendment that it will not adversely affect local governments, no affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for 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 implements the provisions of Part D of Chapter 60 of the Laws of 2014, which establishes registration requirements for all resident and nonresident establishments seeking to prepare and/or distribute compounded sterile drugs and products in New York State. Such establishments are referred to as outsourcing facilities. Part D of Chapter 60 of the Laws of 2014, implements Title I of the Federal Drug Quality and Security Act of 2013, which provides for comprehensive oversight of such facilities. The proposed amendment applies to all resident and nonresident establishments seeking to prepare and/or distribute compounded sterile drugs and products, without receipt of patient-specific prescriptions, 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. To date, of the five resident establishments that have applied to the Federal Food and Drug Administration to be recognized as outsourcing facilities, which is a pre-requisite for New York State registration, none report their location as being in a rural county.

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

The proposed amendment applies to all resident and nonresident establishments seeking to compound and/or distribute sterile drugs and products in New York State, without first obtaining patient-specific prescriptions. Among other requirements, the proposed amendment requires that outsourcing facilities submit, upon initial registration and at least annually thereafter, the results of an inspection by either representatives of the FDA, the Department or a third party acceptable to the Department. The proposed amendment further requires that a New York registered pharmacist be present at all times when an outsourcing facility

is open for business and that outsourcing facilities submit a report, on a form prescribed by the Commissioner, to the Executive Secretary to the State Board upon initial registration and every six months thereafter, identifying the drugs compounded by the facility during the 6-month period and providing certain information relating to such drugs. It requires outsourcing facilities to maintain quality control records for determining beyond use dating and stability for five years and to make such records available to the Department for review and copying upon request. It further requires all outsourcing facilities to comply with the special provisions relating to outsourcing facilities set forth in Education Law § 6831 and to comply with good manufacturing practices as defined by the FDA for such facilities. The proposed amendment also requires nonresident outsourcing facilities to notify the Department on forms prescribed by the Department at least 30 days prior to the expected date of relocation or discontinuance.

The proposed amendment also provides that an outsourcing facility's failure to adhere to applicable practice guidelines for the compounding of sterile drugs and products is unprofessional misconduct and clarifies that holding for sale, offering for sale, or selling any drug later than the beyond use date, which means the expiration date of the drug, constitutes unprofessional misconduct.

No professional services are expected to be required by entities in rural areas to comply with the proposed amendment.

3. COSTS:

A resident or nonresident establishment seeking registration as an outsourcing facility by the Department would be required to pay the Department a registration fee. Such fee would be paid once as part of the establishment's application for initial registration, which, if granted, would be for a three-year period. After initial registration and once every three years thereafter, a resident or nonresident establishments seeking renewal of its registration would be required to pay the Department a fee of \$520 to defray the cost of its review, upon submission of the establishment's application. Therefore, the annualized cost for a facility's initial registration is \$275 and the annualized cost for a facility's subsequent registration or registrations is \$173.33.

The Department estimates that it would require a staff member to spend about eight hours to complete the initial and renewal of registration applications. Based on an hourly rate of \$37 per hour (including fringe benefits), the Department estimates that the cost of completing either one of these applications to be \$296. An application would have to be completed once every three years. Therefore, the annualized cost of completing the application is estimated to be \$98.

The proposed amendment does not impose any costs beyond those imposed by Part D of Chapter 60 of the Laws of 2014; except the proposed amendment requires that outsourcing facilities submit, upon initial registration and at least annually thereafter, the results of an inspection by either representatives of the FDA, the Department or a third party acceptable to the Department. The Department estimates that any costs incurred by the Department to inspect these facilities will be absorbed by existing staff and the registration and renewal fees paid by the outsourcing facilities. Regulated facilities will not be required to pay any additional fees for an inspection by the Department. To date, the Department has not approved any third parties to perform these inspections. Therefore, it does not have any estimate of costs for inspections performed by third parties.

4. MINIMIZING ADVERSE IMPACT:

The Department believes that requirements for registration and regulation of resident and nonresident outsourcing facilities are reasonable, and that uniform standards should apply, regardless of the size of such facility, in order to ensure the safety of compounded sterile drugs and products and our state's and nation's pharmaceutical supply chain and to uniformly implement Part D of Chapter 60 of the Laws of 2014.

5. RURAL AREA PARTICIPATION:

The Department has shared the proposed amendment with the Pharmacists Society of the State of New York and the New York State Council of Health System Pharmacists; whom have members who live and/or work in rural areas of the State. The Department has also shared the proposed amendment with the five establishments located in New York who would be affected by this regulation.

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

Pursuant to State Administrative Procedure Act section 207(1)(b), the 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 of Part D of Chapter 60 of the Laws of 2014, 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 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

Part D of Chapter 60 of the Laws of 2014 implements the requirements of Title I of the Federal Drug Quality and Security Act of 2013, which provides for comprehensive oversight of outsourcing facilities, which are establishments that are engaged in the compounding of sterile drugs. The proposed amendment implements Part D of Chapter 60 of the Laws of 2014 by establishing registration requirements for non-resident and resident outsourcing facilities that seek to compound drugs in this State and provides regulatory oversight over such facilities.

The proposed amendment also modifies certain regulatory provisions relating to supervision requirements for registered resident manufacturers and wholesalers.

Since the proposed amendment implements specific statutory requirements and directives, any impact on jobs and employment opportunities created by establishing requirements for the registration and regulation of outsourcing facilities is attributable to the statutory requirement, not the proposed amendment, which simply establishes standards that conform to the requirements of the statute.

The proposed 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 have no adverse impact on jobs and employment opportunities, no affirmative steps were needed to ascertain these facts and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

Assessment of Public Comment

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

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

Academic Intervention Services (AIS)

I.D. No. EDU-39-14-00015-EP

Filing No. 820

Filing Date: 2014-09-16

Effective Date: 2014-09-16

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

Proposed Action: Amendment of section 100.2(ee) of Title 8 NYCRR.

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

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

Specific reasons underlying the finding of necessity: The proposed rule would extend certain of the provisions in section 100.2(ee) of the Commissioner's Regulations through the 2014-2015 school year, in order to provide continued flexibility to school districts in the provision of Academic Intervention Services (AIS) for those students who performed below Level 3 on the grade 3-8 ELA and math assessments but at or above cut scores established by the Regents.

Since the Board of Regents meets at monthly intervals, the earliest the proposed amendment could be adopted by regular action after publication of a Notice of Proposed Rule Making and expiration of the 45-day public comment period prescribed in State Administrative Procedure Act (SAPA) section 202 would be the December 15-16, 2014 Regents meeting. Because SAPA section 203(1) provides that an adopted rule may not become effective until a Notice of Adoption is published in the State Register, the earliest the proposed amendment could become effective if adopted at the December Regents meeting, is December 31, 2014. However, school districts need to know now what the modified requirements for AIS will be so that they may plan and timely implement AIS for the 2014-2015 school year.

Emergency Action is necessary for the preservation of the general welfare to immediately establish modified requirements for the provision of Academic Intervention Services for the 2014-2015 school year, for purposes of providing districts with flexibility to address the change in student rates of proficiency on the 2013 grades 3-8 assessments in English Language Arts and mathematics, and thereby ensure the timely implementation of the modified AIS requirements by school districts in the 2014-2015 school year.

It is anticipated that the proposed amendment will be presented for

adoption as a permanent rule at the December 15-16, 2014 Regents meeting, which is the first scheduled Regents meeting after publication of the proposed rule in the State Register and expiration of the 45-day public comment period prescribed in the State Administrative Procedure Act for State agency rule makings.

Subject: Academic Intervention Services (AIS).

Purpose: To establish modified requirements for AIS during the 2014-2015 school year.

Text of emergency/proposed rule: Paragraph (2) of subdivision (ee) of section 100.2 of the Regulations of the Commissioner of Education is amended, effective September 16, 2014, as follows:

(2) Requirements for providing academic intervention services in grade three to grade eight. Schools shall provide academic intervention services when students:

(i) score below:

(a) the State designated performance level on one or more of the State elementary assessments in English language arts, mathematics or science, provided that for the [2013-2014] 2014-2015 school year only, the following shall apply:

(1) those students scoring below a scale score specified in subclause (3) of this clause shall receive academic intervention instructional services; and

(2) those students scoring at or above a scale score specified in subclause (3) of this clause but below level 3/proficient shall not be required to receive academic intervention instructional and/or student support services unless the school district, in its discretion, deems it necessary. Each school district shall develop and maintain on file a uniform process by which the district determines whether to offer AIS during the [2013-2014] 2014-2015 school year to students who scored above a scale score specified in subclause (3) of this clause but below level 3/proficient on a grade 3-8 English language arts or mathematics State assessment in [2012-2013] 2013-2014, and shall no later than [November 1, 2013] November 1, 2014 either post to its website or distribute to parents in writing a description of such process;

(3) . . .

(b) . . .

(ii) . . .

(iii) . . .

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 December 14, 2014.

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

Data, views or arguments may be submitted to: Cosimo Tangorra, Jr., 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

I. STATUTORY AUTHORITY:

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

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

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

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

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

Education Law section 3204(3) provides for the courses of study in the public schools.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment is consistent with the authority conferred by the above statutes and is necessary to implement policy enacted by the Board of Regents relating to academic intervention services (AIS).

3. NEEDS AND BENEFITS:

In 2013, the Regents adopted amendments to Commissioner's Regulations section 100.2(ee) [EDU-40-13-00005-EP, State Register October 2, 2014; EDU-40-13-00005-A, State Register December 31, 2013] that provided flexibility to districts in the provision of Academic Intervention Services (AIS) for the 2013-2014 school year, in recognition of the fact that the State assessments administered to New York students in Spring 2013 were the first that measured the progress of students in meeting the expectations of the Common Core Learning Standards (CCLS). The proposed amendment would extend similar flexibility in the provision of AIS for the 2014-2015 school year.

At the Board of Regents July 2013 meeting, Department staff discussed with the Board the implications for the provision by school districts of AIS as a result of the substantial decrease in the percentage of students who demonstrated the knowledge and skills necessary to meet grade level Common Core Learning Standards (CCLS) relative to the percentage of students demonstrating this against the 2005 standards.

To ensure that existing support services, including Academic Intervention Services (AIS), remain relevant and appropriate as New York implements the CCLS, the Regents directed the Department to develop proposed amendments to Commissioner's Regulations to provide flexibility in the provision of AIS.

Historically, students who have scored below proficient (Level 3) on State assessments in English language arts or mathematics have been required to receive AIS. However, proficiency standards on the 2012 and the 2013 state assessments could not be directly compared because the 2012 tests were designed to measure different learning standards than the 2013 Common Core tests. Therefore, the Department determined the scale scores for each respective year that was associated with students who scored at the same percentile rank on the two assessments. The Department used these percentile ranks as the basis for determining which students must be provided AIS during the 2013-2014 transition year to ensure that the change in proficiency rates would not result in a significant increase in the percentage of students who must receive these services. The cut scores that the Department used resulted in districts being required to provide AIS to approximately the same percentages of students Statewide in the 2013-14 school year as received AIS in the 2012-13 school year. This was analogous to the action taken by the Regents in July 2010 to address the raising of the cut scores on the 2010 Grade 3-8 English language arts and mathematics assessments.

Under the approved regulation, districts were required to establish a policy to determine what services, if any, to provide in the 2013-14 school year to students who scored above the transitional cut scores established by the Department but below proficiency on the 2013 assessments.

Specifically, the amendment provided that for the 2013-2014 school year only:

- Students who scored at or below the specified cut points for Grades 3-8 English Language Arts and mathematics must receive academic intervention instructional services.
- Students who scored at or above the specified cut points but below the 2013 level 3/proficient cut points would not be required to receive academic intervention instructional and/or student support services unless the school district deemed it necessary.
- Each school district developed and maintained on file a uniform process by which the district determined whether to offer AIS during the 2013-14 school year to students who scored at or above the specified cut points but below the level 3/proficient on grade 3-8 English Language Arts or mathematics State assessments in 2013-14.
- Each school by November 1, 2013 either posted a description of this process to its Website or distributed to parents in writing a description of such process.

The proposed amendment would extend the 2013-2014 amendment to the Commissioner's Regulations through the 2014-15 school year to continue flexibility in the provision of Academic Intervention Services.

4. COSTS:

- (a) Costs to State government: None.
- (b) Costs to local government: None.
- (c) Costs to private regulated parties: None.

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

The proposed amendment extends to the 2014-2015 school year, the modified requirements for the provision of AIS previously implemented for the 2013-2014 school year. The proposed amendment will not impose any additional costs but instead will allow for continued flexibility and reduced costs to school districts in providing AIS.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment does not impose any additional program, service, duty or responsibility upon local governments but merely extends to the 2014-2015 school year, the modified requirements for the provision of AIS previously implemented for the 2013-2014 school year. The proposed amendment will not impose any additional compliance requirements but instead will allow for continued flexibility to school districts in providing AIS.

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 regulations.

8. ALTERNATIVES:

There were no significant alternatives and none were considered. The proposed amendment is necessary to implement Regents policy to provide flexibility to school districts in providing AIS during the 2014-2015 school year.

9. FEDERAL STANDARDS:

There are no related federal standards.

10. COMPLIANCE SCHEDULE:

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

Regulatory Flexibility Analysis**Small Businesses:**

The proposed amendment extends to the 2014-2015 school year the modified requirements for the provision of Academic Intervention Services (AIS) previously implemented for the 2013-2014 school year, to allow for continued flexibility to school districts in providing AIS.

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

Local Government:

1. EFFECT OF RULE:

The proposed amendment applies to each of the 689 public school districts in the State.

2. COMPLIANCE REQUIREMENTS:

The proposed amendment does not impose any additional compliance requirements upon local governments but merely extends to the 2014-2015 school year, the modified requirements for the provision of AIS previously implemented for the 2013-2014 school year in recognition of the fact that the State assessments administered to New York students in Spring 2013 were the first that measured the progress of students in meeting the expectations of the Common Core Learning Standards (CCLS). The proposed amendment will not impose any additional compliance requirements but instead will allow for continued flexibility to school districts in providing AIS.

3. PROFESSIONAL SERVICES:

The proposed amendment imposes no additional professional service requirements on school districts.

4. COMPLIANCE COSTS:

The proposed amendment extends to the 2014-2015 school year, the modified requirements for the provision of AIS previously implemented for the 2013-2014 school year. The proposed amendment will not impose any additional costs but instead will allow for flexibility and reduced costs to school districts in providing AIS.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The proposed amendment does not impose any technological requirements or costs on school districts.

6. MINIMIZING ADVERSE IMPACT:

The proposed amendment is necessary to implement Regents policy to provide flexibility to school districts in providing AIS during the 2014-2015 school year. The proposed amendment does not impose any additional compliance requirements or costs on local governments but merely extends to the 2014-2015 school year, the modified requirements for the provision of AIS previously implemented for the 2013-2014 school year, to allow for continued flexibility to school districts in providing AIS.

7. LOCAL GOVERNMENT PARTICIPATION:

Comments on the proposed rule were solicited from school districts through the offices of the district superintendents of each supervisory district in the State, and from the chief school officers of the five big city school districts.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed rule applies to all school districts in the State, including

those located in the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square mile or less.

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

The proposed amendment does not impose any additional compliance requirements upon rural areas but merely extends to the 2014-2015 school year, the modified requirements for the provision of AIS previously implemented for the 2013-2014 school year in recognition of the fact that the State assessments administered to New York students in Spring 2013 were the first that measured the progress of students in meeting the expectations of the Common Core Learning Standards (CCLS). The proposed amendment will provide flexibility to school districts in providing AIS services.

The proposed amendment imposes no additional professional services requirements on school districts in rural areas.

3. COMPLIANCE COSTS:

The proposed amendment extends to the 2014-2015 school year, the modified requirements for the provision of AIS previously implemented for the 2013-2014 school year. The proposed amendment will not impose any additional costs but instead will allow for flexibility and reduced costs to school districts in providing AIS.

4. MINIMIZING ADVERSE IMPACT:

The proposed amendment does not impose any additional compliance requirements or costs on local governments but merely extends to the 2014-2015 school year, the modified requirements for the provision of AIS previously implemented for the 2013-2014 school year in recognition of the fact that the State assessments administered to New York students in Spring 2013 were the first that measured the progress of students in meeting the expectations of the Common Core Learning Standards (CCLS).

The proposed amendment is necessary to implement Regents policy to provide flexibility to school districts in providing AIS during the 2014-2015 school year. Because the Regents policy upon which the proposed amendment is based uniformly applies to all school districts throughout the State, it is not possible to establish differing compliance or reporting requirements or timetables or to exempt school districts in rural areas from coverage by the proposed amendment.

5. RURAL AREA PARTICIPATION:

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

Job Impact Statement

The proposed amendment extends to the 2014-2015 school year the modified requirements for the provision of Academic Intervention Services (AIS) previously implemented for the 2013-2014 school year, to allow for continued flexibility to school districts in providing AIS. The proposed amendment 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.

NOTICE OF ADOPTION

Special Education Services and Programs for Preschool Children with Disabilities

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

Filing No. 810

Filing Date: 2014-09-16

Effective Date: 2014-10-01

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

Action taken: Amendment of section 200.16(c)(3) and addition of section 200.20(b)(3) to 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) and (20), 4410(1)-(5), (9), (9-a), (9-b), (9-d), (10), (11) and (13); L. of 2013, ch. 545, sections 1 and 2

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 or summary was published in the March 26, 2014 issue of the Register, I.D. No. EDU-12-14-00013-EP.

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

Revised rule making(s) were previously published in the State Register on July 9, 2014.

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

Initial Review of Rule

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

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

Assessment of Public Comment

Since publication of a Notice of Emergency Adoption and Revised Rule Making in the State Register on July 9, 2014, the State Education Department (SED) received the following comments on the proposed amendment from a group of special education administrators.

1. COMMENT:

Support the proposed amendment to expand the background requirements of a chief executive officer, or a person assigned to perform the duties of a chief executive officer, to include individuals who hold 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/or hold a New York State certification of license to provide an evaluation of and/or related service to a student with a disability; and the proposed amendment that clarifies that a chief executive officer must have knowledge of the program and supervisory requirements for providing appropriate evaluations and/or special education services to preschool students with disabilities.

DEPARTMENT RESPONSE:

Comments are supportive in nature and no response is necessary.

2. COMMENT:

The proposed qualifications of chief executive officers are too broad and basically include anyone. It is important that the executive director or persons assigned to perform the duties of a chief executive officer have at least the very same level of education and training as their staff and for them to not only have a thorough understanding of the CPSE process, but to also be able to interpret the results of preschool evaluations and the implications of the results regarding eligibility for service.

DEPARTMENT RESPONSE:

The proposed rule requires that the executive director have knowledge of the program and supervisory requirements for providing appropriate evaluations and/or special education services to preschool students with disabilities.

3. COMMENT:

Knowledge of the program and supervisory requirements for providing appropriate evaluations and/or special education services to preschool students with disabilities is unnecessary as these credentials are not needed to run a successful program.

DEPARTMENT RESPONSE:

The Department believes it is necessary for the chief executive officer to have a working knowledge of the program and supervisory requirements for providing appropriate evaluations and/or special education services to preschool students with disabilities to ensure the program is operating in compliance with the requirements of Part B of the Individuals with Disabilities Education Act (IDEA) and State law and regulations implementing IDEA for preschool students.

NOTICE OF ADOPTION

Certification As a Clinical Nurse Specialist (CNS)

I.D. No. EDU-15-14-00003-A

Filing No. 812

Filing Date: 2014-09-16

Effective Date: 2014-10-01

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

Action taken: Amendment of sections 52.12, 64.4 and 64.8 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207 (not subdivided), 212(3), 6504 (not subdivided), 6507(2)(a), 6910(1), (2), (3), (4) and (5), 6911(1) and (2); and L. 2013, chapter 364

Subject: Certification as a clinical nurse specialist (CNS).

Purpose: To implement Chapter 364 of the Laws of 2013.

Text or summary was published in the April 16, 2014 issue of the Register, I.D. No. EDU-15-14-00003-P.

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

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

Initial Review of Rule

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

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

Assessment of Public Comment

Since publication of a Notice of Proposed Rule Making in the April 16, 2014 State Register, the State Education Department received the following comments:

1. COMMENT:

Concern was expressed regarding limitations on areas of practice. Including sub-specialization, beyond the traditional M&S, Family or Adult, Maternal & Child Health, and Psychiatric practice, has proven problematic in some jurisdictions. Pigeonholing CNSs [clinical nurse specialists] to a single subspecialty beyond the areas of education would place an undue burden on them and is not done for other professions.

DEPARTMENT RESPONSE:

Neither the Education Law nor the proposed regulations require the Department to certify clinical nurse specialists to be “subspecialized” in any practice areas. The Department will certify clinical nurse specialists to practice in four specialty areas: Pediatrics; Adult; Mental Health; and, Oncology, and will not issue clinical nurse specialist certificates in subspecialty areas of practice (i.e., pediatric hematology or neuro-oncology).

2. COMMENT:

The proposed regulations do not specify which certifying bodies will be acceptable under § 64.8(b)(4)(ii) to provide certification for the clinical nurse specialist (CNS) by a “national certifying body acceptable to the department.” The Department should consider the Oncology Nursing Certification Corporation and American Association of Critical-Care Nurses as national certifying bodies acceptable to meet the CNS certification requirement. These organizations are longstanding certifying bodies that offer CNS certification with criteria acceptable to other states with similar legislation and certify CNS expertise within specialty areas, such as oncology and critical care.

DEPARTMENT RESPONSE:

The Department will certify Oncology Clinical Nurse Specialists and accept Oncology Clinic Nurse Specialist certifications from the Oncology Nursing Certification Corporation, and will certify Pediatric Clinical Nurse Specialists and Mental Health Clinical Nurse Specialists. The Department will also accept Pediatric Clinical Nurse Specialist certification and Psychiatric / Mental Health Clinical Nurse Specialist certification from the American Association of Critical-Care Nurses Certification Corporation.

3. COMMENT:

The Department should consider accepting a broader variety of nursing education programs (for example, a master’s degree in nursing or a master’s degree in nursing practice) to satisfy the education requirements for CNS certification.

The proposed § 64.8(b)(4)(i) identifies the education requisite for licensure to be a “master’s degree program in clinical nursing practice, which is determined by the department to be substantially equivalent to the preparation provided by a registered clinical nurse specialist education program.” The commenter notes that its institution has successfully employed CNSs with varying advanced nursing degrees and which has been especially necessary given the nation-wide drop in CNS specific programs.

Nurses with a master’s degree in nursing, coupled with the proposed amount of practice experience, should be eligible for licensure as a CNS to allow for those working in a role where the core components of the CNS (clinical practice, research, education, consultation, and leadership) are exemplified and verified to obtain CNS licensure to allow those practicing as CNSs to be recognized based on their experience and practice.

Why specify, in § 64.8(b)(4)(i), that the educational program must be a Master’s program? Why exclude RNs [registered nurses] who have completed relevant post-Master’s or doctoral programs from this provision?

DEPARTMENT RESPONSE:

Education Law § 6911, which becomes effective on September 27, 2014, will authorize the Department to certify clinical nurse specialists to practice in a specialty practice area. Since the purpose of Education Law § 6911, as added by Chapter 364 of the Laws of 2013, is to maintain safe patient care by ensuring that only those who are properly educated and qualified are performing clinical nurse specialist services, the proposed amendment requires all applicants to have advanced education in clinical nursing practice, such as a master’s degree, doctoral degree or post master’s certificate program which prepares graduates to practice as a clinical nurse specialist, in order to qualify for certification as a clinical nurse specialist.

4. COMMENT:

Will this certificate be worded as a “Clinical Nurse Specialist” or as a “Clinical Nurse Specialist in a Specific Specialty”? Only “Clinical Nurse Specialist” should be used.

DEPARTMENT RESPONSE:

Education Law § 6911 will authorize the Department to certify clinical nurse specialists to practice in a specialty practice area. The Department will issue clinical nurse specialist certificates that identify the specific specialty practice area in which the holder of the certificate is certified.

5. COMMENT:

The commenter, citing § 64.6, states it supports deleting all sections relating to Alternative Criteria for Certification as a nurse practitioner (NP) as these criteria were established many years ago to cover registered nurses who needed such alternatives and the criteria’s timeframe ended in 2007.

DEPARTMENT RESPONSE:

The proposed regulations make no changes to § 64.6, however, to the extent that the commenter is expressing support for the repeal of obsolete provisions relating to NP certification in § 64.4, the commenter’s support is noted.

6. COMMENT:

The Department should consider permitting registered nurses, who are not CNSs or NPs, but have a master’s or doctoral degree in a nursing specialty, to supervise the clinical practice education of students enrolled in clinical nurse specialist education programs.

In addition, the proposed language in § 52.12(b)(3)(iii) requiring the CNS curriculum include “clinical practice education of at least five hundred hours which is supervised by a clinical nurse specialist, nurse practitioner or physician practicing in the specialty area of the clinical of the clinical nurse specialist program” seems too narrow. There is currently a limited pool of certified CNSs to draw from in providing preceptors for CNS students, and the proposed regulation may impede CNS clinical education. Language should be added to include supervision by “another nurse with a master’s or doctoral degree in nursing”.

DEPARTMENT RESPONSE:

The intent of Education Law § 6911 is to protect the title of clinical nurse specialist and to maintain safe patient care by ensuring that only those who are properly educated and qualified are performing clinical nurse specialist services. Registered professional nurses who are not certified by the Department as CNSs or NPs may lack the knowledge, skill and experience to properly supervise the clinical practice education of a student enrolled in a clinical nurse specialist education program. The suggested change to the proposed amendment would be inconsistent with the law and therefore, no change is necessary.

7. COMMENT:

Clarification is sought regarding whether § 64.8(b)(4) applies to all applicants for CNS certification. Also, the numbering of paragraphs in this section is incorrect.

DEPARTMENT RESPONSE:

Section 64.8(b)(4) does not apply to all applicants, but applies only to those applicants who seek to qualify for CNS certification by fulfilling the professional education and experience criteria set forth in section 64.8(b)(4)(i) or (ii) by the dates specified. The proposed language provides sufficient clarification on this issue. In addition, the numbering of the paragraphs is correct. Therefore, no changes are necessary.

8. COMMENT:

In relation to requiring that the certificates specifically mention the clinical practice area, the profession has learned from its experience with such language in the nurse practitioner certificates, that being so specific can become a barrier to the advanced practice registered nurse’s ongoing practice. The Department should consider seeking legislation to change the nurse practitioner section of the Nurse Practitioner Act, so that this level of specificity is no longer required for this advanced practice registered nurse.

DEPARTMENT RESPONSE:

The Department acknowledges the suggestion but currently has no plans to seek the proposed change.

9. COMMENT:

There may be an error in wording in 64.4(b) Professional study where it states “To meet the professional education requirements for certification as a nurse practitioner in this State...” it should be written as “To meet the professional education requirements for certification as a clinical nurse specialist in this State...”

DEPARTMENT RESPONSE:

The proposed regulations repeal obsolete provisions relating to the certification of nurse practitioners in § 64.4, in addition to implementing the provisions of Chapter 364 of the Laws of 2013 relating to clinical nurse specialists. The reference to “nurse practitioner” in § 64.4(b) is accurate since this provision applies only to nurse practitioners. Therefore no further changes are necessary.

10. COMMENT:

Will there be any “grandfathering” of clinical nurse specialists who are currently using the title and have the requisite educational credentials?

It appears § 64.8(b)(4)(i) is intended to provide a grace period during which nurses may be certified who currently hold a master’s degree in a program that is not registered with the Department as a CNS program, but which provided preparation “substantially equivalent” to that provided by a registered CNS program (provided that the RN also has the specified clinical experience). However, this provision might also be read as providing a period during which nurses who do not currently hold a Master’s degree from a CNS or “substantially equivalent” program may be certified if they complete such a degree (and the specified clinical experience) before September 15, 2017. This latter interpretation would create some complication, however. An individual could be certified as a CNS before completing graduate education - or even without actually enrolling in a graduate program. There would be no way to ensure, prior to September 15, 2017, that an individual has met any education or practice requirements.

Also, does “at least three thousand hours of clinical practice as a registered professional nurse in a clinical nurse specialty area” mean that the nurse must practice as a CNS, or practice as an RN in a specialty area in which CNSs practice (e.g., gerontology, pediatrics, critical care, etc.)? If the intent is to allow graduate-prepared RNs who are practicing as a CNS, or in roles that are similar to those of a CNS, to be certified - providing, essentially, a limited “grandfathering” period, that should be made clearer - either through revised language or other regulatory guidance.

DEPARTMENT RESPONSE:

The proposed amendment includes a “grandfather clause”, section 64.8(b)(4), which allows applicants two additional options for qualifying for CNS certification for a limited period of time. The Department believes that the deadline of September 15, 2017 for meeting education criteria under section 64.8(b)(4)(i) is reasonable, and that many registered professional nurses will complete a master’s degree prior to that date and qualify for CNS certification pursuant to proposed section 64.8(b)(4)(i).

Applicants who seek to qualify for CNS certification pursuant to section 64.8(b)(4)(i), will also be required to complete a form that describes their clinical practice experience. The Department intends to accept 3,000 hours of clinical practice as a registered professional nurse in a clinical nurse specialty area in a New York State general hospital as qualifying experience. The Department will accept experience in the following clinical nurse specialty areas: adult, pediatrics, mental health or oncology, and will review the form submitted to ensure that it meets the statutory and regulatory requirements for certification.

In addition, applicants under 64.8(b)(4)(ii) may meet certification requirements through current certification as a CNS by a national certifying body acceptable to the Department.

Certificates will be issued to applicants who seek qualification under 64.8(b)(4) when the applicant presents evidence of having met its criteria to the Department.

Although the “grandfather clause”, § 64.8(b)(4) will expire after September 15, 2017, an applicant can always satisfy other education criteria set forth in § 64.8(b) in order to qualify for certification as a clinical nurse specialist. The Department respectfully disagrees with the commenter who says the language is insufficiently clear. Therefore, no further changes are necessary.

NOTICE OF ADOPTION

Provide Transfer Credit for Students in an Educational Program Administered by a State Agency Pursuant to Education Law Section 112

I.D. No. EDU-19-14-00010-A

Filing No. 814

Filing Date: 2014-09-16

Effective Date: 2014-10-01

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

Action taken: Amendment of section 100.5(d) of Title 8 NYCRR.

Statutory authority: Education Law, sections 101(not subdivided), 207(not subdivided), 208(not subdivided), 209(not subdivided), 210(not subdivided), 215(not subdivided), 305(1), (2) and 309(not subdivided)

Subject: Provide transfer credit for students in an educational program administered by a State Agency pursuant to Education Law § 112.

Purpose: Provide transfer credit for students in a State Agency educational program upon attestation of chief program administrator.

Text or summary was published in the May 14, 2014 issue of the Register, I.D. No. EDU-19-14-00010-P.

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

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

Initial Review of Rule

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Mathematics Graduation Requirements

I.D. No. EDU-22-14-00008-A

Filing No. 809

Filing Date: 2014-09-16

Effective Date: 2014-10-01

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

Action taken: Amendment of section 100.5(g)(1) of Title 8 NYCRR.

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

Subject: Mathematics graduation requirements.

Purpose: To make technical corrections and clarify the text of the regulation.

Text or summary was published in the June 4, 2014 issue of the Register, I.D. No. EDU-22-14-00008-EP.

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

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

Initial Review of Rule

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

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Pupils with Limited English Proficiency

I.D. No. EDU-27-14-00011-A

Filing No. 819

Filing Date: 2014-09-16

Effective Date: 2014-10-01

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

Action taken: Addition of Subparts 154-1 and 154-2 to Title 8 NYCRR.

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

Subject: Pupils with Limited English Proficiency.

Purpose: To prescribe requirements for bilingual education and English as a New Language programs for English Language Learners.

Substance of final rule: Since publication of a Notice of Proposed Rule Making in the State Register on July 9, 2014, the proposed rule has been substantially revised as set forth in the Statement Concerning the Regulatory Impact Statement submitted herewith. The following is a summary of the substantive provisions of the revised proposed rule.

The existing Part 154 regulations are amended to refer to “English Language Learners (ELL)” instead of “pupils with limited English proficiency” and reorganized under a new Subpart 154-1, which is generally made applicable to programs operated beginning with the 2007-2008 school year and prior to the 2015-2016 school year; provided that a school district may choose to implement one or more provisions of the new Subpart 154-2 in the 2014-2015 school year upon submission of a plan and approval by the Commissioner.

A New Subpart 154-2 is added and generally made applicable to programs operated beginning with the 2015-2016 school year, and includes the following provisions:

INITIAL AND REENTRY PROCESS AND DETERMINATION OF ENGLISH PROFICIENCY [§ 154-2.3(a)]

Implement a four step English Language Learner (ELL) identification process upon a student’s initial enrollment or reentry in a New York State public school to ensure holistic and individualized decisions can be made by qualified staff, including:

- (1) administration of the Home Language Questionnaire,
- (2) an individual interview with the student,
- (3) a determination for students with a disability of whether the disability is the determinant factor affecting the student’s ability to demonstrate proficiency in English; and
- (4) administration of a statewide English language proficiency identification assessment.

SIFE status [§ 154-2.3(a) and (n)]

Districts shall identify ELLs as Students with Interrupted/Inconsistent Formal Education (SIFE) as part of the identification process. SIFE students shall continue to be identified as such until the performance criteria for removal are met, even if the student continues to be identified as an ELL. Upon a student’s exiting SIFE status, the school district must maintain records of student’s SIFE status.

REVIEW OF IDENTIFICATION DETERMINATION [§ 154-2.3(b)]

Implement a review process to determine if a student was misidentified upon enrollment or reentry to be completed within the first 45 days of school. A review would commence upon request by a parent; or teacher with the consent of the parent; or a student, if the student is 18 years old or older. Parental, or student if the student is 18 years or older, consent; principal and superintendent approval are required before a change in determination.

PARENT NOTIFICATION AND INFORMATION [§ 154-2.3(f)]

School staff shall meet with parents or persons in parental relation at least once a year, in addition to other generally required meetings with parents, to discuss their child’s academic content and language development progress and needs.

RETENTION OF IDENTIFICATION AND REVIEW RECORDS [§ 154-2.3(c)]

Districts shall collect and maintain in ELL student’s cumulative record:

- records indicating parent’s preferred language or mode of communication; and
- records of notices and forms generated during the identification and placement process, and review process.

PLACEMENT [§ 154-2.3(g)]

Continue to require placement in a Bilingual Education/ESL program within 10 school days after initiating the identification process. Districts

shall complete the identification process before an ELL student receives a final school placement.

PROGRAM REQUIREMENTS & PROVISION OF PROGRAMS [§§ 154-2.3(d) and (h)]

Districts shall create annual estimates of ELL enrollment before the end of each school year and create a sufficient number of Bilingual Education programs in the district, if there are 20 or more ELLs of the same grade level who speak the same home language district wide.

Districts will be allowed to apply for a one-year exemption for languages that represent less than 2% of the statewide population, if they can demonstrate they meet established criteria for a one-year exemption.

New programs triggered by this provision shall be placed in a school that has not been identified as a Schools Under Registration Review or as a Focus or Priority School, if such school exists in the district.

Continue to require that each school with 20 or more ELL students of the same grade who speak the same home language provide a Bilingual Education program.

English as a Second Language instruction shall be offered through two settings:

- (1) Integrated ESL (ESL methodologies in content area instruction co-taught or taught by a dually certified teacher); and
- (2) Stand-alone (ESL instruction with an ESL teacher to develop the English language needed for academic success).

PROGRAM CONTINUITY [§ 154-2.3(e)]

Districts shall provide program continuity so that ELLs can continue to receive the program type (Bilingual Education or ESL) in which they were initially enrolled.

EXIT CRITERIA [§ 154-2.3(m)]

Implement three different criteria to allow students to exit ELL status, including:

- (1) scoring proficient on the statewide English language proficiency assessment;
- (2) a combination of NYSESLAT scores and 3-8 ELA assessment or ELA Regents scores; or
- (3) a determination that an ELL with a disability cannot meet criteria (1) or (2) because of their disability and are not in need of ELL services.

SUPPORT AND TRANSITIONAL SERVICES [§ 154-2.3(i)]

Districts shall annually identify ELLs not demonstrating adequate performance and provide additional supports aligned to district wide intervention plans. Districts shall provide at least two years of transitional supports to ELLs who exit out of ELL status (former ELLs).

PROFESSIONAL DEVELOPMENT AND CERTIFICATION [154-2.3(k)]

Create certification areas for bilingual teaching assistants and tenure and seniority protection areas for bilingual teaching assistants, bilingual teachers and ESL teachers.

Require that all prospective teachers complete coursework on ELL instructional needs, language acquisition and cultural competency.

Require that 15 percent of professional development hours for all teachers and administrators be specific to the needs of ELLs, language acquisition and cultural competency.

Require that 50 percent of professional development hours for all Bilingual Education and ESL teachers to be specific to the needs of ELLs, language acquisition and cultural competency.

DISTRICT PLANNING AND REPORTING [§ 154-2.4]

Districts shall provide additional information in plans regarding programs for subpopulations of ELLs, information provided to parents, methods to annually measure and track ELL progress, and systems to identify, assess, and exit students from ELL status.

Require districts to provide additional information in reports regarding programs for subpopulations of ELLs including program information, if offered, by subpopulations and languages spoken in the district.

Final rule as compared with last published rule: Nonsubstantive changes were made in section 154-2.3(b)(5) and (6).

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

Revised Regulatory Impact Statement

Since publication of a Notice of Proposed Rule Making in the State Register on July 9, 2014, nonsubstantial revisions were made to the proposed regulation, as follows:

In paragraph (5) of subdivision (a) of section 154-2.3, grammatical revisions were made to replace a period with a comma and to delete a comma.

In paragraphs (5) and (6) of subdivision (b) of section 154-2.3, the phrase “the student, if the student is 18 years of age or older” was added to correct an inadvertent omission of such phrase and to otherwise clarify that such students be provided with notice of the superintendent’s accep-

tance of the principal's recommendation to change a student's designation and be provided with the notice of the reversal of a determination made by the principal in consultation with the Superintendent or the Superintendent's designee.

In addition, references in Subpart 154-2 to specific sections, subdivisions, paragraphs etc. of Subpart 154-3 have been replaced with general references to "Subpart 154-3 of this Part" because the Department is proposing revisions to Subpart 154-3 as a separate rule making and it is uncertain at this time what the specific section references will be.

The above nonsubstantial revisions do not require any changes to the previously published Regulatory Impact Statement.

Revised Regulatory Flexibility Analysis

Since publication of a Notice of Proposed Rule Making in the State Register on July 9, 2014, nonsubstantial revisions were made to the proposed regulation as set forth in the Statement Concerning the Regulatory Impact Statement submitted herewith.

The above nonsubstantial revisions do not require any changes to the previously published Regulatory Flexibility Analysis.

Revised Rural Area Flexibility Analysis

Since publication of a Notice of Proposed Rule Making in the State Register on July 9, 2014, nonsubstantial revisions were made to the proposed regulation as set forth in the Statement Concerning the Regulatory Impact Statement submitted herewith.

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

Revised Job Impact Statement

Since publication of a Notice of Proposed Rule Making in the State Register on July 9, 2014, nonsubstantial revisions were made to the proposed regulation as set forth in the Statement Concerning the Regulatory Impact Statement submitted herewith.

The revised proposed rule is necessary to implement Regents policy on standards for instruction of English Language Learners (ELL), to ensure compliance with Education Law sections 3204 and 4403, and Title I and III of the Elementary and Secondary Education Act (ESEA), Title IV of the Civil Rights Act of 1964, Equal Educational Opportunities Act of 1974 (EEOA).

Federal civil rights and education laws, as well as federal court jurisprudence, require that ELL students must be provided with equal access to all school programs and services offered to non-ELL students, including access to programs required for graduation. Education Law section 3204 and Part 154 of the Regulations of the Commissioner (8 NYCRR Part 154) contain standards for educational services provided to ELLs in New York State in order to meet these federal obligations.

In light of developments in research and best practices for ELL instruction, federal jurisprudence on civil rights obligations towards ELLs, and concerns about the achievement gap between ELLs and non-ELLs in New York State, SED engaged stakeholders to determine how Part 154 programs and services could be enhanced to better meet the needs of the State's multilingual population.

Over the past 10 years, New York State ELL student enrollment has increased by 20%; ahead of the 18% national increase the U.S. Department of Education has reported. Currently, in New York State, over 230,000 ELLs speaking over 140 languages make up approximately 9% of the total student population. Spanish is the home language for approximately 62% of ELLs, and just over 41% were born in another country.

Our challenge in addressing the language and academic needs of ELLs is easily transparent in graduation rates. In 2013, 74% of all eligible New York State students graduated high school compared to 34% of ELLs who graduated. Out of the total State graduates, just over 35% were calculated to be college and career ready compared to just over 7% of ELL graduates calculated to be college and career ready.

In addition to graduation rates, challenges in ELA and Math outcomes between ELLs and non-English Language Learners (non-ELLs) are evident. In 2012, 58% of non-ELLs met or exceeded the ELA proficiency standard in grades 3-8. For the same year, 11.7% of ELLs met or exceeded the standard. In 2013, with the implementation of the more rigorous NYS Common Core Learning Standards, 33% of non-ELLs met or exceeded the ELA proficiency standard in grades 3-8 with 3.2% of their ELL peers achieving the same standard.

Challenges in Math outcomes between ELLs and non-ELLs are also evident in New York State. In 2012, 67.2% of non-ELLs met or exceeded the Math proficiency standard in grades 3-8. For the same year, 34.4% of ELLs met or exceeded the standard. In 2013, with the implementation of the more rigorous NYS Common Core Learning Standards, 32.7% of non-ELLs met or exceeded the Math proficiency standard in grades 3-8 with 9.8% of their ELL peers achieving the same standard.

The revised proposed rule will improve the learning environment and academic outcomes for ELLs to close the achievement gap between ELLs

and non-ELLs, and ensure that ELLs can graduate college and career ready. The revised proposed rule will not have a substantial impact on jobs and employment opportunities. Because it is evident from the nature of the revised proposed rule 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.

Initial Review of Rule

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

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

Assessment of Public Comment

Since publication of the Notice of Proposed Rule Making in the State Register on July 9, 2014, the State Education Department received over 100 comments during the public comment period. The majority of the responses can be categorized as generally supportive of the amendments. Among those who were supportive, many urged the Department to make available additional guidance, supports, or resources to assist in implementation of the Regulations. Some respondents recommended that certain provisions of the regulations should be expanded or intensified.

Among those who expressed concerns about the regulations, a number of respondents conflated the proposed regulations with the provisions of the current Part 154, and raised objections regarding these current provisions. A number of commenters appear to have misunderstood certain provisions of the proposed regulations. For example, a number of responses, which appeared to be based on a form letter, raised concerns that students would be forced to leave their home schools to attend Bilingual Education programs. In fact, while the proposed regulations would require, in many instances, that districts create a Bilingual Education program when there are 20 or more students in the district who attend the same grade and speak the same home language, no student would be forced to transfer to such a program, as parents have the option to have their child remain in his or her home school.

The most frequent concerns raised by commenters were:

- It will be challenging to find qualified personnel to implement the initial identification process, as well as determine whether students should be classified as Students with Interrupted Formal Education (SIFE);

DEPARTMENT RESPONSE: The Home Language Questionnaire (HLQ) is designed to determine whether a student speaks a language other than English. This provision is currently in Part 154, has remained unchanged since adoption by the Regents in 1990, and has not been proposed for amendment pursuant to current rule making. Under the proposed regulations, qualified personnel to administer the HLQ include not only ESL teachers, but also Bilingual Education teachers or any certified teacher trained in cultural competency, language development, and the needs of English Language Learners. Thus, the proposed amendments do not require that only ESL teachers be relied upon to administer the initial identification process, including the administration of the HLQ. Districts may use any certified teacher trained in cultural competency, language development, and the needs of English Language Learners. If the proposed regulations are approved by the Board of Regents, guidance will be created and released by the Department.

With respect to SIFE, as of 2012-2013 SY, districts are required to identify Students with Interrupted Formal Education (SIFE), which requires determining grade level literacy in their home language and math. See page 194 of the NYSED SIRS 2013-14 manual for more information (<http://www.p12.nysed.gov/irs/sirs/2013-14/2013-14SIRSMannual9-18-20140725.pdf>). As always, the Department will continue to work with districts to identify and develop best practices and shared resources. If the proposed regulations are approved by the Board of Regents, guidance will be created and released by the Department. For math, districts should use existing school based assessments to determine the student's grade level in math. Qualified personnel as referred to in section 154-2.3 will be able to administer and score the identification assessment.

- The proposed regulations either inappropriately expand the requirements for provision of Bilingual Education programs, especially by requiring the creation of Bilingual Education programs based on the number of students in a grade districtwide who speak the same home language, or, alternatively, do not go far enough in making bilingual opportunities available by limiting the requirement for creation of “district” Bilingual Education programs to those languages spoken by at least 5% of ELLs statewide.

DEPARTMENT RESPONSE: In order to provide English Language Learners access to high quality Bilingual Education, stakeholders have strongly suggested the creation of additional bilingual opportunities that can meet the diverse needs of ELLs. District-wide Bilingual Education programs create additional academic opportunities for students. Districts can choose to implement Two-way Dual Language programs which distinctly promote diversity, multilingualism, and positively impact the collaborative and cohesive nature of communities.

The proposed regulations do not force any students to attend a different school than that which they would attend if the students were not English Language Learners. While the regulations expand the opportunities for students to be placed in Bilingual Education programs, parents have the right to decline this placement for their child, and have their child remain in his or her home school. Based on stakeholder feedback, the Department believes it is appropriate to allow districts to apply for annual one-year exemptions from providing Bilingual Education programs in languages representing less than 5% of the Statewide ELL population. Five years is the maximum exemption period. The Department will determine on a case-by-case basis annually whether a district warrants further one year exemptions.

- The requirements that 15% of mandated professional development for all teachers and 50% of mandated professional development for ESL and bilingual teachers be focused on meeting the needs of ELLs are too prescriptive.

DEPARTMENT RESPONSE: CR Part 154 includes this provision to ensure that all administrators and teachers are provided with research-based professional development that will allow them to prepare ELL students to meet the Common Core Learning Standards (CCLS) for college and career readiness. The Department believes that this professional development will benefit all students, in addition to ELL students. Moreover, the number of ELL students in a district should not change this basic requirement because a district’s ELL population can change from year to year. All teachers in the state are expected to be prepared to work with English Language Learners. See Blueprint for ELL Success, <http://usny.nysed.gov/docs/blueprint-for-ell-success.pdf>.

In addition, the requirement that 15% of professional development be based on working with ELLs must be embedded and integrated with professional development in content area instruction. For example, a professional development session that meets this requirement could be how to differentiate instruction for all students, including ELLs.

All teachers must receive professional development to keep up to date with current research-based practices and to maintain their certification in New York State. In addition, the requirement that 50% of their professional development be based on working with ELLs must be embedded and integrated with professional development in content area instruction. For example, a professional development session that meets this requirement could include how to scaffold instruction in content area classes (e.g., English Language Arts, Science), or how to use technology to enhance instruction for English Language Learners.

Nevertheless, the Department is considering a separate rulemaking in the near future to provide for a waiver, under specified conditions, of the 15% of mandated professional development for all teachers and 50% of mandated professional development for ESL and Bilingual Education teachers.

- The regulations will impose burdensome costs on districts, particularly small ones.

DEPARTMENT RESPONSE: In previous presentations to the Regents, Department staff have highlighted that the proposed regulations contain provisions that will likely save many districts money in

addition to those provisions that may increase costs for some districts. The Department also points out that some costs to which some commenters raised objections pertain to requirements of the current Part 154, not to the provisions of the proposed regulations. The Department will continue to work with districts to identify and develop best practices and shared resources. If the proposed regulations are approved by the Board of Regents, guidance will be created and released by the Department.

Finally, the Department notes that there has been extensive research conducted over the last 10 years that indicates that the integration of language and content instruction leads to higher student outcomes. See e.g., Duffy, P. (2010). Language socialization into academic discourse communities; Coyle, D., Hood, P. & Marsh, D. (2010). CLIL: Content and language integrated learning. New York, NY: Cambridge University Press; Snow, C., Griffin, P., and Burns, S. (2007). Knowledge to support the teaching of reading: Preparing teachers for a changing world. Hoboken, NJ: John Wiley & Sons. Annual Review of Applied Linguistics, 30, 169-192. Based on a review of this research the Department is proposing the new instructional model of Integrated English as a New Language in addition to Stand-alone English as a New Language instruction.

NOTICE OF ADOPTION

Career and Technical Education (CTE)

I.D. No. EDU-27-14-00014-A

Filing No. 811

Filing Date: 2014-09-16

Effective Date: 2014-10-01

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

Action taken: Amendment of section 100.5(d)(6) of Title 8 NYCRR.

Statutory authority: Education Law, sections 101 (not subdivided), 207 (not subdivided), 208 (not subdivided), 209 (not subdivided), 215 (not subdivided), 305(1) and (2), 308 (not subdivided), 309 (not subdivided) and 3204(3)

Subject: Career and Technical Education (CTE).

Purpose: To expand from four to eight the number of required credits in English, science, mathematics and social studies that may be fulfilled through specialized courses, integrated CTE courses, or a combination of specialized and integrated CTE courses.

Text or summary was published in the July 9, 2014 issue of the Register, I.D. No. EDU-27-14-00014-P.

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

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

Initial Review of Rule

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

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Termination Decisions for Probationary Teachers Based on Annual Professional Performance Reviews (APPR)

I.D. No. EDU-27-14-00015-A

Filing No. 817

Filing Date: 2014-09-16

Effective Date: 2014-10-01

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

Action taken: Amendment of section 30-2.1(d) of Title 8 NYCRR.
Statutory authority: Education Law, sections 101(not subdivided), 207(not subdivided), 215(not subdivided), 305(1), (2) and 3012-c
Subject: Termination Decisions for Probationary Teachers Based on Annual Professional Performance Reviews (APPR).
Purpose: To define performance for purposes of termination decisions for probationary teachers related to APPRs.
Text or summary was published in the July 9, 2014 issue of the Register, I.D. No. EDU-27-14-00015-EP.
Final rule as compared with last published rule: No changes.
Text of rule and any required statements and analyses may be obtained from: Kirti Goswami, State Education Department, Office of Counsel, State Education Building, Room 148, 89 Washington Ave., Albany, NY 12234, (518) 474-6400, email: legal@mail.nysed.gov
Initial Review of Rule
 As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2017, which is no later than the 3rd year after the year in which this rule is being adopted.
Assessment of Public Comment
 The agency received no public comment.

NOTICE OF ADOPTION

Outsourcing Facilities Engaged in the Compounding of Sterile Drugs

I.D. No. EDU-27-14-00017-A
Filing No. 815
Filing Date: 2014-09-16
Effective Date: 2014-10-01

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:
Action taken: Amendment of sections 29.2, 29.7, 63.6 and 63.8 of Title 8 NYCRR.
Statutory authority: Education Law, sections 207(not subdivided), 212(3), 215(not subdivided), 6504(not subdivided), 6507(2)(a), 6509(1-11), 6802(1-23), 6808(1), (5), (6), (7), 6808-b(1), (4)(f), 6810(14), 6811(26), 6811-a(1), (2), 6812(1), 6817(1) and 6831(1-14); and L. 2014, ch. 60, part D
Subject: Outsourcing facilities engaged in the compounding of sterile drugs.
Purpose: To implement L. 2014, Ch. 60, Part D by establishing criteria for registration of outsourcing facilities.
Text or summary was published in the July 9, 2014 issue of the Register, I.D. No. EDU-27-14-00017-EP.
Final rule as compared with last published rule: No changes.
Text of rule and any required statements and analyses may be obtained from: Kirti Goswami, State Education Department, Office of Counsel, State Education Building Room 148, 89 Washington Ave., Albany, NY 12234, (518) 474-6400, email: legal@mail.nysed.gov
Initial Review of Rule
 As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2019, which is the 4th or 5th year after the year in which this rule is being adopted. This review period, justification for proposing same, and invitation for public comment thereon, were contained in a RFA, RAFA or JIS:
 An assessment of public comment on the 4 or 5-year initial review period is not attached because no comments were received on the issue.
Assessment of Public Comment
 The agency received no public comment.

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

Child Abuse Identification and Reporting Coursework or Training for Coaches

I.D. No. EDU-39-14-00016-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:
Proposed Action: Amendment of sections 57-1.1 and 135.4(c)(7); and addition of section 135.7 to Title 8 NYCRR.

Statutory authority: Education Law, sections 101(not subdivided), 207(not subdivided), 305(1), (2), 803(not subdivided), 3204(2), (3), 3036(1) and (2); L. 2014, ch. 205
Subject: Child abuse identification and reporting coursework or training for coaches.

Purpose: To conform Commissioner’s Regulations to Education Law section 3036, as added by chapter 205 of the Laws of 2014.

Text of proposed rule: 1. Section 57-1.1 of the Regulations of the Commissioner of Education is amended, effective December 31, 2014, as follows:

57-1.1 Definition

As used in this Subpart, a provider shall mean any teachers’ or coaches’ or professional organization or association, school district, institution of higher education, hospital, health care facility, government agency or office, social service agency, or employer of licensed professionals or of licensed or certified teachers or of coaches, approved by the department to offer coursework or training in the identification and reporting of child abuse and maltreatment, pursuant to sections 3003(4), 3004, 3007, 3036, 5003 and 6507(3)(a) of the Education Law.

2. Paragraph (7) of subdivision (c) of section 135.4 of the Regulations of the Commissioner of Education is amended, effective December 31, 2014, as follows:

(7) Basic code for extraclass athletic activities. Athletic participation in all schools shall be planned so as to conform to the following:

(i) General provisions. It shall be the duty of trustees and boards of education:

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

(c) to appoint individuals, whether in a paid or non-paid (volunteer) status, to serve as coaches of interschool athletic teams, other than intramural teams or extramural teams, in accordance with the following:

- (1) . . .
- (2) . . .

(3) Temporary coaching license. Except as provided in subclause (4) of this clause and notwithstanding the provisions of section 80-5.10 of this Title, other persons with coaching qualifications and experience satisfactory to the board of education may be appointed as temporary coaches of interschool sport teams whether in a paid or non-paid (volunteer) status, when certified teachers with coaching qualifications and experience are not available, upon the issuance by the commissioner of a temporary coaching license. A temporary coaching license, valid for one year, will be issued under the following conditions:

- (i) . . .
- (ii) candidates for initial temporary licensure shall have completed the first aid requirement set forth in section 135.5 of this Part prior to the first day of coaching and the coursework or training requirement for identifying and reporting child abuse and maltreatment set forth in section 135.7 of this Part;
- (iii) . . .
- (iv) . . .
- (v) . . .

(4) professional coaching certificate.

(i) Notwithstanding the provisions of subclauses (1)-(3) of this clause, other persons with coaching qualifications and experience satisfactory to the board of education may coach a specific sport in any school, upon the issuance by the commissioner of a professional coaching certificate. A professional coaching certificate, valid for three years, shall be issued to a candidate who submits a fee of \$50 together with an application, in a form prescribed by the commissioner, which [satisfactorily] establishes that:

(A) the candidate has completed the requirements set forth in items (3)(ii), (iii), (iv) and (v) of this clause; and

- (B) . . .
- (ii) . . .
- (iii) . . .
- (5) . . .

- (d) . . .
- (e) . . .
- (f) . . .
- (g) . . .
- (h) . . .
- (i) . . .
- (j) . . .
- (k) . . .
- (l) . . .
- (m) . . .
- (n) . . .
- (o) . . .
- (p) . . .

- (q) . . .
- (r) . . .
- (s) . . .
- (ii) . . .

3. Section 135.7 of the Regulations of the Commissioner of Education is added, effective December 31, 2014, as follows:

Section 135.7 Child Abuse and Maltreatment Identification and Reporting Coursework or Training for Coaches.

(a) *All candidates for a temporary coaching license pursuant to subclause 135.4(c)(7)(i)(c)(3) of this Part or a professional coaching certificate pursuant to subclause 135.4(c)(7)(i)(c)(4) of this Part shall have completed at least two clock hours of coursework or training regarding the identification and reporting of suspected child abuse and maltreatment from an institution or provider approved by the department pursuant to Subpart 57-1 of this Title, in accordance with the requirements of section 3036 of the Education Law. Each candidate shall submit documentation satisfactory to the department showing that the candidate has completed the required coursework or training.*

(b) *All persons holding a temporary coaching license or professional coaching certificate on August 6, 2014 shall complete the coursework or training required by section 3036 of the Education Law from a provider approved by the department pursuant to Subpart 57-1 of this Title, and submit documentation satisfactory to the department of such completion, no later than July 1, 2015.*

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

Data, views or arguments may be submitted to: Ken Wagner, Deputy Commissioner, Office of Curriculum, Assessment and Educational Technology, EBA Room 875, 89 Washington Ave., Albany, NY 12234, (518) 474-5915, email: NYSEDP12@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, with the Board of Regents at its head and the Commissioner of Education as the chief administrative officer, and charges the Department with the general management and supervision of public schools and the educational work of the State.

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

Education Law section 305(1) and (2) provide that the Commissioner of Education shall enforce all general and specific laws relating to the educational system of the State and execute all educational policies determined by the Board of Regents and invest the Commissioner with general supervision over all schools and institutions subject to the provisions of the Education Law or any statute relating to education.

Education Law section 803(5) of the Education Law specifically authorizes the Regents to adopt rules determining the subjects to be included in courses of physical education provided pupils in all elementary and secondary schools, the period of instruction in each of such courses, the qualifications of teachers, and the attendance upon such courses of instruction.

Education Law section 3204(2) specifies the course of study for public schools, and includes instruction in physical training.

Education Law section 3036, as added by section 3 of Chapter 205 of the Laws of 2014, directs the Commissioner to prescribe regulations requiring that all persons currently holding a temporary coaching license or a permanent coaching certificate and persons applying for such license or certificate shall have completed two hours of coursework or training regarding the identification and reporting of child abuse and maltreatment pursuant to the provisions of the statute. Chapter 205 of the Laws of 2014 also amended the Social Services Law to expressly include coaches as mandated reporters of suspected child abuse.

2. LEGISLATIVE OBJECTIVES:

The proposed rule is consistent with the authority conferred on the Commissioner pursuant to the above statutes to adopt rules concerning the physical education curriculum and the qualifications of physical education instructors, and is necessary to conform the Commissioner's Regulations to, and otherwise implement, Education Law section 3036, as added by section 3 of Chapter 205 of the Laws of 2014.

3. NEEDS AND BENEFITS:

The proposed rule is necessary to conform the Commissioner's Regula-

tions to, and otherwise implement, Education Law section 3036, as added by section 3 of Chapter 205 of the Laws of 2014, which directs the Commissioner to prescribe regulations requiring that all persons currently holding a temporary coaching license or a permanent coaching certificate and persons applying for such license or certificate shall have completed two hours of coursework or training regarding the identification and reporting of child abuse and maltreatment. The coursework or training shall be obtained from an institution or provider which has been approved by the Department to provide such coursework or training, and shall include information regarding the physical and behavioral indicators of child abuse and maltreatment and the statutory reporting requirements set out in Social Services Law sections 413-420, including but not limited to when and how a report must be made, what other actions the reporter is mandated or authorized to take, the legal protections afforded reporters, and the consequences for failing to report. Entities seeking approval to provide such coursework or training shall comply with Subpart 57-1 of the Commissioner's Regulations.

4. COSTS:

(a) Costs to State government: None.

(b) Costs to local government: None.

(c) Costs to private regulated parties: The proposed rule is necessary to conform the Commissioner's Regulations to, and otherwise implement, Education Law section 3036, as added by section 3 of Chapter 205 of the Laws of 2014 and does not impose any additional costs beyond those imposed by the statute.

The costs of completing the coursework or training will vary depending on the approved provider selected by the applicant to provide the coursework or training, and generally range from \$0 to \$75 with most providers charging between \$20 to \$40.

Eligible entities seeking the Department's approval as a provider of the coursework or training will have to submit a \$300 application fee to the Commissioner. If granted, approval as a provider would be for a period of two years, at the expiration of which, reapplication would entail submission of a \$300 fee to the Commissioner.

(d) Costs to the regulatory agency for implementation and continued administration of the rule: none. It is anticipated that any costs associated with processing applicant's documentation providing proof of completion of the coursework or training will be minor and capable of being absorbed by existing Department staff and resources.

5. LOCAL GOVERNMENT MANDATES:

The proposed rule does not impose any additional program, service, duty or responsibility upon local governments.

6. PAPERWORK:

The proposed rule is necessary to conform the Commissioner's Regulations to, and otherwise implement, Education Law section 3036, as added by section 3 of Chapter 205 of the Laws of 2014.

Consistent with the statute, the proposed rule requires that all persons currently holding a temporary coaching license or a permanent coaching certificate and persons applying for such license or certificate shall have completed two hours of coursework or training from an approved provider regarding the identification and reporting of child abuse and maltreatment, and shall provide the Department with documentation showing that he or she has completed the required training.

Eligible entities seeking approval as providers of the coursework or training must submit an application pursuant to section 57-1.2 of the Commissioner's Regulations. Approval shall be given for a two-year period, after which the provider may reapply for approval pursuant to section 57-1.3. An approved provider shall execute a certificate of completion pursuant to section 57-1.4 and within 10 calendar days of completion of the coursework or training, the provider shall submit two copies of the certificate of completion to the person completing the coursework or training. The provider must retain a copy of the certificate of completion in its files for not less than five years from the date of completion of a course.

7. DUPLICATION:

The proposed rule is necessary to conform the Commissioner's Regulations to, and otherwise implement, Education Law section 3036, as added by section 3 of Chapter 205 of the Laws of 2014, and will not duplicate any other State or Federal statute or regulation.

8. ALTERNATIVES:

The proposed rule is necessary to conform the Commissioner's Regulations to, and otherwise implement, Education Law section 3036, as added by section 3 of Chapter 205 of the Laws of 2014. There are no significant alternatives and none were considered.

9. FEDERAL STANDARDS:

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

10. COMPLIANCE SCHEDULE:

The proposed rule is necessary to conform the Commissioner's regulations to, and otherwise implement, Education Law section 3036, as added by section 3 of Chapter 205 of the Laws of 2014, which became effective

on August 6, 2014. Consistent with the statute, the proposed rule requires that all persons currently holding a temporary coaching license or a permanent coaching certificate and persons applying for such license or certificate shall have completed two hours of coursework or training regarding the identification and reporting of child abuse and maltreatment from an approved provider, and shall provide the Department with documentation showing that he or she has completed the required training. Holders of such license or certificate as of, August 6, 2014, the effective date of Chapter 205, will have until July 1, 2015 to complete such coursework or training.

Regulatory Flexibility Analysis

1. EFFECT OF RULE:

The proposed rule applies to small businesses and local governments that seek status from the State Education Department as an approved provider of coursework or training in child abuse and maltreatment identification and reporting pursuant to Education Law section 3036, and include any teachers' or coaches' or professional organization or association, school district, institution of higher education, hospital, health care facility, government agency or office, social service agency, or employer of licensed professionals or of licensed or certified teachers or of coaches. There are approximately 171 approved providers in the State. Approximately 57 are small businesses and 22 are local governments.

2. COMPLIANCE REQUIREMENTS:

The proposed rule is necessary to conform the Commissioner's Regulations to, and otherwise implement, Education Law section 3036, as added by section 3 of Chapter 205 of the Laws of 2014. Consistent with the statute, the proposed rule requires that all persons currently holding a temporary coaching license or a permanent coaching certificate and persons applying for such license or certificate shall have completed two hours of coursework or training regarding the identification and reporting of child abuse and maltreatment, and shall provide the Department with documentation showing that he or she has completed the required training.

Eligible entities seeking approval as providers of the coursework or training must submit an application pursuant to section 57-1.2 of the Commissioner's Regulations. Approval shall be given for a two-year period, after which the provider may reapply for approval pursuant to section 57-1.3. An approved provider shall execute a certificate of completion pursuant to section 57-1.4 and within 10 calendar days of completion of the coursework or training, the provider shall submit two copies of the certificate of completion to the person completing the coursework or training. The provider must retain a copy of the certificate of completion in its files for not less than five years from the date of completion of a course.

3. PROFESSIONAL SERVICES:

The proposed amendment imposes no additional professional service requirements.

4. COMPLIANCE COSTS:

The proposed rule is necessary to conform the Commissioner's Regulations to, and otherwise implement, Education Law section 3036, as added by section 3 of Chapter 205 of the Laws of 2014 and does not impose any additional costs beyond those imposed by the statute. The costs of completing the coursework or training will vary depending on the approved provider selected by the applicant to provide the coursework or training, and generally range from \$0 to \$75 with most providers charging between \$20 to \$40.

Eligible entities seeking the Department's approval as a provider of the coursework or training will have to submit a \$300 application fee to the Commissioner. If granted, approval as a provider would be for a period of two years, at the expiration of which, reapplication would entail submission of a \$300 fee to the Commissioner. Only those entities which voluntarily seek approval as providers will be required to pay the \$300 application fee to become an approved provider. Approved providers are not prevented by the proposed rule from charging tuition or fees to students completing the coursework or training. Because the costs imposed by the rule are minimal and may be defrayed by the tuition and fees charged to students, the proposed rule is not expected to have any adverse economic impact on small business or local governments seeking approved provider status.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The proposed rule does not impose any new technological requirements. Economic feasibility is discussed under the Costs section above.

6. MINIMIZING ADVERSE IMPACT:

The proposed rule is necessary to conform the Commissioner's Regulations to, and otherwise implement, Education Law section 3036, as added by section 3 of Chapter 205 of the Laws of 2014, which directs the Commissioner to prescribe regulations requiring that all persons currently holding a temporary coaching license or a permanent coaching certificate and persons applying for such license or certificate shall have completed two hours of coursework or training from an approved provider regarding the identification and reporting of child abuse and maltreatment. The proposed rule does not impose any costs or compliance requirements on those hold-

ing or applying for a temporary coaching license or a permanent coaching certificate beyond those imposed by the statute.

Eligible entities seeking approval as providers of the coursework or training must comply with Subpart 57-1 of the Commissioner's Regulations. Only those entities which voluntarily seek approval as providers will be required to pay the \$300 application fee to become an approved provider. Approved providers are not prevented by the proposed rule from charging tuition or fees to students completing the coursework or training. Because the costs imposed by the rule are minimal and may be defrayed by the tuition and fees charged to students, the proposed rule is not expected to have any adverse economic impact on small business or local governments seeking approved provider status. Therefore, there is no need to minimize the adverse economic impact of the proposed rule through such approaches as establishing differing compliance requirements for small businesses and local governments. It would be contrary to the public welfare to exempt small businesses and local governments from the requirements of Subpart 57-1, because such requirements are designed to ensure that approved providers provide adequate training to holders of or persons applying for a temporary coaching license or a professional coaching certificate in child abuse and maltreatment identification and reporting as contemplated by Chapter 205 of the Laws of 2014.

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 rule is necessary to implement the statutory requirements of Education Law section 3036, as added by section 3 of Chapter 205 of the Laws of 2014, and therefore the substantive provisions of the proposed rule cannot be repealed or modified unless there is a further statutory change. Accordingly, there is no need for a shorter review period. The Department invites public comment on the proposed five year review period for this rule. Comments should be sent to the agency contact listed in item 10 of the Notice of Proposed Rule Making published herewith, and must be received within 45 days of the State Register publication date of the Notice.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed rule applies to all persons in the State who hold or apply for a temporary coaching license or professional coaching certificate, and to eligible entities that seek status from the State Education Department as an approved provider of coursework or training in child abuse and maltreatment identification and reporting, 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. There are approximately 34 approved providers located in rural areas.

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

The proposed rule is necessary to conform the Commissioner's Regulations to, and otherwise implement, Education Law section 3036, as added by section 3 of Chapter 205 of the Laws of 2014. Consistent with the statute, the proposed rule requires that all persons currently holding a temporary coaching license or a permanent coaching certificate and persons applying for such license or certificate shall have completed two hours of coursework or training regarding the identification and reporting of child abuse and maltreatment, and shall provide the Department with documentation showing that he or she has completed the required training.

Eligible entities seeking approval as providers of the coursework or training must submit an application pursuant to section 57-1.2 of the Commissioner's Regulations. Approval shall be given for a two-year period, after which the provider may reapply for approval pursuant to section 57-1.3. An approved provider shall execute a certificate of completion pursuant to section 57-1.4 and within 10 calendar days of completion of the coursework or training, the provider shall submit two copies of the certificate of completion to the person completing the coursework or training. The provider must retain a copy of the certificate of completion in its files for not less than five years from the date of completion of a course.

The proposed amendment imposes no additional professional service requirements.

3. COMPLIANCE COSTS:

The proposed rule is necessary to conform the Commissioner's Regulations to, and otherwise implement, Education Law section 3036, as added by section 3 of Chapter 205 of the Laws of 2014 and does not impose any additional costs beyond those imposed by the statute. The costs of

completing the coursework or training will vary depending on the approved provider selected by the applicant to provide the coursework or training, and generally range from \$0 to \$75 with most providers charging between \$20 to \$40.

Eligible entities seeking the Department's approval as a provider of the coursework or training will have to submit a \$300 application fee to the Commissioner. If granted, approval as a provider would be for a period of two years, at the expiration of which, reapplication would entail submission of a \$300 fee to the Commissioner.

4. MINIMIZING ADVERSE IMPACT:

The proposed rule is necessary to conform the Commissioner's Regulations to, and otherwise implement, Education Law section 3036, as added by section 3 of Chapter 205 of the Laws of 2014, which directs the Commissioner to prescribe regulations requiring that all persons currently holding a temporary coaching license or a permanent coaching certificate and persons applying for such license or certificate shall have completed two hours of coursework or training from an approved provider regarding the identification and reporting of child abuse and maltreatment. The proposed rule does not impose any costs or compliance requirements on those holding or applying for a temporary coaching license or a permanent coaching certificate beyond those imposed by the statute.

Eligible entities seeking approval as providers of the coursework or training must comply with Subpart 57-1 of the Commissioner's Regulations. Only those entities which voluntarily seek approval as providers will be required to pay the \$300 application fee to become an approved provider. Approved providers are not prevented by the proposed rule from charging tuition or fees to students completing the coursework or training. Because the costs imposed by the rule are minimal and may be defrayed by the tuition and fees charged to students, the proposed rule is not expected to have any adverse economic impact on eligible entities in rural areas that seek approved provider status. Therefore, there is no need to minimize the adverse economic impact of the proposed rule through such approaches as establishing differing compliance requirements for entities in rural areas. It would be contrary to the public welfare to exempt entities in rural areas that seek approved provider status from the requirements of Subpart 57-1, because such requirements are designed to ensure that approved providers provide adequate training to holders of or persons applying for a temporary coaching license or a professional coaching certificate in child abuse and maltreatment identification and reporting as contemplated by Chapter 205 of the Laws of 2014.

Furthermore, because the statutory requirements upon which the proposed amendment is based apply to all persons in the State who currently hold or apply for a temporary coaching license or a permanent coaching certificate, it is not possible to establish differing compliance or reporting requirements or timetables or to exempt persons in rural areas from coverage by the proposed amendment.

5. RURAL AREA PARTICIPATION:

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

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

Pursuant to State Administrative Procedure Act section 207(1)(b), the State Education Department proposes that the initial review of this rule shall occur in the fifth calendar year after the year in which the rule is adopted, instead of in the third calendar year. The justification for a five year review period is that the proposed rule is necessary to implement the statutory requirements of Education Law section 3036, as added by section 3 of Chapter 205 of the Laws of 2014, and therefore the substantive provisions of the proposed rule cannot be repealed or modified unless there is a further statutory change. Accordingly, there is no need for a shorter review period. The Department invites public comment on the proposed five year review period for this rule. Comments should be sent to the agency contact listed in item 10 of the Notice of Proposed Rule Making published herewith, and must be received within 45 days of the State Register publication date of the Notice.

Job Impact Statement

The proposed rule is necessary to conform the Commissioner's Regulations to, and otherwise implement, Education Law section 3036, as added by section 3 of Chapter 205 of the Laws of 2014, which directs the Commissioner to prescribe regulations requiring that all persons currently holding a temporary coaching license or a permanent coaching certificate and persons applying for such license or certificate shall have completed two hours of coursework or training regarding the identification and reporting of child abuse and maltreatment, and shall provide the Department with documentation showing that he or she has completed the required training. The proposed amendment 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 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.

REVISED RULE MAKING NO HEARING(S) SCHEDULED

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

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

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

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

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

Subject: Pupils with Limited English Proficiency (English Language Learner (ELL) programs.

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

Text of revised rule: Subpart 154-3 of the Regulations of the Commissioner of Education is added, effective December 3, 2014, as follows:

SUBPART 154-3

IDENTIFICATION AND EXIT PROCEDURES FOR STUDENTS WITH DISABILITIES FOR ENGLISH LANGUAGE LEARNER PROGRAMS OPERATED IN THE 2015-2016 SCHOOL YEAR AND THEREAFTER

154-3.1 Scope of Subpart and applicability.

The provisions of this Subpart shall apply to students with disabilities who are subject to the initial and reentry process and determination of English proficiency pursuant to section 154-2.3(a) of this Part and the exit procedures pursuant to section 154-2.3(m) of this Part in programs operated beginning with the 2015-2016 school year and thereafter. Except as otherwise provided in this Subpart, all other provisions of Subpart 154-2 of this Part shall apply to students with disabilities who are English Language Learners in programs operated beginning with the 2015-2016 school year.

154-3.2 Definition.

Language Proficiency Team (LPT) shall mean a committee that makes a recommendation regarding the initial assessment of English Language Learner status for a student with a disability. The LPT shall be minimally comprised of a school/district administrator; a teacher or related service provider with a bilingual extension and/or a teacher of English to Speakers of Other Languages, certified pursuant to Part 80 of this Title; the director of special education or individual in a comparable title (or his or her designee); and the student's parent or person in parental relation. A qualified interpreter or translator of the language or mode of communication the parent or person in parental relation best understands, as defined in section 154-2.2(t) of this Part, shall be present at each meeting of the LPT.

154-3.3 Determination of whether a student with a disability shall take the statewide English language proficiency identification assessment. For students with disabilities who are subject to the initial and reentry identification process and determination of English language proficiency pursuant to section 154-2.3(a) of this Part, following the administration of Steps 1 and 2 and prior to the administration of Step 4 pursuant to section 154-2.3(a) of this Part, the following provisions shall apply:

(a) For a student identified as having a disability, a Language Proficiency Team (LPT), as defined in section 154-3.2 of this Subpart, shall make a recommendation as to whether there is evidence that the student may have second language acquisition needs.

(b) In making this recommendation, the LPT shall, in accordance with guidance prescribed by the commissioner, consider evidence of the student's English language development, including, but not limited to:

(1) the results of Steps 1 and 2 in section 154-2.3(a)(1) and (2) of this Part;

(2) the student's history of language use in school and home or community;

(3) the individual evaluation of the student conducted in accordance with the procedures in section 200.4(b)(6) of this Title, which shall include assessments administered in the student's home language; and

(4) information provided by the Committee on Special Education (CSE) as to whether the student's disability is the determinant factor affecting whether the student can demonstrate proficiency in English.

(c) Based on the evidence reviewed in subdivision (b) of this section, the LPT must make a recommendation as to whether the student may have second language acquisition needs or whether the student's disability is

the determinant factor affecting whether the student could demonstrate proficiency in English during Step 2 in section 154-2.3(a)(2) of this Part.

(d) If the LPT recommends that the student does not have second language acquisition needs and therefore should not take the English language proficiency identification assessment to identify the student as an English Language Learner, such recommendation shall be referred to the school principal for review.

(e) If, upon review, the school principal agrees with the recommendation of the LPT that the student is not an English Language Learner and will not take the English language proficiency identification assessment, the school principal shall inform the parent or person in parental relation of this recommendation, in the language or mode of communication the parent or person in parental relation best understands.

(f) Upon receipt of a recommendation by the school principal, the Superintendent or his or her designee shall review the school principal's recommendation and make a final determination to accept or reject the school principal's recommendation within ten (10) days of receiving the school principal's recommendation. If the Superintendent determines that the student is not an English Language Learner, notice of such determination shall be provided to the parent or person in parental relation in the language or mode of communication the parent or person in parental relation best understands within five (5) days of such final determination.

(g) If the LPT determines that the student with a disability may have second language acquisition needs, the student shall take the initial English language proficiency identification assessment. The CSE shall determine, in accordance with the individualized education program (IEP) developed for such student pursuant to Part 200 of this Title, whether the student shall take the assessment with or without testing accommodations or an alternate assessment as may be prescribed by the commissioner.

154-3.4 Exit Criteria for Students with Disabilities.

(a) Each school district will annually determine if a student with a disability who has been identified as an English Language Learner pursuant to section 154-3.3 of this Subpart will continue to be identified as an English Language Learner.

(b) Following the initial identification of a student with a disability as an English Language Learner, the CSE shall annually make an individual determination as to which of the following methods of assessment shall be used to determine if such student will continue to be identified as an English Language Learner:

- (1) the annual English language proficiency assessment without the use of testing accommodations; or
- (2) the annual English language proficiency assessment with appropriate testing accommodations to be provided in accordance with the individualized education program (IEP) developed for such student pursuant to Part 200 of this Title; or
- (3) an alternate assessment as may be prescribed by the commissioner.

Revised rule compared with proposed rule: Substantive revisions were made in sections 154-3.2, 154-3.3 and 154-3.4.

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

Data, views or arguments may be submitted to: Cosimo Tangorra, Jr., 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: NYSIEDP12@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 July 9, 2014, substantial revisions were made to the proposed rule, as follows:

In response to public comment and guidance issued by the United States Department of Education on July 18, 2014 which clarified that all students with disabilities are required to be included in all general State and districtwide assessment programs including the English language proficiency assessment with appropriate accommodations and alternate assessments, the proposed Subpart 154-3 has been substantially revised as follows:

In sections 154-3.2 and 154-3.3, the role of the Language Proficiency Team (LPT) in the initial identification of a student with a disability as an ELL has been revised so that, beginning in the 2015-16 school year, the LPT is responsible for recommending to the principal whether a student identified as having a disability shall take the statewide English language proficiency identification assessment (i.e., the NYSITELL).

Consistent with the above, the provision in 154-3.3(a)(2), that beginning in the 2016-2017 school year and thereafter the Committee on Special Education (CSE) shall individually determine whether a student identified

as having a disability shall take the statewide English language proficiency identification assessment, has been deleted.

The provision in 154-3.3(b)(1), that beginning in the 2015-2016 school year and thereafter the LPT shall individually determine whether a student should continue to be identified as ELL subject to review by the school principal and superintendent, has been deleted.

The provision in 154-3.3(b)(2), that beginning in the 2016-2017 school year and thereafter the CSE shall individually determine whether a disability is the determinant factor affecting whether a student can demonstrate proficiency in English and if so allowing the CSE to exit the student from ELL status without having to take the English language proficiency assessment, has been deleted.

A new section 154-3.4, regarding exit criteria for students with disabilities, has been added to clarify that the CSE shall annually make an individual determination as to which of the following methods of assessment shall be used to determine if a student with a disability will continue to be identified as ELL:

- (1) the annual English language proficiency assessment (i.e., the NYSESLAT) without the use of testing accommodations; or
- (2) the annual English language proficiency assessment with appropriate testing accommodations to be provided in accordance with the individualized education program (IEP) developed for such student pursuant to Part 200 of this Title; or
- (3) an alternate assessment as may be prescribed by the commissioner.

The above revisions require that the Local Government Mandates and Paperwork sections of the previously published Regulatory Impact Statement be revised as follows:

LOCAL GOVERNMENT MANDATES:

Initial and Reentry Process for Determination of English Proficiency.

School districts must form a Language Proficiency Team (LPT) to make recommendations regarding the initial assessment of ELL status for a student with a disability. The LPT shall include a school/district administrator; a certified teacher or related service provider with a bilingual extension and/or a certified teacher of English to Speakers of Other Languages; the director of special education or individual in a comparable title (or his or her designee); and the student's parent/person in parental relation. A qualified interpreter/translator of the language or mode of communication the parent/person in parental relation best understands shall be present at each LPT meeting.

Beginning in the 2015-16 school year, the LPT is responsible for recommending to the principal whether a student identified as having a disability may have second language acquisition needs or whether the student shall take the statewide English language proficiency identification assessment (i.e., the NYSITELL).

For students with disabilities who are subject to the initial and reentry identification process and determination of English language proficiency pursuant to Commissioner's Regulations section 154-2.3(a), following the administration of Steps 1 and 2 and prior to the administration of Step 4 pursuant to Commissioner's Regulations section 154-2.3(a), the following provisions shall apply:

For a student identified as having a disability, the Language Proficiency Team (LPT) shall make a recommendation as to whether there is evidence that the student may have second language acquisition needs. In making this recommendation, the LPT shall, in accordance with guidance prescribed by the Commissioner, consider evidence of the student's English language development, including, but not limited to:

- (1) the results of Steps 1 and 2 in section 154-2.3(a)(1) and (2) of this Part;
- (2) the student's history of language use in school and home or community;
- (3) the individual evaluation of the student conducted in accordance with the procedures in section 200.4(b)(6) of this Title, which shall include assessments administered in the student's home language; and
- (4) information provided by the Committee on Special Education (CSE) as to whether the student's disability is the determinant factor affecting whether the student can demonstrate proficiency in English.

Based on the evidence reviewed, the LPT must make a recommendation as to whether the student may have second language acquisition needs or whether the student's disability is the determinant factor affecting whether the student could demonstrate proficiency in English during Step 2 in section 154-2.3(a)(2). If the LPT recommends that the student does not have second language acquisition needs and therefore should not take the English language proficiency identification assessment to identify the student as an English language learner, such recommendation shall be referred to the school principal for review.

If, upon review, the school principal agrees with the recommendation of the LPT that the student is not an English Language Learner and will not take the English language proficiency identification assessment, the school principal shall inform the parent or person in parental relation of this recommendation, in the language or mode of communication the parent or person in parental relation best understands.

Upon receipt of a recommendation by the school principal, the Superintendent or his or her designee shall review the school principal's recommendation and make a final determination to accept or reject the school principal's recommendation within ten (10) days of receiving the school principal's recommendation. If the Superintendent determines that the student is not an English Language Learner, notice of such determination shall be provided to the parent or person in parental relation in the language or mode of communication the parent or person in parental relation best understands within five (5) days of such final determination.

If the LPT determines that the student with a disability may have second language acquisition needs, the student shall take the initial English language proficiency identification assessment. The CSE shall determine, in accordance with the individualized education program (IEP) developed for such student pursuant to Part 200 of this Title, whether the student shall take the assessment with or without testing accommodations or an alternate assessment as may be prescribed by the Commissioner.

Exit Criteria for Students with Disabilities.

Each school district will annually determine if a student with a disability who has been identified as an English Language Learner pursuant to Commissioner's Regulations section 154-3.3 will continue to be identified as an English Language Learner.

Following the initial identification of a student with a disability as an English Language Learner, the CSE shall annually make an individual determination as to which of the following methods of assessment shall be used to determine if such student will continue to be identified as an English Language Learner:

(1) the annual English language proficiency assessment without the use of testing accommodations; or

(2) the annual English language proficiency assessment with appropriate testing accommodations to be provided in accordance with the individualized education program (IEP) developed for such student pursuant to Part 200 of this Title; or

(3) an alternate assessment as may be prescribed by the Commissioner.

PAPERWORK:

The LPT and principal shall issue written recommendations, and the superintendent of schools shall issue a written determination, regarding the initial identification of ELL status for a student with a disability.

Parents/persons in parental relation must submit a signed consent letter, in the language or mode of communication the parent/person in parental relation best understands, in order for a principal to submit a recommendation regarding the student's ELL status to the superintendent or superintendent's designee for review and approval.

Revised Regulatory Flexibility Analysis

Since publication of a Notice of Proposed Rule Making in the State Register on July 9, 2014, substantial revisions were made to the proposed rule, as set forth in the Revised Regulatory Impact Statement submitted herewith.

The above changes require that the Compliance Requirements section of the previously published Regulatory Flexibility Analysis be revised to read as follows.

2. COMPLIANCE REQUIREMENTS:

Initial and Reentry Process for Determination of English Proficiency.

School districts must form a Language Proficiency Team (LPT) to make recommendations regarding the initial assessment of ELL status for a student with a disability. The LPT shall include a school/district administrator; a certified teacher or related service provider with a bilingual extension and/or a certified teacher of English to Speakers of Other Languages; the director of special education or individual in a comparable title (or his or her designee); and the student's parent/person in parental relation. A qualified interpreter/translator of the language or mode of communication the parent/person in parental relation best understands shall be present at each LPT meeting.

Beginning in the 2015-16 school year, the LPT is responsible for recommending to the principal whether a student identified as having a disability may have second language acquisition needs or whether the student shall take the statewide English language proficiency identification assessment (i.e., the NYSITELL).

For students with disabilities who are subject to the initial and reentry identification process and determination of English language proficiency pursuant to Commissioner's Regulations section 154-2.3(a), following the administration of Steps 1 and 2 and prior to the administration of Step 4 pursuant to Commissioner's Regulations section 154-2.3(a), the following provisions shall apply:

For a student identified as having a disability, the Language Proficiency Team (LPT) shall make a recommendation as to whether there is evidence that the student may have second language acquisition needs. In making this recommendation, the LPT shall, in accordance with guidance prescribed by the Commissioner, consider evidence of the student's English language development, including, but not limited to:

(1) the results of Steps 1 and 2 in section 154-2.3(a)(1) and (2) of this Part;

(2) the student's history of language use in school and home or community;

(3) the individual evaluation of the student conducted in accordance with the procedures in section 200.4(b)(6) of this Title, which shall include assessments administered in the student's home language; and

(4) information provided by the Committee on Special Education (CSE) as to whether the student's disability is the determinant factor affecting whether the student can demonstrate proficiency in English.

Based on the evidence reviewed, the LPT must make a recommendation as to whether the student may have second language acquisition needs or whether the student's disability is the determinant factor affecting whether the student could demonstrate proficiency in English during Step 2 in section 154-2.3(a)(2). If the LPT recommends that the student does not have second language acquisition needs and therefore should not take the English language proficiency identification assessment to identify the student as an English language learner, such recommendation shall be referred to the school principal for review.

If, upon review, the school principal agrees with the recommendation of the LPT that the student is not an English Language Learner and will not take the English language proficiency identification assessment, the school principal shall inform the parent or person in parental relation of this recommendation, in the language or mode of communication the parent or person in parental relation best understands.

Upon receipt of a recommendation by the school principal, the Superintendent or his or her designee shall review the school principal's recommendation and make a final determination to accept or reject the school principal's recommendation within ten (10) days of receiving the school principal's recommendation. If the Superintendent determines that the student is not an English Language Learner, notice of such determination shall be provided to the parent or person in parental relation in the language or mode of communication the parent or person in parental relation best understands within five (5) days of such final determination.

If the LPT determines that the student with a disability may have second language acquisition needs, the student shall take the initial English language proficiency identification assessment. The CSE shall determine, in accordance with the individualized education program (IEP) developed for such student pursuant to Part 200 of this Title, whether the student shall take the assessment with or without testing accommodations or an alternate assessment as may be prescribed by the Commissioner.

Exit Criteria for Students with Disabilities.

Each school district will annually determine if a student with a disability who has been identified as an English Language Learner pursuant to Commissioner's Regulations section 154-3.3 will continue to be identified as an English Language Learner.

Following the initial identification of a student with a disability as an English Language Learner, the CSE shall annually make an individual determination as to which of the following methods of assessment shall be used to determine if such student will continue to be identified as an English Language Learner:

(1) the annual English language proficiency assessment without the use of testing accommodations; or

(2) the annual English language proficiency assessment with appropriate testing accommodations to be provided in accordance with the individualized education program (IEP) developed for such student pursuant to Part 200 of this Title; or

(3) an alternate assessment as may be prescribed by the Commissioner.

The LPT and principal shall issue written recommendations, and the superintendent of schools shall issue a written determination, regarding the initial identification of ELL status for a student with a disability.

Parents/persons in parental relation must submit a signed consent letter, in the language or mode of communication the parent/person in parental relation best understands, in order for a principal to submit a recommendation regarding the student's ELL status to the superintendent or superintendent's designee for review and approval.

Revised Rural Area Flexibility Analysis

Since publication of a Notice of Proposed Rule Making in the State Register on July 9, 2014, substantial revisions were made to the proposed rule, as set forth in the Revised Regulatory Impact Statement submitted herewith.

The above changes 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

Initial and Reentry Process for Determination of English Proficiency.

School districts must form a Language Proficiency Team (LPT) to make recommendations regarding the initial assessment of ELL status for a student with a disability. The LPT shall include a school/district administrator; a certified teacher or related service provider with a bilingual extension

sion and/or a certified teacher of English to Speakers of Other Languages; the director of special education or individual in a comparable title (or his or her designee); and the student's parent/person in parental relation. A qualified interpreter/translator of the language or mode of communication the parent/person in parental relation best understands shall be present at each LPT meeting.

Beginning in the 2015-16 school year, the LPT is responsible for recommending to the principal whether a student identified as having a disability may have second language acquisition needs or whether the student shall take the statewide English language proficiency identification assessment (i.e., the NYSITELL).

For students with disabilities who are subject to the initial and reentry identification process and determination of English language proficiency pursuant to Commissioner's Regulations section 154-2.3(a), following the administration of Steps 1 and 2 and prior to the administration of Step 4 pursuant to Commissioner's Regulations section 154-2.3(a), the following provisions shall apply:

For a student identified as having a disability, the Language Proficiency Team (LPT) shall make a recommendation as to whether there is evidence that the student may have second language acquisition needs. In making this recommendation, the LPT shall, in accordance with guidance prescribed by the Commissioner, consider evidence of the student's English language development, including, but not limited to:

(1) the results of Steps 1 and 2 in section 154-2.3(a)(1) and (2) of this Part;

(2) the student's history of language use in school and home or community;

(3) the individual evaluation of the student conducted in accordance with the procedures in section 200.4(b)(6) of this Title, which shall include assessments administered in the student's home language; and

(4) information provided by the Committee on Special Education (CSE) as to whether the student's disability is the determinant factor affecting whether the student can demonstrate proficiency in English.

Based on the evidence reviewed, the LPT must make a recommendation as to whether the student may have second language acquisition needs or whether the student's disability is the determinant factor affecting whether the student could demonstrate proficiency in English during Step 2 in section 154-2.3(a)(2). If the LPT recommends that the student does not have second language acquisition needs and therefore should not take the English language proficiency identification assessment to identify the student as an English language learner, such recommendation shall be referred to the school principal for review.

If, upon review, the school principal agrees with the recommendation of the LPT that the student is not an English Language Learner and will not take the English language proficiency identification assessment, the school principal shall inform the parent or person in parental relation of this recommendation, in the language or mode of communication the parent or person in parental relation best understands.

Upon receipt of a recommendation by the school principal, the Superintendent or his or her designee shall review the school principal's recommendation and make a final determination to accept or reject the school principal's recommendation within ten (10) days of receiving the school principal's recommendation. If the Superintendent determines that the student is not an English Language Learner, notice of such determination shall be provided to the parent or person in parental relation in the language or mode of communication the parent or person in parental relation best understands within five (5) days of such final determination.

If the LPT determines that the student with a disability may have second language acquisition needs, the student shall take the initial English language proficiency identification assessment. The CSE shall determine, in accordance with the individualized education program (IEP) developed for such student pursuant to Part 200 of this Title, whether the student shall take the assessment with or without testing accommodations or an alternate assessment as may be prescribed by the Commissioner.

Exit Criteria for Students with Disabilities.

Each school district will annually determine if a student with a disability who has been identified as an English Language Learner pursuant to Commissioner's Regulations section 154-3.3 will continue to be identified as an English Language Learner.

Following the initial identification of a student with a disability as an English Language Learner, the CSE shall annually make an individual determination as to which of the following methods of assessment shall be used to determine if such student will continue to be identified as an English Language Learner:

(1) the annual English language proficiency assessment without the use of testing accommodations; or

(2) the annual English language proficiency assessment with appropriate testing accommodations to be provided in accordance with the individualized education program (IEP) developed for such student pursuant to Part 200 of this Title; or

(3) an alternate assessment as may be prescribed by the Commissioner.

The LPT and principal shall issue written recommendations, and the superintendent of schools shall issue a written determination, regarding the initial identification of ELL status for a student with a disability.

Parents/persons in parental relation must submit a signed consent letter, in the language or mode of communication the parent/person in parental relation best understands, in order for a principal to submit a recommendation regarding the student's ELL status to the superintendent or superintendent's designee for review and approval.

Revised Job Impact Statement

Since publication of a Notice of Proposed Rule Making in the State Register on July 9, 2014, substantial revisions were made to the proposed rule, as set forth in the Revised Regulatory Impact Statement submitted herewith.

The revised proposed rule amends the procedures for identifying and exiting students with disabilities as English Language Learners (ELL). Federal civil rights and education laws, as well as federal court jurisprudence, require that ELL students must be provided with equal access to all school programs and services offered to non-ELL students, including access to programs required for graduation. Education Law section 3204 and Part 154 of the Regulations of the Commissioner (8 NYCRR Part 154) contain standards for educational services provided to ELLs in New York State in order to meet these federal obligations. In addition, Education Law section 4403 outlines the Department's and a school district's responsibilities regarding special education programs/ and services to students with disabilities. Section 4403(3) authorizes the Department to adopt regulations as Commissioner deems in their best interests.

In light of developments in research and best practices for ELL instruction, federal jurisprudence on civil rights obligations towards ELLs, concerns about the achievement gap between ELLs with disabilities, ELLs and non-ELLs in New York State, and concerns about over identification of ELLs with disabilities, the revised proposed rule improves identification and exit procedures for students with disabilities who are also English Language Learners.

According to the National Institute of Child Health it is estimated that 9% of all ELL students in U.S. public schools are identified as ELLs with disabilities. In New York State 19.6% of ELLs are classified with disabilities, and of which 80.4% have a home language of Spanish. In terms of disability classifications in New York State, 40% of ELLs with disabilities are classified with Speech Language Impairment, and 38% are classified with a Learning disability. According to the National Center for Education Statistics (NCES), the percentage distribution nationally of all children with a disability classification shows 36% are classified with a Learning Disability, and 21% with Speech Language Impairments. This data demonstrates the need to improve identification and exit procedures for ELLs with disabilities, as New York State significantly over identifies these students as compared to national statistics.

The revised proposed rule will not have a substantial impact on jobs and employment opportunities. Because it is evident from the nature of the revised proposed rule 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

Since publication of a Notice of Proposed Rule Making in the State Register on July 9, 2014, the State Education Department received the following comments:

COMMENT:

Approves of rule's procedures for incoming and enrolled students with disabilities to determine whether the disability is the determining factor affecting a student's ability to demonstrate proficiency in English, and procedures for determining whether a student with a disability should continue to receive English as a Second Language services.

DEPARTMENT RESPONSE:

No response is necessary as the comment is supportive, however, as discussed below, the Department has revised the proposed Subpart 154-3 Identification and exit procedures for students with disabilities.

COMMENT:

In accordance with guidelines submitted by the U.S. Department of Education on July 18, 2014, a Language Proficiency Team (LPT) or a Committee on Special Education (CSE) cannot make the determination that a student with disabilities should not participate in a State English Language Proficiency assessment. All students with disabilities must "be included in all general State assessment programs, including assessments described under section 1111 of the Elementary and Secondary Education Act (ESEA), with appropriate accommodations and alternate assessments, if necessary, as indicated in their respective IEPs."

DEPARTMENT RESPONSE:

In response to public comment and guidance issued by the United States

Department of Education on July 18, 2014, which clarified that all students with disabilities are required to be included in all general State and districtwide assessment programs including the English language proficiency assessment with appropriate accommodations and alternate assessments, the proposed Subpart 154-3 has been substantially revised to reflect the guidance.

COMMENT:

Revise the rule to provide for the opting out from ESL testing (NYSESLAT) of students with severe disabilities that are not language related who are alternately-assessed, similar to what is done with such students for the ELA and Math State examinations.

DEPARTMENT RESPONSE:

The Department has revised the proposed rule to clarify that the CSE shall annually make an individual determination regarding the method of assessment to be used to determine if a student with a disability will continue to be identified as ELL, including the use of an alternate assessment as may be prescribed by the Commissioner.

COMMENT:

It is not always readily apparent at time of initial entry whether or not a disability impedes a student's ability to learn English. It is preferable to err in favor of providing English Language Learner (ELL) instruction for the vast majority of students with disabilities, then over time special education and English as a Second Language (ESL) educators, parents and students (where appropriate) can ascertain whether or not a disability is the main determinate of English language acquisition.

DEPARTMENT RESPONSE:

In situations where the Language Proficiency Team (LPT) is uncertain whether the disability is the determinant factor, the student should be identified as a student to take the English language proficiency assessment. However, when the LPT determines that the student with a disability has no second language acquisition needs, requiring that ELL instruction be provided to such students would not benefit them academically and would be an inefficient and non-cost effective use of school district fiscal and staff resources.

COMMENT:

The time for student placement when a disability is suspected should be extended. The 45-day period should begin after student placement, not the first day of school.

DEPARTMENT RESPONSE:

The 45-school day review period is not referenced in this rulemaking.

loan servicers in their communications, transactions and other dealings with borrowers. In addition, the rule sets standards with respect to the handling of loan delinquencies and loss mitigation. The rule further requires specific reporting on the status of delinquent loans with the Department so that it has the information necessary to assess loan servicers' performance.

In addition to addressing the pressing issue of mortgage loan delinquencies and loss mitigation, the rule addresses other areas of significant concern to homeowners, including the handling of borrower complaints and inquiries, the payment of taxes and insurance, crediting of payments and handling of late payments, payoff balances and servicer fees. The rule also sets forth prohibited practices such as engaging in deceptive practices or placing homeowners' insurance on property when the servicer has reason to know that the homeowner has an effective policy for such insurance.

Subject: The business conduct of mortgage loan servicers.

Purpose: To implement the purpose and provisions of the Mortgage Lending Reform Law of 2008 with respect to mortgage loan servicers.

Substance of emergency rule: Section 419.1 contains definitions of terms that are used in Part 419 and not otherwise defined in Part 418, including "Servicer", "Qualified Written Request" and "Loan Modification".

Section 419.2 establishes a duty of fair dealing for Servicers in connection with their transactions with borrowers, which includes a duty to pursue loss mitigation with the borrower as set forth in Section 419.11.

Section 419.3 requires compliance with other State and Federal laws relating to mortgage loan servicing, including Banking Law Article 12-D, RESPA, and the Truth-in-Lending Act.

Section 419.4 describes the requirements and procedures for handling to consumer complaints and inquiries.

Section 419.5 describes the requirements for a servicer making payments of taxes or insurance premiums for borrowers.

Section 419.6 describes requirements for crediting payments from borrowers and handling late payments.

Section 419.7 describes the requirements of an annual account statement which must be provided to borrowers in plain language showing the unpaid principal balance at the end of the preceding 12-month period, the interest paid during that period and the amounts deposited into and disbursed from escrow. The section also describes the Servicer's obligations with respect to providing a payment history when requested by the borrower or borrower's representative.

Section 419.8 requires a late payment notice be sent to a borrower no later than 17 days after the payment remains unpaid.

Section 419.9 describes the required provision of a payoff statement that contains a clear, understandable and accurate statement of the total amount that is required to pay off the mortgage loan as of a specified date.

Section 419.10 sets forth the requirements relating to fees permitted to be collected by Servicers and also requires Servicers to maintain and update at least semi-annually a schedule of standard or common fees on their website.

Section 419.11 sets forth the Servicer's obligations with respect to handling of loan delinquencies and loss mitigation, including an obligation to make reasonable and good faith efforts to pursue appropriate loss mitigation options, including loan modifications. This Section includes requirements relating to procedures and protocols for handling loss mitigation, providing borrowers with information regarding the Servicer's loss mitigation process, decision-making and available counseling programs and resources.

Section 419.12 describes the quarterly reports that the Superintendent may require Servicers to submit to the Superintendent, including information relating to the aggregate number of mortgages serviced by the Servicer, the number of mortgages in default, information relating to loss mitigation activities, and information relating to mortgage modifications.

Section 419.13 describes the books and records that Servicers are required to maintain as well as other reports the Superintendent may require Servicers to file in order to determine whether the Servicer is complying with applicable laws and regulations. These include books and records regarding loan payments received, communications with borrowers, financial reports and audited financial statements.

Section 419.14 sets forth the activities prohibited by the regulation, including engaging in misrepresentations or material omissions and placing insurance on a mortgage property without written notice when the Servicer has reason to know the homeowner has an effective policy in place.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire December 8, 2014.

Text of rule and any required statements and analyses may be obtained from: Hadas A. Jacobi, NYS Department of Financial Services, 1 State Street, New York, NY 10004, (212) 480-5890, email: hadas.jacobi@dfs.ny.gov

Department of Financial Services

EMERGENCY RULE MAKING

Business Conduct of Mortgage Loan Servicers

I.D. No. DFS-39-14-00001-E

Filing No. 772

Filing Date: 2014-09-10

Effective Date: 2014-09-11

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

Action taken: Addition of Part 419 to Title 3 NYCRR.

Statutory authority: Banking Law, art. 12-D

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

Specific reasons underlying the finding of necessity: The legislature required the registration of mortgage loan servicers as part of the Mortgage Lending Reform Law of 2008 (Ch. 472, Laws of 2008, hereinafter, the "Mortgage Lending Reform Law") to help address the existing foreclosure crisis in the state. By registering servicers and requiring that servicers engage in the business of mortgage loan servicing in compliance with rules and regulations adopted by the Superintendent, the legislature intended to help ensure that servicers conduct their business in a manner acceptable to the Department. However, since the passage of the Mortgage Lending Reform Law, foreclosures continue to pose a significant threat to New York homeowners. The Department continues to receive complaints from homeowners and housing advocates that mortgage loan servicers' response to delinquencies and their efforts at loss mitigation are inadequate. These rules are intended to provide clear guidance to mortgage loan servicers as to the procedures and standards they should follow with respect to loan delinquencies. The rules impose a duty of fair dealing on

Regulatory Impact Statement**1. Statutory authority.**

Article 12-D of the Banking Law, as amended by the Legislature in the Mortgage Lending Reform Law of 2008 (Ch. 472, Laws of 2008, hereinafter, the "Mortgage Lending Reform Law"), creates a framework for the regulation of mortgage loan servicers. Mortgage loan servicers are individuals or entities which engage in the business of servicing mortgage loans for residential real property located in New York. That legislation also authorizes the adoption of regulations implementing its provisions. (See, e.g., Banking Law Sections 590(2) (b-1) and 595-b.)

Subsection (1) of Section 590 of the Banking Law was amended by the Mortgage Lending Reform Law to add the definitions of "mortgage loan servicer" and "servicing mortgage loans". (Section 590(1)(h) and Section 590(1)(i).)

A new paragraph (b-1) was added to Subdivision (2) of Section 590 of the Banking Law. This new paragraph prohibits a person or entity from engaging in the business of servicing mortgage loans without first being registered with the Superintendent. The registration requirements do not apply to an "exempt organization," licensed mortgage banker or registered mortgage broker.

This new paragraph also authorizes the Superintendent to refuse to register an MLS on the same grounds as he or she may refuse to register a mortgage broker under Banking Law Section 592-a(2).

Subsection (3) of Section 590 was amended by the Subprime Law to clarify the power of the banking board to promulgate rules and regulations and to extend the rulemaking authority regarding regulations for the protection of consumers and regulations to define improper or fraudulent business practices to cover mortgage loan servicers, as well as mortgage bankers, mortgage brokers and exempt organizations. The functions and powers of the banking board have since been transferred to the Superintendent of Financial Services, pursuant to Part A of Chapter 62 of the Laws of 2011, Section 89.

New Paragraph (d) was added to Subsection (5) of Section 590 by the Mortgage Lending Reform Law and requires mortgage loan servicers to engage in the servicing business in conformity with the Banking Law, such rules and regulations as may be promulgated by the Banking Board or prescribed by the Superintendent, and all applicable federal laws, rules and regulations.

New Subsection (1) of Section 595-b was added by the Mortgage Lending Reform Law and requires the Superintendent to promulgate regulations and policies governing the grounds to impose a fine or penalty with respect to the activities of a mortgage loan servicer. Also, the Mortgage Lending Reform Law amends the penalty provision of Subdivision (1) of Section 598 to apply to mortgage loan servicers as well as to other entities.

New Subdivision (2) of Section 595-b was added by the Mortgage Lending Reform Law and authorizes the Superintendent to prescribe regulations relating to disclosure to borrowers of interest rate resets, requirements for providing payoff statements, and governing the timing of crediting of payments made by the borrower.

Section 596 was amended by the Mortgage Lending Reform Law to extend the Superintendent's examination authority over licensees and registrants to cover mortgage loan servicers. The provisions of Banking Law Section 36(10) making examination reports confidential are also extended to cover mortgage loan servicers.

Similarly, the books and records requirements in Section 597 covering licensees, registrants and exempt organizations were amended by the Mortgage Lending Reform Law to cover servicers and a provision was added authorizing the Superintendent to require that servicers file annual reports or other regular or special reports.

The power of the Superintendent to require regulated entities to appear and explain apparent violations of law and regulations was extended by the Mortgage Lending Reform Law to cover mortgage loan servicers (Subdivision (1) of Section 39), as was the power to order the discontinuance of unauthorized or unsafe practices (Subdivision (2) of Section 39) and to order that accounts be kept in a prescribed manner (Subdivision (5) of Section 39).

Finally, mortgage loan servicers were added to the list of entities subject to the Superintendent's power to impose monetary penalties for violations of a law, regulation or order. (Paragraph (a) of Subdivision (1) of Section 44).

The fee amounts for mortgage loan servicer registration and branch applications are established in accordance with Banking Law Section 18-a.

2. Legislative objectives.

The Mortgage Lending Reform Law was intended to address various problems related to residential mortgage loans in this State. The law reflects the view of the Legislature that consumers would be better protected by the supervision of mortgage loan servicing. Even though mortgage loan servicers perform a central function in the mortgage industry, there had previously been no general regulation of servicers by the state or the Federal government.

The Mortgage Lending Reform Law requires that entities be registered with the Superintendent in order to engage in the business of servicing mortgage loans in this state. The new law further requires mortgage loan servicers to engage in the business of servicing mortgage loans in conformity with the rules and regulations promulgated by the Banking Board and the Superintendent.

The mortgage servicing statute has two main components: (i) the first component addresses the registration requirement for persons engaged in the business of servicing mortgage loans; and (ii) the second authorizes the Superintendent to promulgate appropriate rules and regulations for the regulation of servicers in this state.

Part 418 of the Superintendent's Regulations, initially adopted on an emergency basis on July 1 2009, addresses the first component of the mortgage servicing statute by setting standards and procedures for applications for registration as a mortgage loan servicer, for approving and denying applications to be registered as a mortgage loan servicer, for approving changes of control, for suspending, terminating or revoking the registration of a mortgage loan servicer as well as setting financial responsibility standards for mortgage loan servicers.

Part 419 addresses the business practices of mortgage loan servicers in connection with their servicing of residential mortgage loans. This part addresses the obligations of mortgage loan servicers in their communications, transactions and general dealings with borrowers, including the handling of consumer complaints and inquiries, handling of escrow payments, crediting of payments, charging of fees, loss mitigation procedures and provision of payment histories and payoff statements. This part also imposes certain recordkeeping and reporting requirements in order to enable the Superintendent to monitor servicers' conduct and prohibits certain practices such as engaging in deceptive business practices.

Collectively, the provisions of Part 418 and 419 implement the intent of the Legislature to register and supervise mortgage loan servicers.

3. Needs and benefits.

The Mortgage Lending Reform Law adopted a multifaceted approach to the lack of supervision of the mortgage loan industry, particularly with respect to servicing and foreclosure. It addressed a variety of areas in the residential mortgage loan industry, including: i. loan originations; ii. loan foreclosures; and iii. the conduct of business by residential mortgage loans servicers.

Until July 1, 2009, when the mortgage loan servicer registration provisions first became effective, the Department regulated the brokering and making of mortgage loans, but not the servicing of these mortgage loans. Servicing is vital part of the residential mortgage loan industry; it involves the collection of mortgage payments from borrowers and remittance of the same to owners of mortgage loans; to governmental agencies for taxes; and to insurance companies for insurance premiums. Mortgage servicers also act as agents for owners of mortgages in negotiations relating to loss mitigation when a mortgage becomes delinquent. As "middlemen," moreover, servicers also play an important role when a property is foreclosed upon. For example, the servicer may typically act on behalf of the owner of the loan in the foreclosure proceeding.

Further, unlike in the case of a mortgage broker or a mortgage lender, borrowers cannot "shop around" for loan servicers, and generally have no input in deciding what company services their loans. The absence of the ability to select a servicer obviously raises concerns over the character and viability of these entities given the central part of they play in the mortgage industry. There also is evidence that some servicers may have provided poor customer service. Specific examples of these activities include: pyramiding late fees; misapplying escrow payments; imposing illegal prepayment penalties; not providing timely and clear information to borrowers; erroneously force-placing insurance when borrowers already have insurance; and failing to engage in prompt and appropriate loss mitigation efforts.

More than 2,000,000 loans on residential one-to-four family properties are being serviced in New York. Of these over 9% were seriously delinquent as of the first quarter of 2012. Despite various initiatives adopted at the state level and the creation of federal programs such as Making Home Affordable to encourage loan modifications and help at risk homeowners, the number of loans modified, have not kept pace with the number of foreclosures. Foreclosures impose costs not only on borrowers and lenders but also on neighboring homeowners, cities and towns. They drive down home prices, diminish tax revenues and have adverse social consequences and costs.

As noted above, Part 418, initially adopted on an emergency basis on July 1 2009, relates to the first component of the mortgage servicing statute – the registration of mortgage loan servicers. It was intended to ensure that only those persons and entities with adequate financial support and sound character and general fitness will be permitted to register as mortgage loan servicers. It also provided for the suspension, revocation and termination of licensees involved in wrongdoing and establishes minimum financial standards for mortgage loan servicers.

Part 419 addresses the business practices of mortgage loan servicers and establishes certain consumer protections for homeowners whose residential mortgage loans are being serviced. These regulations provide standards and procedures for servicers to follow in their course of dealings with borrowers, including the handling of borrower complaints and inquiries, payment of taxes and insurance premiums, crediting of borrower payments, provision of annual statements of the borrower's account, authorized fees, late charges and handling of loan delinquencies and loss mitigation. Part 419 also identifies practices that are prohibited and imposes certain reporting and record-keeping requirements to enable the Superintendent to determine the servicer's compliance with applicable laws, its financial condition and the status of its servicing portfolio.

Since the adoption of Part 418, 67 entities have been approved for registration or have pending applications and nearly 400 entities have indicated that they are a mortgage banker, broker, bank or other organization exempt from the registration requirements.

All Exempt Organizations, mortgage bankers and mortgage brokers that perform mortgage loan servicing with respect to New York mortgages must notify the Superintendent that they do so, and are required to comply with the conduct of business and consumer protection rules applicable to mortgage loan servicers.

These regulations will improve accountability and the quality of service in the mortgage loan industry and will help promote alternatives to foreclosure in the state.

4. Costs.

The requirements of Part 419 do not impose any direct costs on mortgage loan servicers. Although mortgage loan servicers may incur some additional costs as a result of complying with Part 419, the overwhelming majority of mortgage loan servicers are banks, operating subsidiaries or affiliates of banks, large independent servicers or other financial services entities that service millions, and even billions, of dollars in loans and have the experience, resources and systems to comply with these requirements. Moreover, any additional costs are likely to be mitigated by the fact that many of the requirements of Part 419, including those relating to the handling of residential mortgage delinquencies and loss mitigation (419.11) and quarterly reporting (419.12), are consistent with or substantially similar to standards found in other federal or state laws, federal mortgage modification programs or servicers own protocols.

For example, Fannie Mae and Freddie Mac, which own or insure approximately 90% of the nation's securitized mortgage loans, have similar guidelines governing various aspects of mortgage servicing, including handling of loan delinquencies. In addition, over 100 mortgage loan servicers participate in the federal Making Home Affordable (MHA) program which requires adherence to standards for handling of loan delinquencies and loss mitigation similar to those contained in these regulations. Those servicers not participating in MHA have, for the most part, adopted programs which parallel many components of MHA.

Reporting on loan delinquencies and loss mitigation has likewise become increasingly common. The OCC publish quarterly reports on credit performance, loss mitigation efforts and foreclosures based on data provided by national banks and thrifts. And, states such as Maryland and North Carolina have adopted similar reporting requirements to those contained in section 419.12.

Many of the other requirements of Part 419 such as those related to handling of taxes, insurance and escrow payments, collection of late fees and charges, crediting of payments derive from federal or state laws and reflect best industry practices. The periodic reporting and bookkeeping and record keeping requirements are also standard among financial services businesses, including mortgage bankers and brokers (see, for example section 410 of the Superintendent's Regulations).

The ability by the Department to regulate mortgage loan servicers is expected to reduce costs associated with responding to consumers' complaints, decrease unnecessary expenses borne by mortgagors, and should assist in decreasing the number of foreclosures in this state.

The regulations will not result in any fiscal implications to the State. The Department is funded by the regulated financial services industry. Fees charged to the industry will be adjusted periodically to cover Department expenses incurred in carrying out this regulatory responsibility.

5. Local government mandates.

None.

6. Paperwork.

Part 419 requires mortgage loan servicers to keep books and records related to its servicing for a period of three years and to produce quarterly reports and financial statements as well as annual and other reports requested by the Superintendent. It is anticipated that the quarterly reporting relating to mortgage loan servicing will be done electronically and would therefore be virtually paperless. The other recordkeeping and reporting requirements are consistent with standards generally required of mortgage bankers and brokers and other regulated financial services entities.

7. Duplication.

The regulation does not duplicate, overlap or conflict with any other regulations. The various federal laws that touch upon aspects of mortgage loan servicing are noted in Section 9 "Federal Standards" below.

8. Alternatives.

The Mortgage Lending Reform Law required the registration of mortgage loan servicers and empowered the Superintendent to prescribe rules and regulations to guide the business of mortgage servicing. The purpose of the regulation is to carry out this statutory mandate to register mortgage loan servicers and regulate the manner in which they conduct business. The Department circulated a proposed draft of Part 419 and received comments from and met with industry and consumer groups. The current Part 419 reflects the input received. The alternative to these regulations is to do nothing or to wait for the newly created federal bureau of consumer protection to promulgate national rules, which could take years, may not happen at all or may not address all the practices covered by the rule. Thus, neither of those alternatives would effectuate the intent of the legislature to address the current foreclosure crisis, help at-risk homeowners vis-à-vis their loan servicers and ensure that mortgage loan servicers engage in fair and appropriate servicing practices.

9. Federal standards.

Currently, mortgage loan servicers are not required to be registered by any federal agencies, and there are no comprehensive federal rules governing mortgage loan servicing. Federal laws such as the Real Estate Settlement Procedures Act of 1974, 12 U.S.C. § 2601 et seq. and regulations adopted thereunder, 24 C.F.R. Part 3500, and the Truth-in-Lending Act, 15 U.S.C. section 1600 et seq. and Regulation Z adopted thereunder, 12 C.F.R. section 226 et seq., govern some aspects of mortgage loan servicing, and there have been some recent amendments to those laws and regulations regarding mortgage loan servicing. For example, Regulation Z, 12 C.F.R. section 226.36(c), was recently amended to address the crediting of payments, imposition of late charges and the provision of payoff statements. In addition, the recently enacted Dodd-Frank Wall Street Reform and Protection Act of 2010 (Dodd-Frank Act) establishes requirements for the handling of escrow accounts, obtaining force-placed insurance, responding to borrower requests and providing information related to the owner of the loan. Additionally, the newly created Bureau of Consumer Financial Protection established by the Dodd-Frank Act may soon propose additional regulations for mortgage loan servicers.

10. Compliance schedule.

Similar emergency regulations first became effective on October 1, 2010.

Regulatory Flexibility Analysis

1. Effect of the Rule:

The rule will not have any impact on local governments. The Mortgage Lending Reform Law of 2008 (Ch. 472, Laws of 2008, hereinafter, the "Mortgage Lending Reform Law") requires all mortgage loan servicers, whether registered or exempt from registration under the law, to service mortgage loans in accordance with the rules and regulations promulgated by the Banking Board or Superintendent. The functions and powers of the Banking Board have since been transferred to the Superintendent of Financial Services, pursuant to Part A of Chapter 62 of the Laws of 2011, Section 89. Of the 67 entities which have been approved for registration or have pending applications and the nearly 400 entities which have indicated that they are exempt from the registration requirements, it is estimated that very few are small businesses.

2. Compliance Requirements:

The provisions of the Mortgage Lending Reform Law relating to mortgage loan servicers has two main components: it requires the registration by the Department of servicers who are not a bank, mortgage banker, mortgage broker or other exempt organizations (the "MLS Registration Regulations"), and it authorizes the Department to promulgate rules and regulations that are necessary and appropriate for the protection of consumers, to define improper or fraudulent business practices, or otherwise appropriate for the effective administration of the provisions of the Mortgage Lending Reform Law relating to mortgage loan servicers (the "Mortgage Loan Servicer Business Conduct Regulations").

The provisions of the Mortgage Lending Reform Law requiring registration of mortgage loan servicers which are not mortgage bankers, mortgage brokers or exempt organizations became effective on July 1, 2009. Part 418 of the Superintendent's Regulations, initially adopted on an emergency basis on July 1 2009, sets for the standards and procedures for applications for registration as a mortgage loan servicer, for approving and denying applications to be registered as a mortgage loan servicer, for approving changes of control, for suspending, terminating or revoking the registration of a mortgage loan servicer as well as the financial responsibility standards for mortgage loan servicers.

Part 419 implements the provisions of the Mortgage Lending Reform Law by setting the standards by which mortgage loan servicers conduct the business of mortgage loan servicing. The rule sets the standards for

handling complaints, payments of taxes and insurance, crediting of borrower payments, late payments, account statements, delinquencies and loss mitigation, fees and recordkeeping.

3. Professional Services:

None.

4. Compliance Costs:

The requirements of Part 419 do not impose any direct costs on mortgage loan servicers. Although mortgage loan servicers may incur some additional costs as a result of complying with Part 419, the overwhelming majority of mortgage loan servicers are banks, operating subsidiaries or affiliates of banks, large independent servicers or other financial services entities that service millions, and even billions, of dollars in loans and have the experience, resources and systems to comply with these requirements. Moreover, any additional costs are likely to be mitigated by the fact that many of the requirements of Part 419, including those relating to the handling of residential mortgage delinquencies and loss mitigation (419.11) and quarterly reporting (419.12), are consistent with or substantially similar to standards found in other federal or state laws, federal mortgage modification programs or servicers own protocols.

For example, Fannie Mae and Freddie Mac, which own or insure approximately 90% of the nation's securitized mortgage loans, have similar guidelines governing various aspects of mortgage servicing, including handling of loan delinquencies. In addition, over 100 mortgage loan servicers participate in the federal Making Home Affordable (MHA) program which requires adherence to standards for handling of loan delinquencies and loss mitigation similar to those contained in these regulations. Those servicers not participating in MHA have, for the most part, adopted programs which parallel many components of MHA.

Reporting on loan delinquencies and loss mitigation has likewise become increasingly common. The OCC publishes quarterly reports on credit performance, loss mitigation efforts and foreclosures based on data provided by national banks and thrifts. And, states such as Maryland and North Carolina have adopted similar reporting requirements to those contained in section 419.12.

Many of the other requirements of Part 419 such as those related to handling of taxes, insurance and escrow payments, collection of late fees and charges, crediting of payments derive from federal or state laws and reflect best industry practices. The periodic reporting and bookkeeping and record keeping requirements are also standard among financial services businesses, including mortgage bankers and brokers (see, for example section 410 of the Superintendent's Regulations).

Compliance with the rule should improve the servicing of residential mortgage loans in New York, including the handling of mortgage delinquencies, help prevent unnecessary foreclosures and reduce consumer complaints regarding the servicing of residential mortgage loans.

5. Economic and Technological Feasibility:

For the reasons noted in Section 4 above, the rule should impose no adverse economic or technological burden on mortgage loan servicers that are small businesses.

6. Minimizing Adverse Impacts:

As noted in Section 1 above, most servicers are not small businesses. Many of the requirements contained in the rule derive from federal or state laws, existing servicer guidelines utilized by Fannie Mae and Freddie Mac and best industry practices.

Moreover, the ability by the Department to regulate mortgage loan servicers is expected to reduce costs associated with responding to consumers' complaints, decrease unnecessary expenses borne by mortgagors, help borrowers at risk of foreclosure and decrease the number of foreclosures in this state.

7. Small Business and Local Government Participation:

The Department distributed a draft of proposed Part 419 to industry representatives, received industry comments on the proposed rule and met with industry representatives in person. The Department likewise distributed a draft of proposed Part 419 to consumer groups, received their comments on the proposed rule and met with consumer representatives to discuss the proposed rule in person. The rule reflects the input received from both industry and consumer groups.

Rural Area Flexibility Analysis

Types and Estimated Numbers: Since the adoption of the Mortgage Lending Reform Law of 2008 (Ch. 472, Laws of 2008, hereinafter, the "Mortgage Lending Reform Law"), which required mortgage loan servicers to be registered with the Department unless exempted under the law, 67 entities have pending applications or have been approved for registration and nearly 400 entities have indicated that they are a mortgage banker, broker, bank or other organization exempt from the registration requirements. Only one of the non-exempt entities applying for registration is located in New York and operating in a rural area. Of the exempt organizations, all of which are required to comply with the conduct of business contained in Part 419, approximately 400 are located in New York, including several in rural areas. However, the overwhelming major-

ity of exempt organizations, regardless of where located, are banks or credit unions that are already regulated and are thus familiar with complying with the types of requirements contained in this regulation.

Compliance Requirements: The provisions of the Mortgage Lending Reform Law relating to mortgage loan servicers has two main components: it requires the registration by the Department of servicers that are not a bank, mortgage banker, mortgage broker or other exempt organization (the "MLS Registration Regulations"), and it authorizes the Department to promulgate rules and regulations that are necessary and appropriate for the protection of consumers, to define improper or fraudulent business practices, or otherwise appropriate for the effective administration of the provisions of the Mortgage Lending Reform Law relating to mortgage loan servicers (the "MLS Business Conduct Regulations").

The provisions of the Mortgage Lending Reform Law of 2008 requiring registration of mortgage loan servicers which are not mortgage bankers, mortgage brokers or exempt organizations became effective on July 1, 2009. Part 418 of the Superintendent's Regulations, initially adopted on an emergency basis on July 1, 2010, sets forth the standards and procedures for applications for registration as a mortgage loan servicer, for approving and denying applications to be registered as a mortgage loan servicer, for approving changes of control, for suspending, terminating or revoking the registration of a mortgage loan servicer as well as the financial responsibility standards for mortgage loan servicers.

Part 419 implements the provisions of the Mortgage Lending Reform Law of 2008 by setting the standards by which mortgage loan servicers conduct the business of mortgage loan servicing. The rule sets the standards for handling complaints, payments of taxes and insurance, crediting borrower payments, late payments, account statements, delinquencies and loss mitigation and fees. This part also imposes certain recordkeeping and reporting requirements in order to enable the Superintendent to monitor services' conduct and prohibits certain practices such as engaging in deceptive business practices.

Costs: The requirements of Part 419 do not impose any direct costs on mortgage loan servicers. The periodic reporting requirements of Part 419 are consistent with those imposed on other regulated entities. In addition, many of the other requirements of Part 419, such as those related to the handling of loan delinquencies, taxes, insurance and escrow payments, collection of late fees and charges and crediting of payments, derive from federal or state laws, current federal loan modification programs, servicing guidelines utilized by Fannie Mae and Freddie Mac or servicers' own protocols. Although mortgage loan servicers may incur some additional costs as a result of complying with Part 419, the overwhelming majority of mortgage loan servicers are banks, credit unions, operating subsidiaries or affiliates of banks, large independent servicers or other financial services entities that service millions, and even billions, of dollars in loans and have the experience, resources and systems to comply with these requirements. Of the 67 entities that have been approved for registration or that have pending applications, only one is located in a rural area of New York State. Of the few exempt organizations located in rural areas of New York, virtually all are banks or credit unions. Moreover, compliance with the rule should improve the servicing of residential mortgage loans in New York, including the handling of mortgage delinquencies, help prevent unnecessary foreclosures and reduce consumer complaints regarding the servicing of residential mortgage loans.

Minimizing Adverse Impacts: As noted in the "Costs" section above, while mortgage loan servicers may incur some higher costs as a result of complying with the rules, the Department does not believe that the rule will impose any meaningful adverse economic impact upon private or public entities in rural areas. In addition, it should be noted that Part 418, which establishes the application and financial requirements for mortgage loan servicers, authorizes the Superintendent to reduce or waive the otherwise applicable financial responsibility requirements in the case of mortgage loans servicers that service not more than 12 mortgage loans or more than \$5,000,000 in aggregate mortgage loans in New York and which do not collect tax or insurance payments. The Superintendent is also authorized to reduce or waive the financial responsibility requirements in other cases for good cause. The Department believes that this will ameliorate any burden on mortgage loan servicers operating in rural areas.

Rural Area Participation: The Department issued a draft of Part 419 in December 2009 and held meetings with and received comments from industry and consumer groups following the release of the draft rule. The Department also maintains continuous contact with large segments of the servicing industry though its regulation of mortgage bankers and brokers and its work in the area of foreclosure prevention. The Department likewise maintains close contact with a variety of consumer groups through its community outreach programs and foreclosure mitigation programs. The Department has utilized this knowledge base in drafting the regulation.

Job Impact Statement

Article 12-D of the Banking Law, as amended by the Mortgage Lending Reform Law (Ch. 472, Laws of 2008), requires persons and entities

which engage in the business of servicing mortgage loans after July 1, 2009 to be registered with the Superintendent. Part 418 of the Superintendent's Regulations, initially adopted on an emergency basis on July 1, 2009, sets forth the application, exemption and approval procedures for registration as a mortgage loan servicer, as well as financial responsibility requirements for applicants, registrants and exempted persons.

Part 419 addresses the business practices of mortgage loan servicers in connection with their servicing of residential mortgage loans. Thus, this part addresses the obligations of mortgage loan servicers in their communications, transactions and general dealings with borrowers, including the handling of consumer complaints and inquiries, handling of escrow payments, crediting of payments, charging of fees, loss mitigation procedures and provision of payment histories and payoff statements. This part also imposes certain recordkeeping and reporting requirements in order to enable the Superintendent to monitor services' conduct and prohibits certain practices such as engaging in deceptive business practices.

Compliance with Part 419 is not expected to have a significant adverse effect on jobs or employment activities within the mortgage loan servicing industry. The vast majority of mortgage loan servicers are sophisticated financial entities that service millions, if not billions, of dollars in loans and have the experience, resources and systems to comply with the requirements of the rule. Moreover, many of the requirements of the rule reflect derive from federal or state laws and reflect existing best industry practices.

EMERGENCY RULE MAKING

Adjustment of the Subprime Threshold As Established in Banking Law Section 6-m

I.D. No. DFS-39-14-00011-E

Filing No. 808

Filing Date: 2014-09-16

Effective Date: 2014-09-18

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

Action taken: Addition of Part 42 to Title 3 NYCRR.

Statutory authority: Financial Services Law, section 302; Banking Law, sections 6-m and 14

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

Specific reasons underlying the finding of necessity: Section 6-m of the Banking Law provides for the regulation of subprime home loans. Section 6-m defines a subprime home loan as a loan in which the initial interest rate or the fully-indexed rate, whichever is higher, exceeds by more than a specified number of percentage points the average commitment rate for loans with a comparable duration of such home loan as set forth in an index provided by the Federal Home Loan Mortgage (the "subprime threshold").

In Mortgagee Letter 2013-04, the Federal Housing Administration (the "FHA") revised the period for assessing the annual Mortgage Insurance Premium ("MIP") for FHA-insured loans such that, in certain cases, MIP is required to be paid over the life of the loan, effective June 3, 2013. The FHA's revised policy has caused significantly more FHA-insured loans to exceed the subprime threshold. Because of the reluctance of secondary market participants to purchase subprime loans, lenders are less willing to originate such loans, which has significantly restricted the availability of mortgage financing in New York State.

Based on a financial analysis and an assessment of market conditions, the Superintendent has determined that FHA Mortgagee Letter 2013-04 has effectively decreased the threshold on certain FHA-insured loans; as a result, the existing subprime threshold in Section 6-m is having an unduly negative effect on the availability of mortgage financing in New York State. Accordingly, emergency adoption of this regulation is necessary to adjust the subprime threshold to restore the availability of mortgage financing to approximately the levels predating the effective date of FHA Mortgagee Letter 2013-04.

Subject: Adjustment of the subprime threshold as established in Banking Law, section 6-m.

Purpose: To adjust the subprime threshold to restore the availability of mortgage financing to approximately the levels predating the effective date of the FHA's rule change concerning the calculation of MIP.

Text of emergency rule: PART 42

SUBPRIME HOME LOANS – THRESHOLDS

§ 42.1 Background.

Section 6-m of the Banking Law provides for the regulation of subprime home loans as defined in the statute. In doing so, the statute incorporates the federal concept of Annual Percentage Rate ("APR"), as defined in the Federal Truth-in-Lending Act, for determining whether a home loan is deemed subprime. Loans with a fully-indexed rate (a calculation correlated with APR) above a specified threshold are defined as subprime loans.

The term "fully-indexed rate" is defined in Section 6-m(1)(b) to mean "(i) for an adjustable rate loan based on an index, the annual percentage rate calculated using the index rate on the loan on the date the lender provides the 'good faith estimate' required under 12 USC § 2601 et seq. plus the margin to be added to it after the expiration of any introductory period or periods; or (ii) for a fixed rate loan, the annual percentage rate on the loan disregarding any introductory rate or rates and any interest rate caps that limit how quickly the contractual interest rate may be reached calculated at the time the lender issues its commitment."

Section 6-m defines a subprime home loan as a loan in which the initial interest rate or the fully-indexed rate, whichever is higher, exceeds by more than one and three-quarters percentage points for a first-lien loan, or by more than three and three-quarters percentage points for a subordinate-lien loan, the average commitment rate for loans with a comparable duration of such home loan as set forth in an index provided by the Federal Home Loan Mortgage Corporation for the date as specified in the statute (the first-lien threshold and subordinate-lien threshold, collectively, the "subprime threshold").

In Mortgagee Letter 2013-04, the Federal Housing Administration (the "FHA") revised the period for assessing the annual Mortgage Insurance Premium ("MIP") for FHA-insured loans such that, in certain cases, MIP is required to be paid over the life of the loan, effective June 3, 2013. Because MIP is part of the APR calculation, the FHA's revised policy has caused the APR on many FHA-insured loans to increase, resulting in significantly more FHA-insured loans exceeding the subprime threshold. Because of the reluctance of secondary market participants to purchase subprime loans, lenders are less willing to originate such loans, which has significantly restricted the availability of mortgage financing in New York State.

Section 6-m anticipated the need to adjust the statute's established subprime threshold under certain circumstances. Section 6-m(1)(c)(ii) empowers the Superintendent to adjust the threshold, stating, "(n)otwithstanding the comparable rates set forth in this paragraph, and notwithstanding any other law, if . . . the provisions of this section have had an unduly negative effect upon the availability or price of mortgage financing in this state, the superintendent may from time to time designate such other threshold rates as may be necessary. . . to alleviate such unduly negative effects."

Based on a financial analysis and an assessment of market conditions, the Superintendent has determined that FHA Mortgagee Letter 2013-04 has effectively decreased the threshold on certain loans; as a result, the existing subprime threshold in Section 6-m is having an unduly negative effect on the availability of mortgage financing in New York State. The Superintendent has further determined to use the authority provided by Section 6-m to promulgate this regulation to restore the availability of mortgage financing to New York State residents.

Accordingly, as set forth in Part 42.2 below, the Superintendent is adjusting the subprime threshold by 75 basis points, or 0.75%, to restore the availability of mortgage financing to approximately the levels predating the effective date of FHA Mortgagee Letter 2013-04, subject to the specifications set forth in § 42.2.

§ 42.2 Adjustment of Subprime Threshold.

(a) **Threshold Adjustment.** Notwithstanding the subprime threshold currently set forth in Banking Law Section 6-m, and subject to the exclusions set forth in subdivision (b), a subprime home loan, if insured by the FHA, means a home loan in which the initial interest rate or the fully-indexed rate, whichever is higher, on the loan exceeds by more than two-and-a-half percentage points for a first-lien loan, or by more than four-and-a-half percentage points for a subordinate-lien loan, the average commitment rate for such loans in the northeast region with a comparable duration to the duration of such home loan, as published by the Federal Home Loan Mortgage Corporation (herein "Freddie Mac") in its weekly Primary Mortgage Market Survey (PMMS) posted in the week prior to the week in which the lender provides the "good faith estimate" required under 12 USC § 2601 et seq."

(b) Exclusions:

(1) The following types of FHA-insured loans are excluded from the threshold adjustment in subdivision (a), and instead are examined in accordance with the threshold currently set forth in Banking Law Section 6-m:

i. Title I Home Improvement Loans;
 ii. Home Equity Conversion Mortgages; and
 iii. Any loan in which the fully-indexed rate, calculated using the FHA MIP policies that were in effect immediately prior to the effectiveness of Mortgagee Letter 2013-04, exceeds the unadjusted subprime threshold.

(2) All home loans other than FHA-insured loans are excluded from the threshold adjustment in subdivision (a), and instead are examined in accordance with the threshold currently set forth in Banking Law Section 6-m.

§ 42.3 Effective Date.

This Part shall be effective immediately.

This notice is intended to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires December 14, 2014.

Text of rule and any required statements and analyses may be obtained from: Ted Anastasiou, New York State Department of Financial Services, One State Street, New York, NY 10004-1417, (212) 709-3539, email: Ted.Anastasiou@DFS.ny.gov

Regulatory Impact Statement

1. Statutory Authority.

Section 6-m of the Banking Law provides for the regulation of subprime home loans as defined in the statute. Section 6-m(1)(c)(ii) empowers the Superintendent to adjust the subprime threshold established in Section 6-m, stating, "(n)otwithstanding the comparable rates set forth in this paragraph, and notwithstanding any other law, if . . . the provisions of this section have had an unduly negative effect upon the availability or price of mortgage financing in this state, the superintendent may from time to time designate such other threshold rates as may be necessary... to alleviate such unduly negative effects."

2. Legislative Objectives.

Part 42 of the General Regulations of the Superintendent sets forth the adjustment of the subprime threshold as established in Banking Law Section 6-m. As a result of a rule change by the Federal Housing Administration ("FHA") concerning the calculation of the annual Mortgage Insurance Premium ("MIP"), significantly more FHA-insured loans exceed the subprime threshold as established in Banking Law Section 6-m. Because of the reluctance of secondary market participants to purchase subprime loans, lenders are less willing to originate such loans, which has significantly restricted the availability of mortgage financing in New York State.

The purpose of Part 42 of the General Regulations of the Superintendent is to adjust the subprime threshold to restore the availability of mortgage financing to approximately the levels predating the effective date of the FHA's rule change concerning the calculation of MIP.

3. Needs and Benefits.

Based on a financial analysis and an assessment of market conditions, the Superintendent has determined that a rule change by the FHA concerning the calculation of the annual MIP has effectively decreased the threshold for certain loans; as a result, the existing subprime threshold in Section 6-m is having an unduly negative effect on the availability of mortgage financing in New York State. Accordingly, emergency adoption of this regulation is necessary to adjust the subprime threshold to restore the availability of mortgage financing to approximately the levels predating the effective date of the FHA rule change concerning the calculation of annual MIP.

4. Costs.

This proposed regulation will not result in any fiscal implications to the State. It simply restores the availability of mortgage financing to approximately the levels predating the effective date of the FHA rule change concerning the calculation of annual MIP.

5. Local Government Mandates.

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

6. Paperwork.

This proposed regulation does not impose any paperwork burden on lenders or borrowers. It simply restores the availability of mortgage financing to approximately the levels predating the effective date of the FHA rule change concerning the calculation of annual MIP.

7. Duplication.

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

8. Alternatives.

The Department could choose not to adopt a regulation with respect to adjusting the subprime threshold as established in Banking Law Section 6-m. The emergency adoption of this regulation, however, will restore the availability of mortgage financing to the levels predating the effective date of the FHA rule change concerning the calculation of annual MIP, which will benefit borrowers throughout New York State.

9. Federal Standards.

There are no applicable federal standards.

10. Compliance Schedule.

It is proposed that the regulation be effective upon filing.

Regulatory Flexibility Analysis

A Regulatory Flexibility Analysis for Small Business and Local Governments is not being submitted with the regulation because the regulation will not impose any adverse economic impact or any reporting, recordkeeping, or other compliance requirements on small businesses or local governments.

The purpose of Part 42 of the General Regulations of the Superintendent is to adjust the subprime threshold to restore the availability of mortgage financing to approximately the levels predating the effective date of a rule change by the Federal Housing Administration ("FHA") concerning the calculation of the annual Mortgage Insurance Premium. As a result of the rule change, significantly more FHA-insured loans exceed the subprime threshold as established in Banking Law Section 6-m. Because of the reluctance of secondary market participants to purchase subprime loans, lenders are less willing to originate such loans, which has significantly restricted the availability of mortgage financing in New York State. Banking Law Section 6-m(1)(c)(ii) empowers the Superintendent to adjust the subprime threshold established in Section 6-m. Part 42 is issued pursuant to this authority. Since nothing in this regulation will create any adverse impacts on any small businesses or local governments in the state, a full Regulatory Flexibility Analysis is not required and therefore one has not been prepared.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis is not being submitted with this proposed regulation because it will not impose any adverse impact on rural areas or any reporting, recordkeeping, or other compliance requirements on public or private entities in rural areas. The proposed regulation does not distinguish between regulated parties located in rural, suburban, or metropolitan areas of New York State, but applies universally throughout the state.

The purpose of Part 42 of the General Regulations of the Superintendent is to adjust the subprime threshold to restore the availability of mortgage financing to approximately the levels predating the effective date of a rule change by the Federal Housing Administration ("FHA") concerning the calculation of the annual Mortgage Insurance Premium. As a result of the rule change, significantly more FHA-insured loans exceed the subprime threshold as established in Banking Law Section 6-m. Because of the reluctance of secondary market participants to purchase subprime loans, lenders are less willing to originate such loans, which has significantly restricted the availability of mortgage financing in New York State. Banking Law Section 6-m(1)(c)(ii) empowers the Superintendent to adjust the subprime threshold established in Section 6-m. Part 42 is issued pursuant to this authority. Since nothing in this proposed regulation will create any adverse impacts on rural areas in the state, a full Rural Area Flexibility Analysis is not required and therefore one has not been prepared.

Job Impact Statement

A Job Impact Statement is not being submitted with this proposed regulation because it is evident from the subject matter of the regulation that it will not have an adverse impact on jobs and employment opportunities in New York State. The purpose of Part 42 of the Superintendent's Regulations is to adjust the subprime threshold to restore the availability of mortgage financing to approximately the levels predating the effective date of a rule change by the Federal Housing Administration ("FHA") concerning the calculation of the annual Mortgage Insurance Premium. As a result of the rule change, significantly more FHA-insured loans exceed the subprime threshold as established in Banking Law Section 6-m. Because of the reluctance of secondary market participants to purchase subprime loans, lenders are less willing to originate such loans, which has significantly restricted the availability of mortgage financing in New York State. Banking Law Section 6-m(1)(c)(ii) empowers the Superintendent to adjust the subprime threshold established in Section 6-m. Part 42 is issued pursuant to this authority. The terms as interpreted will not have any adverse impact on jobs or employment opportunities in New York State.

NOTICE OF ADOPTION

Regulation of Mortgage Loan Originators

I.D. No. DFS-26-14-00001-A

Filing No. 798

Filing Date: 2014-09-15

Effective Date: 2014-10-01

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

Action taken: Repeal of Part 420 and Supervisory Procedures MB 107, MB 108; and addition of new Part 420 and Supervisory Procedure MB 107 to Title 3 NYCRR.

Statutory authority: Banking Law, art. 12-E

Subject: Regulation of mortgage loan originators.

Purpose: The revised rules implement new Article 12-E of the Banking Law to require that individuals engaging in mortgage loan origination activities must be licensed by the Superintendent of Financial Services (formerly the Superintendent of Banks). Revised Part 420 sets forth the application, exemption and approval procedures for initial and annual licensing as a mortgage loan originator. Revised Supervisory Procedure MB 107 sets forth the details of the application procedure. Supervisory Procedure MB 108 set forth the procedure for approval of education courses and providers under the prior version Article 12-E. It no longer is required under the new article 12-E.

Text or summary was published in the July 2, 2014 issue of the Register, I.D. No. DFS-26-14-00001-P.

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

Text of rule and any required statements and analyses may be obtained from: Christine M. Tomczak, Esq., New York State Department of Financial Services, One State Street, New York, NY 10004, (212) 709-1642, email: christine.tomczak@DFS.ny.gov

Initial Review of Rule

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Credit Exposure Arising from Derivative Transactions

I.D. No. DFS-27-14-00009-A

Filing No. 800

Filing Date: 2014-09-15

Effective Date: 2014-10-01

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

Action taken: Addition of Part 117 to Title 3 NYCRR.

Statutory authority: Banking Law, sections 103 and 235; Financial Services Law, section 302

Subject: Credit exposure arising from derivative transactions.

Purpose: To provide for the consideration of credit exposure relating to derivative transactions.

Text or summary was published in the July 9, 2014 issue of the Register, I.D. No. DFS-27-14-00009-P.

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

Text of rule and any required statements and analyses may be obtained from: Christine M. Tomczak, Esq., New York State Department of Financial Services, One State Street, New York, NY 10004, (212) 709-1642, email: christine.tomczak@DFS.ny.gov

Initial Review of Rule

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Mandatory Rule of ATM Safety Act Compliance by Banking Institutions

I.D. No. DFS-27-14-00010-A

Filing No. 799

Filing Date: 2014-09-15

Effective Date: 2014-10-01

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

Action taken: Amendment of section 301.6 of Title 3 NYCRR.

Statutory authority: Banking Law, art. II-AA

Subject: Mandatory rule of ATM Safety Act compliance by banking institutions.

Purpose: Changes reporting requirements in section 301.6 of the Superintendent's Regulations to be consistent with changes in the ATM Safety Act (Article II-AA of the Banking Law) made by chapter 27 of the Laws of 2013. This proposal would implement the changed reporting requirements contemplated by the amended statute.

Text or summary was published in the July 9, 2014 issue of the Register, I.D. No. DFS-27-14-00010-P.

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

Text of rule and any required statements and analyses may be obtained from: Christine M. Tomczak, Esq., New York State Department of Financial Services, One State Street, New York, NY 10004, (212) 709-1642, email: christine.tomczak@DFS.ny.gov

Initial Review of Rule

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

Assessment of Public Comment

The agency received no public comment.

Department of Health

EMERGENCY RULE MAKING

Children's Camps

I.D. No. HLT-39-14-00017-E

Filing No. 821

Filing Date: 2014-09-16

Effective Date: 2014-09-16

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

Action taken: Amendment of Subpart 7-2 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 225

Finding of necessity for emergency rule: Preservation of public safety.

Specific reasons underlying the finding of necessity: Chapter 501 of the Laws of 2012 established the Justice Center for the Protection of People with Special Needs ("Justice Center"), in order to coordinate and improve the State's ability to protect those persons having various physical, developmental, or mental disabilities and who are receiving services from various facilities or provider agencies. The Department must promulgate regulations as a "state oversight agency." These regulations will assure proper coordination with the efforts of the Justice Center.

Among the facilities covered by Chapter 501 are children's camps having enrollments with 20 percent or more developmentally disabled campers. These camps are regulated by the Department and, in some cases, by local health departments, pursuant to Article 13-B of the Public Health Law and 10 NYCRR Subpart 7-2. Given the effective date of Chapter 501 and its relation to the start of the camp season, these implementing regulations must be promulgated on an emergency basis in order to assure the necessary protections for vulnerable persons at such camps. Absent emergency promulgation, such persons would be denied initial coordinated protections until the 2015 camp season. Promulgating these regulations on an emergency basis will provide such protection, while still providing a full opportunity for comment and input as part of a formal rulemaking process which will also occur pursuant to the State Administrative Procedures Act. The Department is authorized to promulgate these rules pursuant to sections 201 and 225 of the Public Health Law.

Promulgating the regulations on an emergency basis will ensure that campers with special needs promptly receive the coordinated protections to be provided to similar individuals cared for in other settings. Such protections include reduced risk of being cared for by staff with a history of inappropriate actions such as physical, psychological or sexual abuse towards persons with special needs. Perpetrators of such abuse often seek legitimate access to children so it is critical to camper safety that individuals who that have committed such acts are kept out of camps. The regulation provides an additional mechanism for camp operators to do so. The regulations also reduce the risk of incidents involving physical, psycho-

logical or sexual abuse towards persons with special needs by ensuring that such occurrences are fully and completely investigated, by ensuring that camp staff are more fully trained and aware of abuse and reporting obligations, allowing staff and volunteers to better identify inappropriate staff behavior and provide a mechanism for reporting injustice to this vulnerable population. Early detection and response are critical components for mitigating injury to an individual and will prevent a perpetrator from hurting additional children. Finally, prompt enactment of the proposed regulations will ensure that occurrences are fully investigated and evaluated by the camp, and that measures are taken to reduce the risk of re-occurrence in the future. Absent emergency adoption, these benefits and protections will not be available to campers with special needs until the formal rulemaking process is complete, with the attendant loss of additional protections against abuse and neglect, including physical, psychological, and sexual abuse.

Subject: Children's Camps.

Purpose: To include camps for children with developmental disabilities as a type of facility with in the oversight of the Justice Center.

Substance of emergency rule: The Department is amending 10 NYCRR Subpart 7-2 Children's Camps as an emergency rulemaking to conform the Department's regulations to requirements added or modified as a result of Chapter 501 of the Laws of 2012 which created the Justice Center for the Protection of Persons with Special Needs (Justice Center). Specifically, the revisions:

- amend section 7-2.5(o) to modify the definition of "adequate supervision," to incorporate the additional requirements being imposed on camps otherwise subject to the requirements of section 7-2.25
- amend section 7-2.24 to address the provision of variances and waivers as they apply to the requirements set forth in section 7-2.25
- amend section 7-2.25 to add definitions for "camp staff," "Department," "Justice Center," and "Reportable Incident"

With regard to camps with 20 percent or more developmentally disabled children, which are subject to the provisions of 10 NYCRR section 7-2.25, add requirements as follows:

- amend section 7-2.25 to add new requirements addressing the reporting of reportable incidents to the Justice Center, to require screening of camp staff, camp staff training regarding reporting, and provision of a code of conduct to camp staff
- amend section 7-2.25 to add new requirements providing for the disclosure of information to the Justice Center and/or the Department and, under certain circumstances, to make certain records available for public inspection and copying
- amend section 7-2.25 to add new requirements related to the investigation of reportable incidents involving campers with developmental disabilities
- amend section 7-2.25 to add new requirements regarding the establishment and operation of an incident review committee, and to allow an exemption from that requirement under appropriate circumstances.
- amend section 7-2.25 to provide that a permit may be denied, revoked, or suspended if the camp fails to comply with the regulations, policies or other requirements of the Justice Center

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire December 14, 2014.

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

Regulatory Impact Statement

Statutory Authority:

The Public Health and Health Planning Council is authorized by Section 225(4) of the Public Health Law (PHL) to establish, amend and repeal sanitary regulations to be known as the State Sanitary Code (SSC), subject to the approval of the Commissioner of Health. Article 13-B of the PHL sets forth sanitary and safety requirements for children's camps. PHL Sections 225 and 201(1)(m) authorize SSC regulation of the sanitary aspects of businesses and activities affecting public health including children's camps.

Legislative Objectives:

In enacting to Chapter 501 of the Laws of 2012, the legislature established the New York State Justice Center for the Protection of People with Special Needs (Justice Center) to strengthen and standardize the safety net for vulnerable people that receive care from New York's Human Services Agencies and Programs. The legislation includes children's camps for children with developmental disabilities within its scope and requires the Department of Health to promulgate regulations approved by the Justice Center pertaining to incident management. The proposed amendments further the legislative objective of protecting the health and safety of vulnerable children attending camps in New York State (NYS).

Needs and Benefits:

The legislation amended Article 11 of Social Services law as it pertains to children's camps as follows. It:

- included overnight, summer day and traveling summer day camps for children with developmental disabilities as facilities required to comply with the Justice Center requirements.
- defined the types of incident required to be reported by children's camps for children with developmental disabilities to the Justice Center Vulnerable Persons' Central Registry.
- mandated that the regulations pertaining to children's camps for children with developmental disabilities are amended to include incident management procedures and requirements consistent with Justice Center guidelines and standards.
- required that children's camps for children with developmental disabilities establish an incident review committee, recognizing that the Department could provide for a waiver of that requirement under certain circumstances.
- required that children's camps for children with developmental disabilities consult the Justice Center's staff exclusion list (SEL) to ensure that prospective employees are not on that list and to, where the prospective employee is not on that list, to also consult the Office of Children and Family Services State Central Registry of Child Abuse and Maltreatment (SCR) to determine whether prospective employees are on that list.
- required that children's camps for children with developmental disabilities publicly disclose certain information regarding incidents of abuse and neglect if required by the Justice Center to do so.

The children's camp regulations, Subpart 7-2 of the SSC are being amended in accordance with the aforementioned legislation.

Compliance Costs:

Cost to Regulated Parties:

The amendments impose additional requirements on children's camp operators for reporting and cooperating with Department of Health investigations at children's camps for children with developmental disabilities (hereafter "camps"). The cost to affected parties is difficult to estimate due to variation in salaries for camp staff and the amount of time needed to investigate each reported incident. Reporting an incident is expected to take less than half an hour; assisting with the investigation will range from several hours to two staff days. Using a high estimate of staff salary of \$30.00 an hour, total staff cost would range from \$120 to \$1600 for each investigation. Expenses are nonetheless expected to be minimal statewide as between 40 and 50 children's camps for children with developmental disabilities operate each year, with combined reports of zero to two incidents a year statewide. Accordingly, any individual camp will be very unlikely to experience costs related to reporting or investigation.

Each camp will incur expenses for contacting the Justice Center to verify that potential employees, volunteers or others falling within the definition of "custodian" under section 488 of the Social Services Law (collectively "employees") are not on the Staff Exclusion List (SEL). The effect of adding this consultation should be minimal. An entry level staff person earning the minimum wage of \$7.25/hour should be able to compile the necessary information for 100 employees, and complete the consultation with the Justice Center, within a few hours.

Similarly, each camp will incur expenses for contacting the Office of Children and Family Services (OCFS) to determine whether potential employees are on the State Central Registry of Child Abuse and Maltreatment (SCR) when consultation with the Justice Center shows that the prospective employee is not on the SEL. The effect of adding this consultation should also be minimal, particularly since it will not always be necessary. An entry level staff person earning the minimum wage of \$7.25/hour should be able to compile the necessary information for 100 employees, and complete the consultation with the OCFS, within a few hours. Assuming that each employee is subject to both screens, aggregate staff time required should not be more than six to eight hours. Additionally, OCFS imposes a \$25.00 screening fee for new or prospective employees.

Camps will be required to disclose information pertaining to reportable incidents to the Justice Center and to the permit issuing official investigating the incident. Costs associated with this include staff time for locating information and expenses for copying materials. Using a high estimate of staff salary of \$30.00 an hour, and assuming that staff may take up to two hours to locate and copy the records, typical cost should be under \$100.

Camps must also assure that camp staff, and certain others, who fall within the definition of mandated reporters under section 488 of the Social Services Law receive training related to mandated reporting to the Justice Center, and the obligations of those staff who are required to report incidents to the Justice Center. The costs associated with such training should be minimal as it is expected that the training material will be provided to the camps and will take about one hour to review during routine staff training. Camps must also ensure that the telephone number for the Justice Center reporting hotline is conspicuously posted for campers

and staff. Cost associated with such posting is limited, related to making and posting a copy of such notice in appropriate locations.

The camp operator must also provide each camp staff member, and others who may have contact with campers, with a copy of a code of conduct established by the Justice Center pursuant to Section 554 of the Executive Law. The code must be provided at the time of initial employment, and at least annually thereafter during the term of employment. Receipt of the code of conduct must be acknowledged, and the recipient must further acknowledge that he or she has read and understands it. The cost of providing the code, and obtaining and filing the required employee acknowledgment, should be minimal, as it would be limited to copying and distributing the code, and to obtaining and filing the acknowledgments. Staff should need less than 30 minutes to review the code.

Camps will also be required to establish and maintain a facility incident review committee to review and guide the camp's responses to reportable incidents. The cost to maintain a facility incident review committee is difficult to estimate due to the variations in salaries for camp staff and the amount of time needed for the committee to do its business. A facility incident review committee must meet at least annually, and also within two weeks after a reportable incident occurs. Assuming the camp will have several staff members participate on the committee, an average salary of \$50.00 an hour and a three hour meeting, the cost is estimated to be \$450.00 dollars per meeting. However, the regulations also provide the opportunity for a camp to seek an exemption, which may be granted subject to Department approval based on the duration of the camp season and other factors. Accordingly, not all camps can be expected to bear this obligation and its associated costs.

Camps are now explicitly required to obtain an appropriate medical examination of a camper physically injured from a reportable incident. A medical examination has always been expected for such injuries.

Finally, the regulations add noncompliance with Justice Center-related requirements as a ground for denying, revoking, or suspending a camp operator's permit.

Cost to State and Local Government:

State agencies and local governments that operate children's camps for children with developmental disabilities will have the same costs described in the section entitled "Cost to Regulated Parties." Currently, it is estimated that five summer day camps that meet the criteria are operated by municipalities. The regulation imposes additional requirements on local health departments for receiving incident reports and investigations of reportable incidents, and providing a copy of the resulting report to the Department and the Justice Center. The total cost for these services is difficult to estimate because of the variation in the number of incidents and amount of time to investigate an incident. However, assuming the typically used estimate of \$50 an hour for health department staff conducting these tasks, an investigation generally lasting between one and four staff days, and assuming an eight hour day, the cost to investigate an incident will range \$400.00 to \$1600. Zero to two reportable incidents occur statewide each year, so a local health department is unlikely to bear such an expense. The cost of submitting the report is minimal, limited to copying and mailing a copy to the Department and the Justice Center.

Cost to the Department of Health:

There will be routine costs associated with printing and distributing the amended Code. The estimated cost to print revised code books for each regulated children's camp in NYS is approximately \$1600. There will be additional cost for printing and distributing training materials. The expenses will be minimal as most information will be distributed electronically. Local health departments will likely include paper copies of training materials in routine correspondence to camps that is sent each year.

Local Government Mandates:

Children's camps for children with developmental disabilities operated by local governments must comply with the same requirements imposed on camps operated by other entities, as described in the "Cost to Regulated Parties" section of this Regulatory Impact Statement. Local governments serving as permit issuing officials will face minimal additional reporting and investigation requirements, as described in the "Cost to State and Local Government" section of this Regulatory Impact Statement. The proposed amendments do not otherwise impose a new program or responsibilities on local governments. City and county health departments continue to be responsible for enforcing the amended regulations as part of their existing program responsibilities.

Paperwork:

The paperwork associated with the amendment includes the completion and submission of an incident report form to the local health department and Justice Center. Camps for children with developmental disabilities will also be required to provide the records and information necessary for LHD investigation of reportable incidents, and to retain documentation of the results of their consultation with the Justice Center regarding whether any given prospective employee was found to be on the SEL or the SCR.

Duplication:

This regulation does not duplicate any existing federal, state, or local regulation. The regulation is consistent with regulations promulgated by the Justice Center.

Alternatives Considered:

The amendments to the camp code are mandated by law. No alternatives were considered.

Consideration was given to including a cure period to afford camp operators an opportunity to correct violations associated with this rule; however, this option was rejected because it is believed that lessening the department's ability to enforce the regulations could place this already vulnerable population at greater risk to their health and safety.

Federal Standards:

Currently, no federal law governs the operation of children's camps.

Compliance Schedule:

The proposed amendments are to be effective upon filing with the Secretary of State.

Regulatory Flexibility Analysis

Types and Estimated Number of Small Businesses and Local Governments:

There are between 40 and 50 regulated children's camps for children with development disabilities (38% are expected to be overnight camps and 62% are expected to be summer day camps) operating in New York State, which will be affected by the proposed rule. About 30% of summer day camps are operated by municipalities (towns, villages, and cities). Typical regulated children's camps representing small business include those owned/operated by corporations, hotels, motels and bungalow colonies, non-profit organizations (Girl/Boy Scouts of America, Cooperative Extension, YMCA, etc.) and others. None of the proposed amendments will apply solely to camps operated by small businesses or local governments.

Compliance Requirements:

Reporting and Recordkeeping:

The obligations imposed on small business and local government as camp operators are no different from those imposed on camps generally, as described in "Cost to Regulated Parties," "Local Government Mandates," and "Paperwork" sections of the Regulatory Impact Statement. The obligations imposed on local government as the permit issuing official is described in "Cost to State and Local Government" and "Local Government Mandates" portions of the Regulatory Impact Statement.

Other Affirmative Acts:

The obligations imposed on small business and local government as camp operators are no different from those imposed on camps generally, as described in "Cost to Regulated Parties," "Local Government Mandates," and "Paperwork" sections of the Regulatory Impact Statement.

Professional Services:

Camps with 20 percent or more developmentally disabled children are now explicitly required to obtain an appropriate medical examination of a camper physically injured from a reportable incident. A medical examination has always been expected for such injuries.

Compliance Costs:

Cost to Regulated Parties:

The obligations imposed on small business and local government as camp operators are no different from those imposed on camps generally, as described in "Cost to Regulated Parties" and "Paperwork" sections of the Regulatory Impact Statement.

Cost to State and Local Government:

The obligations imposed on small business and local government as camp operators are no different from those imposed on camps generally, as described in the "Cost to Regulated Parties" section of the Regulatory Impact Statement. The obligations imposed on local government as the permit issuing official is described in "Cost to State and Local Government" and "Local Government Mandates" portions of the Regulatory Impact Statement.

Economic and Technological Feasibility:

There are no changes requiring the use of technology.

The proposal is believed to be economically feasible for impacted parties. The amendments impose additional reporting and investigation requirements that will use existing staff that already have similar job responsibilities. There are no requirements that that involve capital improvements.

Minimizing Adverse Economic Impact:

The amendments to the camp code are mandated by law. No alternatives were considered. The economic impact is already minimized.

Consideration was given to including a cure period to afford camp operators an opportunity to correct violations associated with this rule; however, this option was rejected because it is believed that lessening the department's ability to enforce the regulations could place this already vulnerable population at greater risk to their health and safety.

Small Business Participation and Local Government Participation:

No small business or local government participation was used for this

rule development. The amendments to the camp code are mandated by law. Ample opportunity for comment will be provided as part of the process of promulgating the regulations, and training will be provided to affected entities with regard to the new requirements.

Rural Area Flexibility Analysis

Types and Estimated Number of Rural Areas:

There are between 40 and 50 regulated children's camps for children with development disabilities (38% are expected to be overnight camps and 62% are expected to be summer day camps) operating in New York State, which will be affected by the proposed rule. Currently, there are seven day camps and ten overnight camps operating in the 44 counties that have population less than 200,000. There are an additional four day camps and three overnight camps in the nine counties identified to have townships with a population density of 150 persons or less per square mile.

Reporting and Recordkeeping and Other Compliance Requirements:

Reporting and Recordkeeping:

The obligations imposed on camps in rural areas are no different from those imposed on camps generally, as described in "Cost to Regulated Parties" and "Paperwork" sections of the Regulatory Impact Statement.

Other Compliance Requirements:

The obligations imposed on camps in rural areas are no different from those imposed on camps generally, as described in "Cost to Regulated Parties" and "Paperwork" sections of the Regulatory Impact Statement.

Professional Services:

Camps with 20 percent or more developmentally disabled children are now explicitly required to obtain an appropriate medical examination of a camper physically injured from a reportable incident. A medical examination has always been expected for such injuries.

Compliance Costs:

Cost to Regulated Parties:

The costs imposed on camps in rural areas are no different from those imposed on camps generally, as described in "Cost to Regulated Parties" and "Paperwork" sections of the Regulatory Impact Statement.

Economic and Technological Feasibility:

There are no changes requiring the use of technology.

The proposal is believed to be economically feasible for impacted parties. The amendments impose additional reporting and investigation requirements that will use existing staff that already have similar job responsibilities. There are no requirements that that involve capital improvements.

Minimizing Adverse Economic Impact on Rural Area:

The amendments to the camp code are mandated by law. No alternatives were considered. The economic impact is already minimized, and no impacts are expected to be unique to rural areas.

Consideration was given to including a cure period to afford camp operators an opportunity to correct violations associated with this rule; however, this option was rejected because it is believed that lessening the department's ability to enforce the regulations could place this already vulnerable population at greater risk to their health and safety.

Rural Area Participation:

No rural area participation was used for this rule development. The amendments to the camp code are mandated by law. Ample opportunity for comment will be provided as part of the process of promulgating the routine regulations, and training will be provided to affected entities with regard to the new requirements.

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 have no impact on jobs and employment opportunities, because it does not result in an increase or decrease in current staffing level requirements. Tasks associated with reporting new incidents types and assisting with the investigation of new reportable incidents are expected to be completed by existing camp staff, and should not be appreciably different than that already required under current requirements.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Medical Records Access Review Committees (MRARCs)

I.D. No. HLT-39-14-00018-P

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

Proposed Action: Amendment of Subpart 50-3 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 18(4)

Subject: Medical Records Access Review Committees (MRARCs).

Purpose: To designate rather than appoint MRARCs to hear appeals from the denial of access to patient information.

Text of proposed rule: Sections 50-3.1, 50-3.2, 50-3.3 and 50-3.4 are amended to read as follows:

Section 50-3.1 Application.

This [regulation] *Subpart* shall govern the functioning of medical record access review committees established pursuant to Public Health Law, section 18 to hear appeals from the denial of access to patient information.

Section 50-3.2 Definitions.

For the purpose of this [section] *subpart*:

(a) Committee means a medical record access review committee [appointed] *designated* by the Commissioner of Health to hear appeals from the denial of access to patient information as provided in Public Health Law, section 18.

(b) Health care provider or provider [means a health care facility or a health care practitioner as defined in subdivisions (c) and (d) of this section] *shall have the same meaning as in section 18 of the Public Health Law.*

[(c) Health care facility or facility means a hospital as defined in Public Health Law, article 28; a home care services agency, as defined in Public Health Law, article 36; a hospice, as defined in Public Health Law, article 40; a health maintenance organization, as defined in Public Health Law, article 44; and a shared health facility, as defined in Public Health Law, article 47.

(d) Health care practitioner or practitioner means a person licensed under Education Law, article 131, 131-B, 132, 133, 136, 139, 141, 143, 144, 153, 154, 156 or 159 or a person certified under Public Health Law section 2560.]

[(e) (c) Patient information [or information means any information as defined in Public Health Law section 18(1)(e)] *shall have the same meaning as in section 18 of the Public Health Law.*

[(f) (d) API coordinator means the Department of Health employee responsible for administration, coordination and operation of the access to patient information program within the Department of Health.

[(g) (e) Qualified person [means any properly identified subject, committee for an incompetent appointment pursuant to article 78 of the Mental Hygiene Law, or a parent of an infant, a guardian of an infant appointed pursuant to article 17 of the Surrogate's Court Procedure Act or other legally appointed guardian of an infant who may be entitled to request access to a clinical record pursuant to Public Health Law, section 18] *shall have the same meaning as in section 18 of the Public Health Law.*

[(h) (f) Personal notes and observations shall mean a practitioner's speculations, impressions (other than tentative or actual diagnosis) and reminders, provided such data is maintained by a practitioner. Handwritten notes and observations shall not be presumed to be personal notes and observations.

Section 50-3.3 Medical record access review committee.

[(a) Appointment. (1) A medical record access review committee shall consist of three to five licensed professionals appointed by the commissioner. The commissioner shall designate a chairperson and a vice-chairperson] *Every reasonable effort will be made to include on the committee a professional in the same or related field as the health care provider who is the subject of the appeal.*

[(2) The commissioner may appoint new members to the committee when vacancies arise.

(3) The commissioner may remove members of a committee for cause. Cause for removal includes, but is not limited to, absence from three consecutive meetings or criminal conviction or findings of professional misconduct against the member.

(4) The commissioner shall appoint alternates who shall serve on the committee when a standing committee member is absent. The API coordinator shall determine when a standing member is absent and which alternate shall serve in place of the absent member. The alternate chosen shall have the same duties and responsibilities as a member.

(b) Term. Initial members shall be appointed for a one- or two-year term. Thereafter, the term shall be for two years.

(c) Quorum. A majority of the members of a committee constitutes a quorum.

(d) Meetings. A committee shall meet as frequently as its business may require. The API coordinator shall schedule meetings in consultation with the committee chairperson.

(e) Voting. Each member of the committee shall have one vote. No proxy voting is allowed. A majority vote of the members on the committee is required for committee action.]

Section 50-3.4 Notification of patient rights.

(a) If a provider denies access to patient information the provider shall inform, in writing, the qualified person of the reasons for denial and the qualified person's right to obtain a review of the denial. The provider shall furnish the qualified person a form, approved by the Department of Health, which can be used for requesting such a review.

(b) If a qualified person decides to request a review, he or she shall do so by forwarding the request to the API coordinator for review. The API coordinator shall notify the provider of the request for review and of the name and address of the chairperson of the [appropriate] committee where the patient information shall be sent. A copy of the patient information, and a statement of the reasons for denial must be sent by the provider to the chairperson within 10 days of notification of the request. *The qualified person shall be given a reasonable opportunity to present written information and written statements.*

Sections 50-3.5, 50-3.6 and 50-3.7 are deleted in their entirety. Existing sections 50-3.8 and 50-3.9 are renumbered as 50-3.5 and amended as follows:

Section [50-3.8] 50-3.5 Decisions [and determinations].

[(a) Committee decisions shall be in writing and issued promptly. The decision shall include the specific reasons for which access was denied or granted.

(b) A copy of the decision shall be [mailed] *provided* to the provider and qualified person [by certified mail. When the committee's decision does not involve a finding of personal notes and observations, the qualified person shall also be notified in writing of the right to appeal the decision. A copy of the decision and record of the meeting shall be provided to the API coordinator].

[(c) Copies of all patient records shall be returned to the provider within 10 days following the committee meeting.

Section 50-3.9 Records.

(a) The record of a meeting will include notices, written statements, [a transcript of the meeting if requested,] any other information submitted[,] and a copy of the decision. [The API coordinator shall retain the records of all meetings.

(b) Meetings may be mechanically, electronically or otherwise recorded under the supervision of the chairperson, and the original recording or an official transcript thereof shall be part of the record.

(c) Upon prior request made by the provider or qualified person, the API coordinator will prepare a transcript of proceedings within a reasonable time and shall furnish a copy to the requester. Except when any statute authorizes otherwise, the department is authorized to charge the cost for preparation and furnishing of such record or transcript or any part thereof.]

Existing section 50-3.10 is renumbered as section 50-3.6 and amended as follows:

Section [50-3.10] 50-3.6 Confidentiality.

All patient information is confidential as provided for in New York State law and regulations. Any patient information, [review] committee records, [committee] deliberations, or correspondence sent to the committee or API coordinator will be treated confidentially and all records will be stored in a secure place.

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.ny.gov

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

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

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

Regulatory Impact Statement

Statutory Authority:

The authority for the promulgation of these amended regulations is contained in the Laws of 2010, Chapter 58, Part A, section 13. This section revised Public Health Law (PHL) § 18(4) and directs the commissioner of health to designate medical record access review committees to hear appeals of denial of access to patient information and to promulgate the necessary rules and regulations to effectuate these provisions.

Subpart 50-3 of Title 10 of NYCRR regulates the function of medical record access review committees established pursuant to PHL § 18 to hear appeals from the denial of access to patient information.

Legislative Objectives:

The legislative objective of the proposed amendments to Subpart 50-3 is to address specific requirements of a medical record access review committee outlined in the earlier version of PHL § 18(4). The regulations must be updated for consistency with new provisions of PHL § 18(4) which were necessary to implement the health and mental hygiene budget for the 2010-2011 state fiscal year. The new provisions of PHL § 18(4) require the commissioner of health to designate rather than appoint medical record access review committees to hear appeals from the denial of access to patient information. The regulations must be updated to reflect this change.

Needs and Benefits:

The amendments to Subpart 50-3 will clarify the steps that health care providers must take in the event of an appeal to the denial of access to

patient information. The amendments will simplify the process by designating Department of Health (DOH) staff as members of medical record access review committees. Since DOH staff will not receive honorariums, the amendments will also provide a cost savings to the state.

Various provider and patient organizations were contacted to determine if they had any concerns about the proposed amendments. The organizations representing psychologists, nurses and social workers requested that any medical records access review committee designated to hear an appeal for psychological or social work records include a professional in the same field as the health care provider who is the subject of the appeal. The Medical Society of the State of New York concurs with this suggestion and also requested that any medical records access review committee designated to hear an appeal for medical records include a physician in the same specialty as the subject of the appeal. The proposed regulations were drafted to address that concern.

Costs:

Costs to State and Local Government:

The amended regulations will not impose any costs upon State and local governments.

Costs to Private Regulated Parties:

These amended regulations will not impose any costs on the regulated parties.

Costs to the Department of Health:

These amended regulations will not increase costs to the Department. Department costs will actually be reduced by using staff instead of paid experts.

Local Government Mandate:

There are no additional programs, services, duties or responsibilities imposed upon any county, city, village, school district, fire district or other special district by this proposal.

Paperwork:

No additional new paperwork will be required. Qualified parties will use the same form to file an appeal of denial of access to patient information.

Duplication:

This is an amendment to an existing State regulation and does not duplicate any existing federal, state, or local regulation.

Alternatives:

This amendment is required by the Laws of 2010, Chapter 58, Part A, section 13. This section revised Public Health Law (PHL) § 18(4) and directs the commissioner of health to designate medical record access review committees to hear appeals of denial of access to patient information and to promulgate the necessary rules and regulations to effectuate these provisions.

Various provider and patient organizations were contacted to determine if they had any concerns about the proposed amendments. The organizations representing psychologists, nurses and social workers requested that any medical records access review committee designated to hear an appeal for psychological or social work records include a professional in the same field as the health care provider who is the subject of the appeal. The Medical Society of the State of New York concurs with this suggestion and also requested that any medical records access review committee designated to hear an appeal for medical records include a physician in the same specialty as the subject of the appeal. The proposed regulations were drafted to address that concern.

Federal Standards:

This regulatory amendment does not exceed any minimum standards of the federal government for the same or similar subject areas.

Compliance Schedule:

This proposal will go into effect upon a Notice of Adoption in the New York State Register.

Regulatory Flexibility Analysis

No Regulatory Flexibility Analysis is required pursuant to Section 202-b(3)(b) of the State Administrative Procedure Act. The proposed amendment does not impose any adverse economic impact on small businesses or local governments, and does not impose reporting, recordkeeping or other compliance requirements on small businesses or local governments.

No cure period or other opportunity for ameliorative action is required pursuant to Section 202-b of the State Administrative Procedure Act. The proposed amendment does not establish or modify penalties associated with a violation.

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 any adverse impact on facilities in rural areas, and does not impose any reporting, recordkeeping or other compliance requirements on regulated parties in rural areas.

Job Impact Statement

A Job Impact Statement is not required because it is apparent, from the nature and purpose of the proposed rule, that it will not have a substantial adverse impact on jobs and employment opportunities.

Higher Education Services Corporation

NOTICE OF ADOPTION

New York State Young Farmers Loan Forgiveness Incentive Program

I.D. No. ESC-28-14-00022-A

Filing No. 806

Filing Date: 2014-09-16

Effective Date: 2014-10-01

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

Action taken: Addition of section 2201.14 to Title 8 NYCRR.

Statutory authority: Education Law, sections 653, 655 and 679-f

Subject: New York State Young Farmers Loan Forgiveness Incentive Program.

Purpose: To implement the New York State Young Farmers Loan Forgiveness Incentive Program.

Text of final rule: New section 2201.14 is added to Title 8 of the New York Code, Rules and Regulations to read as follows:

Section 2201.14 New York State Young Farmers Loan Forgiveness Incentive Program.

(a) Definitions. The following definitions apply to this section:

(1) "Approved New York state college or university" shall mean a college or university located within New York State that is accredited by an agency recognized by the United States secretary of education, or by a successor federal agency.

(2) "Award" shall mean a New York State Young Farmers Loan Forgiveness Incentive Program award pursuant to section 679-f of the New York State Education Law.

(3) "Corporation" shall mean the New York State Higher Education Services Corporation.

(4) "Degree" shall mean an undergraduate degree.

(5) "Economically disadvantaged" and "economic need" shall mean applicants who demonstrate the greatest need by dividing their household income by their outstanding student loan debt; the lowest resulting quotient evidences the greatest need.

(6) "Employer" shall mean a legal entity that employs one or more people for wages or salary, including a sole owner without employees.

(7) "Full time" shall mean employment devoted to the operation of a farm in New York State in accordance with the employer's policy, practice, and standard for defining full time employment.

(8) "Household income" shall mean the federal Adjusted Gross Income (AGI) for individuals or married couples filing jointly, or the aggregate AGI of married couples filing separately, reduced by a cost of living allowance, which shall be equal to the applicant's eligible New York State standard deductions plus their eligible New York State dependent exemptions for personal income tax purposes.

(9) "Operate" and "operation" shall mean employment in a managerial position, including the management of a component(s) of farm operation.

(10) "Outstanding student loan debt" shall mean the total cumulative student loan balance required to be paid by the applicant at the time of selection for an award under this program. Such outstanding student loan debt shall include the outstanding principal and any accrued interest covering the cost of attendance to obtain an undergraduate degree from an approved New York State college or university.

(11) "Program" shall mean the New York State Young Farmers Loan Forgiveness Incentive Program.

(b) Eligibility. An applicant must:

(1) satisfy the requirements provided in section 679-f of the Education Law;

(2) not be in default on a student loan made under any statutory New York State or federal education loan program or repayment of any award made pursuant to article 14 of the Education Law; and

(3) be in compliance with the terms of any service condition imposed by an award made pursuant to article 14 of the Education Law.

(c) Administration.

(1) An applicant for an award shall:

(i) apply for program eligibility on forms and in a manner

prescribed by the corporation. The corporation may require applicants to provide additional documentation evidencing eligibility; and

(ii) postmark or electronically transmit an application for program eligibility to the corporation on or before the date prescribed by the corporation.

(2) A recipient of an award shall:

(i) execute a service contract prescribed by the corporation;

(ii) apply for payment annually on forms prescribed by the corporation;

(iii) confirm annually his or her operation of a farm in New York State on a full time basis by submitting a certification from his or her employer attesting to the recipient's job title, job duties, full-time employment status (including a copy of the employer's policy, practice, and standard for defining full time employment), and any other information necessary for the corporation to determine eligibility. Said submission shall be on forms and in a manner prescribed by the corporation; and

(iv) not receive more than ten thousand dollars per year for not more than five years in duration and not to exceed the total amount of such recipient's outstanding student loan debt.

(3) The outstanding student loan debt shall:

(i) include New York State student loans, federal government student loans, and private student loans for the purpose of financing undergraduate studies made by commercial entities subject to governmental examination.

(ii) exclude federal parent PLUS loans; loans cancelled under any program; private loans given by family or personal acquaintances; student loan debt paid by credit card; loans paid in full, or in part, on or before the first successful application for program eligibility under this program; loans for which documentation is not available; loans without a promissory note; or any other loan debt that cannot be verified by the corporation.

(iii) be reduced by any reductions to student loan debt that an applicant has received or shall receive.

(4) The corporation may impose an administrative offset whereby a payment under this program is withheld, in whole or in part, to satisfy a debt owed to the corporation by the recipient.

(d) Award selection.

(1) For the first year of this program's operation, awards shall be granted to applicants who are economically disadvantaged with a priority given to those applicants completing the second, third, fourth or fifth year of full time farm operation.

(2) For the second year of this program's operation and thereafter, awards shall be made in the following order of priority:

(i) applicants who received an award in a prior year and are re-applying to receive an award under this program;

(ii) applicants who are economically disadvantaged, but did not receive an award during the first year of this program's operation, with a priority given to those applicants completing the second, third, fourth or fifth year of full time farm operation.

(3) All awards are contingent upon annual appropriations.

(e) Abandonment or revocation. Upon prior notice to a recipient, an award may be revoked by the corporation if the corporation determines that the recipient has abandoned their award. Abandonment of an award can be evidenced by:

(1) a failure to apply for payment or reimbursement;

(2) a lack of any contact or communication with the corporation;

(3) a failure to respond to a request for information; or

(4) any other information known to the corporation reasonably evidencing an indication of abandonment by a program participant.

Final rule as compared with last published rule: Nonsubstantive changes were made in section 2201.14(a), (b) and (c).

Text of rule and any required statements and analyses may be obtained from: Cheryl B. Fisher, NYS Higher Education Services Corporation, 99 Washington Avenue, Room 1325, Albany, New York 12255, (518) 474-5592, email: regcomments@hesc.ny.gov

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

The changes made to the proposed rule were to add applicable sections of Education Law and the Corporation's right to use an administrative offset through the State Comptroller's constitutional authority. Also, the definition of the term "employer" was added and the definition of the term "operate" was revised to clarify the meaning of both terms. These changes do not necessitate a revision to these documents and therefore a revised RIS, RFA, RAFA, and JIS are not required.

Initial Review of Rule

As a rule that does not require a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2019, which is no later than the 5th year after the year in which this rule is being adopted.

Assessment of Public Comment

The New York State Higher Education Services Corporation (HESC) is authorized, pursuant to New York State Education Law § 679-f(1), to

adopt rules and regulations implementing the New York State Young Farmers Loan Forgiveness Incentive Program.

Following the July 16, 2014 publication of the 'Notice of Proposed Rulemaking' in the State Register, HESC received comments throughout the public comment period, which ended with the close of business on September 2, 2014. All substantive comments received are considered and discussed below.

1. Definition of Undergraduate Degree

Comment: In the proposed rule, it states: "Degree shall mean an undergraduate degree." New York Farm Bureau recommends that this should be interpreted to include applicants who obtained either 2- year or 4-year degrees (Associates or Bachelor's degrees), with no preference given for length of study.

Response: The term undergraduate degree includes both an associate degree as well as a baccalaureate degree.

2. Definition of an Approved New York State College or University

Comment: Under the definitions section, it states: "Approved New York state college or university" shall mean a college or university located within New York State that is accredited by an agency recognized by the United State Secretary of Education, or by a successor federal agency." New York Farm Bureau believes that young farmers who chose to study at accredited colleges or universities outside of New York State should also be eligible to receive the Award as well as applicants who received their degrees through accredited online programs. Some young farmers decide to attend schools outside of New York State for a whole array of reasons, and we believe that they should not be penalized for that, especially if they plan on returning to New York to farm. Also by widening the applicant pool to those who received their degrees in other states, it may encourage for young farmers to return or come to New York to establish or take over a business. Applicants who did receive their degrees from an approved New York State college or university could have higher consideration to receive the Award.

Response: To be eligible for an award, the statute requires that an applicant "...shall have graduated and obtained a degree from an approved New York state college or university." Therefore, the regulation cannot include institutions outside New York State. The regulation defines the term approved.

3. Award Selection

Comment: The proposed rule states: For the first year of this program's operation, awards shall be granted to applicants who are economically disadvantaged with a priority given to those applicants completing the second, third, fourth or fifth years of full time farm operation. New York Farm Bureau would like to inquire if there is a timeframe after graduation that applicants would be able to receive the Award? New York Farm Bureau recommends that applicants be eligible to apply for the Award at least 10 years after their graduation date. This timeframe enables young farmers the opportunity to learn at other jobs and then join an existing agricultural operation or start their own agricultural business. Many times, recent graduates will go to another farming operation or take a job off the farm, which gives them the time to decide if they would like to return to a family operation or start their own business.

Response: To be eligible for an award, the statute requires that an applicant "...shall apply for this program within two years of college graduation." Therefore, the regulation cannot provide for applicants to be eligible to receive an award 10 years after their graduation date.

4. Definition of Operate

Comment: The proposed rule states "operate or operation shall mean employment in a managerial position." New York Farm Bureau believes award consideration should also be given to young farmers who are not in a managerial position. Many young farmers start out on a farm as general employee and make their way up to a managerial position. But this can take years as management ages or as the business transitions to the younger generation. These young farmers will eventually be in an operator position, but need financial assistance now.

Response: Although every young farmer is also a general employee, those individuals coming out of college with a degree are in a leadership track on the farm and are given significant responsibility immediately upon employment. For example, in dairy farm management oversight may include a number of tracks including herd management, calf management, feed management and crop management to name a few. Management for purposes of this law is not limited to the overall management of a farm, but rather includes management of a component(s) of farm operation. The program was created to provide financial assistance to these individuals. Since the current definition is consistent with the purpose of the law, it was amended to clarify that a managerial position includes management of a component(s) of farm operation.

5. Verification of Employment Status

Comment: The proposed rule states: "(iii) confirm annually his or her operation of a farm in New York State on a full time basis by submitting a certification from his or her employer attesting to the recipient's job title,

job duties, full-time employment status (including a copy of the employer's policy, practice, and standard for defining full time employment), and any other information necessary for the corporation to determine eligibility." An applicant may be the sole-proprietor of his/her business and may not have an employer with which to verify their employment status. New York Farm Bureau believes applicants should not be detrimentally impacted if they are the sole-operator of their business and that other means of verifying their operation of a farm, including the submittal of a schedule F, would serve to prove that the applicant is an operator of an agricultural operation. However, a sole-proprietor would still be required to submit all related job information to the corporation.

Response: The term "employer" was intended to include sole proprietors. For clarity, the regulation was revised to define the term "employer" to mean a legal entity that employs one or more people for wages or salary, including a sole owner without employees.

Office of Mental Health

EMERGENCY RULE MAKING

Implementation of the Protection of People with Special Needs Act and Reforms to Incident Management

I.D. No. OMH-39-14-00003-E

Filing No. 797

Filing Date: 2014-09-12

Effective Date: 2014-09-12

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

Action taken: Repeal of Part 524; addition of new Part 524; and amendment of Parts 501 and 550 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 7.07, 7.09 and 31.04

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

Specific reasons underlying the finding of necessity: The immediate adoption of these amendments is necessary for the preservation of the health, safety, and welfare of individuals receiving services.

In December, 2012, the Governor signed the Protection of People with Special Needs Act (PPSNA). This new law created the Justice Center for the Protection of People with Special Needs (Justice Center) and established many new protections for vulnerable persons, including a new system for incident management in services operated or licensed by OMH and new requirements for more comprehensive and coordinated pre-employment background checks.

The amendment of OMH regulations is necessary to implement many of the provisions contained in the PPSNA.

The promulgation of these regulations is essential to preserve the health, safety and welfare of individuals with mental illness who receive services in the OMH system. If OMH did not promulgate regulations on an emergency basis, many of the protections established by the PPSNA vital to the health, safety and welfare of individuals with mental illness would not be implemented or would be implemented ineffectively. Further, protections for individuals receiving services would be threatened by the confusion resulting from inconsistent requirements. For example, the emergency regulations change the categories of incidents to conform to the categories established by the PPSNA. Without the promulgation of these amendments, agencies would be required to report incidents based on one set of definitions to the Justice Center and incidents based on a different set of definitions to OMH. Requirements for the management of incidents would also be inconsistent. Especially concerning regulatory requirements related to incident management and pre-employment background checks, it is crucial that OMH regulations be changed to support the new requirements in the PPSNA so that this initiative is implemented in a coordinated fashion.

For all of the reasons outlined above, this rule is being adopted on an Emergency basis until such time as it has been formally adopted through the SAPA rule promulgation process.

Subject: Implementation of the Protection of People with Special Needs Act and reforms to incident management.

Purpose: To enhance protections for people with mental illness served in the OMH system.

Substance of emergency rule: The emergency regulations are intended to conform regulations of the Office of Mental Health (OMH) to Chapter 501 of the Laws of 2012 (Protection of People with Special Needs Act or PPSNA). The primary changes include:

- 14 NYCRR Part 501 is amended by adding a new Subdivision (a) to Section 501.5, “Obsolete or Outdated References,” that replaces any reference throughout OMH regulations to the Commission on Quality of Care and Advocacy for Persons with Disabilities with a reference to the Justice Center for the Protection of People with Special Needs.

- 14 NYCRR Part 524 (Incident Management) has been repealed and revised to incorporate categories of “reportable incidents” as established by the PPSNA and includes enhanced provisions regarding incident investigations. The amendments make changes related to definitions, reporting, investigation, notification and committee review of events and situations that occur in providers of mental health services licensed or operated by OMH. It is OMH’s expectation that implementation of these amendments will enhance safeguards for persons with mental illness, which, in turn, will allow individuals to focus on their recovery. The amendments also require distribution of the Code of Conduct, developed by the Justice Center, to all employees. Providers must maintain signed documentation from such employees, indicating that they have received, and understand, the Code.

- Revisions to 14 NYCRR Part 550 are intended to facilitate and implement the consolidation of the criminal background check function in the Justice Center, and to make other conforming changes to the criminal background check function established by the PPSNA.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire December 10, 2014.

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

Regulatory Impact Statement

1. Statutory authority: Chapter 501 of the Laws of 2012, i.e., “The Protection of People with Special Needs Act,” establishes Article 20 of the Executive Law, Article 11 of the Social Services Law, and makes a number of amendments in other statutes, including the Mental Hygiene Law.

Section 7.07 of the Mental Hygiene Law, charges the Office of Mental Health with the responsibility for seeing that persons with mental illness are provided with care and treatment, that such care, treatment, and rehabilitation are of high quality and effectiveness, and that the personal and civil rights of persons with mental illness receiving care and treatment are adequately protected.

Sections 7.09 and 31.04 of the Mental Hygiene Law grant the Commissioner of the Office of Mental Health the authority and responsibility to adopt regulations that are necessary and proper to implement matters under his or her jurisdiction.

2. Legislative objectives: These regulatory amendments further the legislative objectives embodied in the Protection of People with Special Needs Act, as well as Sections 7.07, 7.09, and 31.04 of the Mental Hygiene Law. The amendments incorporate a number of reforms to regulations of the Office of Mental Health (OMH) in order to increase protections and improve the quality of services provided to persons receiving services from mental health providers operated or licensed by OMH.

3. Needs and benefits: The amendments include new and modified requirements for incident management programs, codified at 14 NYCRR Part 524, and also add and revise provisions of Parts 501 and 550 to implement Chapter 501 of the Laws of 2012. Known as “The Protection of People with Special Needs Act,” this new law requires the establishment of comprehensive protections for vulnerable persons, including persons with mental illness, against abuse, neglect and other harmful conduct.

The Act created a Justice Center with responsibilities for effective incident reporting and investigation systems, fair disciplinary processes, informed and appropriate staff hiring procedures, and strengthened monitoring and oversight systems. The Justice Center operates a 24/7 hotline for reporting allegations of abuse, neglect and significant incidents in accordance with Chapter 501’s provisions for uniform definitions, mandatory reporting and minimum standards for incident management programs. In collaboration with OMH, the Justice Center is also charged with developing and delivering appropriate training for caregivers, their supervisors and investigators. Additionally, the Justice Center is responsible for conducting criminal background checks for applicants, including those who will be working in the OMH system.

Chapter 501 of the Laws of 2012 also created a Vulnerable Persons’ Central Register (VPCR). This register contains the names of custodians found to have committed substantiated acts of abuse or neglect using a preponderance of evidence standard. All custodians found to have com-

mitted such acts have the right to a hearing before an administrative law judge to challenge those findings. Custodians having committed egregious or repeated acts of abuse or neglect are prohibited from future employment in providing services for vulnerable persons, and may be subject to criminal prosecution. Less serious acts of misconduct are subject to progressive discipline and retraining. Job applicants with criminal records who seek employment serving vulnerable persons will be individually evaluated as to suitability for such positions.

Pursuant to Chapter 501 of the Laws of 2012, the Justice Center is charged with recommending policies and procedures to OMH for the protection of persons with mental illness. This effort involves the development of requirements and guidelines in areas including but not limited to incident management, rights of people receiving services, criminal background checks, and training of custodians. In accordance with Chapter 501, these requirements and guidelines must be reflected, wherever appropriate, in OMH’s regulations. Consequently, the amendments incorporate the requirements in regulations and guidelines recently developed by the Justice Center.

The amendments make changes to OMH’s incident management process to strengthen the process and to provide further protection to people receiving services from harm and abuse. For example, the amendments make changes related to definitions, reporting, investigation, notification, and committee review of events and situations that occur in providers of mental health services licensed or operated by OMH. It is OMH’s expectation that implementation of the amendments will enhance safeguards for persons with mental illness, which will in turn allow individuals to focus on their recovery.

4. Costs:

(a) Costs to the Agency and to the State and its local governments: OMH will not incur significant additional costs as a provider of services. While the regulations impose some new requirements on providers, OMH expects that it will comply with the new requirements with no additional staff. There may be minimal one-time costs associated with notification and training of staff.

Chapter 501 created the Justice Center, which assumes some designated functions previously performed by OMH. The Justice Center manages the criminal background check process and conducts some investigations that had previously been conducted by OMH. OMH experienced savings associated with the reduction in staff performing these functions; however, because the staff shifted to the Justice Center, the net effect is cost neutral.

There may be some minor costs associated with necessary modifications to NIMRS (the New York Incident Management Reporting System developed by OMH) to reflect Justice Center requirements.

Any costs or savings will have no impact on Medicaid rates, prices or fees. Therefore, there is no impact on New York State in its role paying for Medicaid services.

There are no costs to local governments as there are no changes to Medicaid reimbursement.

(b) Costs to private regulated parties: It is difficult to estimate the cost impact on private regulated parties; however, OMH expects that costs to providers will be minimal. OMH already requires the reporting and investigation of incidents. The implementation of these reforms in general will not result in costs. There may also be additional costs associated with the need for medical examinations in cases of alleged physical abuse or clinical assessments needed to substantiate a finding of psychological abuse. Again, OMH is not able to estimate these cost impacts. There are no costs associated with a check of the Staff Exclusion List. Other amendments made in the rule making merely clarify existing requirements or interpretive guidance, or can be implemented without cost to the provider.

OMH anticipates that generally any potential costs incurred will be mitigated by savings that the provider will realize from the improvements to the incident management process. OMH expects that in the long term, the amendments will ultimately reduce incidents and abuse in its system and increase efficiency and quality in the reporting, investigation, notification, and review of such events. OMH is not able to quantify the minor potential costs or the savings that might be realized by the promulgation of these amendments.

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

6. Paperwork: The new regulations require additional paperwork to be completed by providers. Examples of additional paperwork are found in new requirements pertaining to reporting reportable incidents to the Justice Center and making additional notifications. However, the Justice Center will likely predominantly utilize electronic format for incident reporting.

7. Duplication: The amendments do not duplicate any existing State or Federal requirements that are applicable to services for persons with mental illness. In some instances, the regulations reiterate current requirements in New York State law.

8. Alternatives: Current definitions of incidents in OMH regulations

that require reporting and investigation exceed the criteria in the new statutory definitions in Chapter 501. OMH considered reducing or eliminating requirements applying to events and situations that do not meet the criteria in the statutory definitions for “reportable incidents.” However, OMH chose to propose the continuation of protections associated with these events and situations.

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

10. Compliance schedule: The regulations will be effective immediately upon filing to ensure compliance with Chapter 501 of the Laws of 2012. OMH intends thereafter to continue to develop and transmit implementation guidance to regulated parties to assist them with compliance.

Regulatory Flexibility Analysis

1. Effect on small business: OMH has determined, through its Bureau of Inspection and Certification, that approximately 732 agencies provide services which are certified or licensed by OMH. OMH is unable to estimate the portion of these providers that may be considered to be small businesses (under 100 employees).

However, the amendments have been reviewed by OMH in light of their impact on small businesses. The regulations make revisions to OMH’s requirements for incident management which will necessitate some changes in compliance activities and may result in additional costs and savings to providers, including small business providers. However, OMH is unable to quantify the potential additional costs and savings to providers as a result of these amendments. In any event, these changes are required by statute and OMH considers that the improvements in protections for people served in the OMH system will help safeguard individuals from harm and abuse; thus, the benefits more than outweigh any potential negative impact on providers.

2. Compliance requirements: The regulations add several new requirements with which providers must comply. Amendments associated with the implementation of Chapter 501 include a requirement that providers report “reportable incidents” and deaths to the Justice Center. In addition, the regulations impose an obligation on providers to obtain an examination for physical injuries; however, OMH anticipates that providers are already obtaining examinations of physical injuries. While Chapter 501 also establishes an obligation to obtain a clinical assessment to substantiate a charge of psychological abuse, it is not immediately clear who will be responsible for obtaining, and paying for, that assessment.

Current OMH regulations require reporting and investigation of incidents, and that providers request criminal background checks. While the amendments incorporate some changes and reforms, the basic requirements are conceptually unchanged. OMH, therefore, expects that additional compliance activities (except as noted above) will be minimal. There is no associated cost with checking the Staff Exclusion List. The cost to check the Statewide Register of Child Abuse and Maltreatment is \$25 per check; providers serving children are already incurring this cost. However, this would represent a new cost for providers who previously did not request such checks, though this cost could be passed by the provider to the applicant.

Providers subject to these regulations are already responsible for complying with incident management regulations. The regulations enhance some of these requirements, e.g., providers must comply with the new requirement to complete investigations within a 45-day timeframe. Providers must also comply with new requirements to enhance the independence of investigators and incident review committees. However, OMH expects that additional compliance activities associated with these enhanced requirements will be minimal.

3. Professional services: There may be additional professional services required for small business providers as a result of these amendments. The definition of psychological abuse references a need to determine specific impacts on an individual receiving services by means of a clinical assessment, but it is not immediately clear at what stage in the process that assessment must be maintained or who is responsible for obtaining and paying for it. The amendments will not add to the professional service needs of local governments.

4. Compliance costs: There may be modest costs for small business providers associated with these amendments. There may be nominal costs for providers to comply with the expanded notification requirements, but OMH is unable to determine the cost impact. Furthermore, providers may experience savings if the Justice Center or OMH assumes responsibility for investigations that were previously conducted by provider staff. In the long term, compliance activities associated with the implementation of these amendments are expected to reduce future incidents and abuse, resulting in savings for providers as well as benefits to the wellbeing of individuals receiving services.

5. Economic and technological feasibility: The amendments may impose the use of new technological processes on small business providers. Providers have already been reporting incidents and abuse in NIMRS, and that technology will continue to be used. However, statutory requirements

to report reportable incidents to the Justice Center in the manner specified by the Justice Center may impose new technology requirements if that is the manner specified by the Justice Center. However, this is not a direct impact caused by the regulations.

6. Minimizing adverse economic impact: The amendments may result in an adverse economic impact for small business providers due to additional compliance activities and associated compliance costs. However, as stated earlier, OMH expects that compliance with these new regulations will result in savings in the long term and there may be some short term savings as a result of the conduct of investigations by the Justice Center.

OMH has reviewed the regulations to determine if there were any viable approaches for minimizing adverse economic impact as suggested in section 202-b(1) of the State Administrative Procedure Act; none were readily identified. However, OMH did not consider the exemption of small businesses from these amendments or the establishment of differing compliance or reporting requirements since OMH considers compliance with the amendments to be crucial for the health, safety, and welfare of the individuals served by small business providers.

7. Small business participation: Chapter 501 of the Laws of 2012 was originally a Governor’s Program Bill which received extensive media attention. Providers have had the opportunity to become familiar with its provisions since it was made available on various government websites last June. Furthermore, in accordance with statutory requirements, the rule was presented to the Mental Health Services Council for review and recommendations.

8. The amendments include a penalty for violating the regulations of a fine not to exceed \$1,000 per day or \$15,000 per violation in accordance with section 31.16 of the Mental Hygiene Law and/or may suspend, revoke, or limit an operating certificate or take any other appropriate action, in accordance with applicable law and regulations. However, due process is available to a provider via 14 NYCRR Part 503.

Rural Area Flexibility Analysis

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

The amendments have been reviewed by OMH in light of their impact on rural areas. The regulations make revisions and in some cases enhance OMH’s current requirements for incident management programs, which will necessitate some changes in compliance activities and result in additional costs and savings to providers, including those in rural areas. However, OMH is unable to quantify the potential additional costs and savings to providers as a result of these amendments. In any event, OMH considers that the improvements in protections for people served in the OMH system will help safeguard individuals from harm and abuse and that the benefits more than outweigh any potential negative impacts on all providers.

The geographic location of any given program (urban or rural) will not be a contributing factor to any additional costs to providers.

2. Compliance requirements: The regulations add some new requirements with which providers must comply. Amendments associated with the implementation of Chapter 501 include a requirement that providers report “reportable incidents” and deaths to the Justice Center. In addition, the regulations impose an obligation on providers to obtain an examination for physical injuries, and there is a requirement that, for a finding of psychological abuse to be substantiated, a clinical assessment is needed in order to demonstrate the impact of the conduct on the individual receiving services.

Current OMH regulations require reporting and investigation of incidents, and that providers request criminal background checks. While the amendments incorporate some changes, the basic requirements are conceptually unchanged. OMH therefore expects that additional compliance activities associated with these changes will be minimal. However, there will be additional compliance activities associated with checking the Staff Exclusion List.

Providers must comply with the new requirement to complete investigations within a 45-day timeframe. Providers must also comply with new requirements to enhance the independence of investigators and incident review committees. However, OMH expects that additional compliance activities will be minimal since providers are already required to comply with existing incident management program requirements; these revisions primarily enhance current requirements.

3. Professional services: There may be additional professional services required for rural providers as a result of these amendments. The amendments will not add to the professional service needs of rural providers.

4. Compliance costs: There may be modest costs for rural providers associated with the amendments. There also may be nominal costs for rural providers to comply with the expanded notification requirements. However, all providers may experience savings if the Justice Center or OMH assumes responsibility for investigations that were previously conducted by provider staff.

In the long term, compliance activities associated with the implementation of these amendments are expected to reduce future incidents and abuse, resulting in savings for both urban and rural area providers as well as benefits to the wellbeing of individuals receiving services.

5. Minimizing adverse impact: The amendments may result in an adverse economic impact for rural providers due to additional compliance activities and associated compliance costs. However, as stated earlier, OMH expects that compliance with these enhanced regulations will result in savings in the long term and there may be some short-term savings as a result of the conduct of investigations by the Justice Center.

OMH has reviewed the regulations to determine if there were any viable approaches for minimizing adverse economic impact as suggested in section 202-b(1) of the State Administrative Procedure Act; none were readily identified. However, OMH did not consider the exemption of rural area providers from the amendments or the establishment of differing compliance or reporting requirements, since OMH considers compliance with the amendments to be crucial for the health, safety, and welfare of the individuals served by rural area providers.

6. Participation of public and private interests in rural areas: Chapter 501 of the Laws of 2012 was originally a Governor’s Program Bill which received extensive media attention. Providers have had the opportunity to become familiar with its provisions since it was made available on various government websites last June. Furthermore, in accordance with statutory requirements, the rule was presented to the Mental Health Services Council for review and recommendations.

Job Impact Statement

A Job Impact Statement for these amendments is not being submitted because OMH does not anticipate a substantial adverse impact on jobs and employment opportunities.

The amendments incorporate a number of reforms to improve the quality and consistency of incident management activities throughout the OMH system. However, it is not anticipated that these reforms will negatively impact jobs or employment opportunities. The amendments that impose new requirements on providers, such as additional reporting requirements and the timeframe for completion of investigations, will not result in an adverse impact on jobs. OMH anticipates that there will be no effect on jobs as agencies will utilize current staff to perform the required compliance activities.

Chapter 501 of the Laws of 2012 and these implementing regulations will also mean that some functions that are currently performed by OMH staff will instead be performed by the staff of the Justice Center. OMH expects that the volume of incidents and occurrences investigated will be roughly similar. To the extent that the Justice Center performs investigations, oversees the management of reportable incidents, and manages requests for criminal history record checks, the result is expected to be neutral in that positions lost by OMH will be gained by the Justice Center.

It is therefore apparent from the nature and purpose of the rule that it will not have a substantial adverse impact on jobs and employment opportunities.

Action taken: Amendment of Parts 624, 633, and 687; and addition of Part 625 to Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 13.07, 13.09(b) and 16.00; and L. 2012, ch. 501

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

Specific reasons underlying the finding of necessity: The immediate adoption of these amendments is necessary for the preservation of the health, safety, and welfare of individuals receiving services.

In December 2012, the Governor signed the Protection of People with Special Needs Act (PPSNA). This new law created the Justice Center for the Protection of People with Special Needs (Justice Center) and established many new protections for vulnerable persons, including a new system for incident management in services operated or certified by OPWDD and new requirements for more comprehensive and coordinated pre-employment background checks.

OPWDD filed emergency regulations effective June 30, 2013 through September 25, 2013, and replacement emergency regulations effective September 26, 2013; December 25, 2013; March 24, 2014; and June 22, 2014 to implement many of the provisions contained in the PPSNA. The June 22, 2014 replacement emergency regulations are now expiring. New emergency regulations are necessary to continue implementing regulations that are in conformance with the PPSNA. If OPWDD did not file new emergency regulations effective September 17, 2014, regulatory requirements would revert to the regulations that were in effect prior to June 30, 2013.

The promulgation of these regulations is essential to preserve the health, safety and welfare of individuals with developmental disabilities who receive services in the OPWDD system. If OPWDD did not promulgate regulations on an emergency basis, many of the protections established by the PPSNA vital to the health, safety, and welfare of individuals with developmental disabilities would not be implemented or would be implemented ineffectively. Further, protections for individuals receiving services would be threatened by the confusion resulting from inconsistent requirements. For example, the emergency regulations change the categories of incidents to conform to the categories established by the PPSNA. Without the promulgation of these amendments, agencies would be required to report incidents based on one set of definitions to the Justice Center and incidents based on a different set of definitions to OPWDD. Requirements for the management of incidents would also be inconsistent. Especially concerning regulatory requirements related to incident management and pre-employment background checks, it is crucial that OPWDD regulations are changed to support the new requirements in the PPSNA so that this initiative is implemented in a coordinated fashion.

OPWDD was not able to use the regular rulemaking process established by the State Administrative Procedure Act because there was not sufficient time to develop and promulgate regulations within the necessary timeframes. OPWDD is making a number of revisions in the new emergency regulations, compared with the June 30, 2013; September 26, 2013; December 25, 2013; March 24, 2014; and June 22, 2014 regulations, based on input from the field and the Justice Center, and experience with the new systems and requirements gained over the past fifteen months. By filing new emergency regulations, OPWDD is able to revise the regulations to reflect recent input and current needs.

Subject: Implementation of the Protection of People with Special Needs Act and reforms to incident management.

Purpose: To enhance protections for people with developmental disabilities served in the OPWDD system.

Substance of emergency rule:

The emergency regulations conform OPWDD regulations to Chapter 501 of the Laws of 2012 (Protection of People with Special Needs Act or PPSNA) by making a number of revisions. The major changes to OPWDD regulations made to implement the PPSNA are:

- Revisions to 14 NYCRR Part 624 (now titled “Reportable incidents and notable occurrences”) to incorporate categories of “reportable incidents” as established by the PPSNA. Programs and facilities certified or operated by OPWDD must report “reportable incidents” to the Vulnerable Persons’ Central Register (VPCR), a part of the Justice Center for the Protection of People with Special Needs (Justice Center). Part 624 is amended to incorporate other revisions related to the management of reportable incidents in conformance with various provisions of the PPSNA.
- Revisions to 14 NYCRR Section 633.7 concern the code of conduct adopted by the Justice Center in accordance with Section 554 of the Executive Law and impose requirements on programs certified or operated by OPWDD. The code of conduct must be read and signed by custodians who have regular and direct contact with individuals receiving services as specified in the regulations.
- Revisions to 14 NYCRR Section 633.22 reflect the consolidation of

Office for People with Developmental Disabilities

EMERGENCY RULE MAKING

Implementation of the Protection of People with Special Needs Act and Reforms to Incident Management

I.D. No. PDD-39-14-00019-E

Filing No. 822

Filing Date: 2014-09-16

Effective Date: 2014-09-17

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

the criminal history record check function in the Justice Center. The Justice Center will receive requests for criminal history record checks and will process those requests, instead of OPWDD.

- A new 14 NYCRR Section 633.24 contains requirements for background checks (in addition to criminal history record checks).
- Revisions to Part 687 incorporate changes to criminal history record check and background check requirements in family care homes.

The regulations include numerous changes associated with incident management or the implementation of the PPSNA. These changes include:

- The amendments delete the current categories and definitions of events and situations that must be reported to agencies and OPWDD. The amendments add definitions of “reportable incidents.” Types of reportable incidents are “abuse,” “neglect,” and “significant incidents.” The amendments also add definitions of “notable occurrences.” Part 624 includes requirements for reporting and investigating these types of events.

- The requirements of Part 624 are limited to events and situations that occur under the auspices of an agency.

- A new Part 625 contains requirements that apply to events and situations which are not under the auspices of an agency.

- The amendments mandate the use of OPWDD’s Incident Report and Management Application (IRMA), a secure electronic statewide incident reporting system, for reporting information about specified events and situations, and remove the current requirement to submit a paper based incident report to OPWDD in certain instances.

- The amendments make several changes to requirements for investigations. The amendments require that investigations of specified events and situations be initiated immediately following occurrence or discovery (with limitations when it is anticipated that the Justice Center or the Central Office of OPWDD will conduct the investigation). Investigations conducted by agencies must be completed no later than thirty days after the initiation of an investigation, unless the agency documents an acceptable justification for an extension of the thirty-day time frame. The amendments also add new requirements to enhance the independence of investigators, and require agency investigators to use a standardized investigative report format.

- The amendments make several changes regarding Incident Review Committees (IRC). The amendments change requirements concerning membership of the IRC and include specific provisions concerning shared committees, using another agency’s committee or making alternative arrangements for IRC review. The amendments also modify the responsibilities of a provider agency’s IRC when an incident is investigated by the Central Office of OPWDD or the Justice Center.

- The amendments expand on requirements for notification to service coordinators.

- The amendments contain an explicit requirement that providers must comply with OPWDD recommendations concerning a specific event or situation or must explain its reasons for not complying with a recommendation within a month of the recommendation being made.

- When the Justice Center makes findings concerning matters referred to its attention and the Justice Center issues a report and recommendations to the agency regarding such matters, the agency is required to make a written response, within ninety days of receipt of such report, of action taken regarding each of the recommendations in the report.

- The amendments add a requirement that agencies retain records pertaining to incidents and allegations of abuse for a minimum time period of seven years. In cases when there is a pending audit or litigation, the pertinent records must be retained throughout the pendency of the audit or litigation. The amendments specify what information must be retained.

- The amendments add requirements that agencies check the “Staff Exclusion List” of the Vulnerable Persons’ Central Register as a part of the background check process.

- The amendments also include requirements concerning background checks for prospective employees and volunteers to determine if an applicant was involved in substantiated abuse or neglect in the OPWDD system before June 30, 2013. These requirements are added to implement section 16.34 on the Mental Hygiene Law as amended by the PPSNA.

- In accordance with changes in Section 424-a of the Social Services Law, the amendments extend requirements for checks of the Statewide Central Register of Child Abuse and Maltreatment to employees and others that have the potential for regular and substantial contact with individuals receiving services in programs certified or operated by OPWDD. Prior to June 30, 2013, providers were only required to request an SCR check for those who have the potential for regular and substantial contact with children.

- Definitions are changed in Parts 624 and 633 to conform to PPSNA definitions.

- The amendments include revisions to reflect the restructuring of entities within OPWDD and OPWDD’s name change.

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

will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire December 14, 2014.

Text of rule and any required statements and analyses may be obtained from: Janet Felker, Regulatory Affairs Unit, Office for People With Developmental Disabilities, 44 Holland Avenue, 3rd Floor, 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 will have no effect on the environment, and an E.I.S. is not needed.

Regulatory Impact Statement

1. Statutory authority:

a. Chapter 501 of the Laws of 2012 (Protection of People with Special Needs Act), added Article 20 to the Executive Law and Article 11 to the Social Services Law and amended other laws including the Mental Hygiene Law. Chapter 501 incorporates requirements for implementing regulations by “State Oversight Agencies,” which include OPWDD.

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

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

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

2. Legislative objectives: These emergency amendments further the legislative objectives embodied in Chapter 501 of the Laws of 2012 (Protection of People with Special Needs Act) and sections 13.07, 13.09(b), and 16.00 of the Mental Hygiene Law. The emergency amendments incorporate a number of reforms to OPWDD regulations in order to increase protections and improve the quality of services provided to people with developmental disabilities in OPWDD’s system.

3. Needs and benefits: The majority of the amendments include extensive new and modified requirements for OPWDD regulations in 14 NYCRR Part 624 pertaining to incident management. Additional amendments add and revise requirements in other OPWDD regulations in order to implement the Protection of People with Special Needs Act (PPSNA).

The PPSNA requires the establishment of comprehensive protections for vulnerable persons, including people with developmental disabilities, against abuse, neglect, and other harmful conduct. The PPSNA created a Justice Center with responsibilities for effective incident reporting and investigation systems, fair disciplinary processes, informed and appropriate staff hiring procedures, and strengthened monitoring and oversight systems. The Justice Center operates a 24/7 hotline for reporting abuse, neglect, and significant incidents in accordance with the PPSNA’s provisions for uniform definitions, mandatory reporting, and minimum standards for incident management programs. In collaboration with OPWDD, the Justice Center is also charged with developing and delivering appropriate training for caregivers, their supervisors, and investigators. Additionally, the Justice Center is responsible for conducting criminal background checks for applicants in the OPWDD system.

The PPSNA creates a Vulnerable Persons’ Central Register (VPCR). This register will contain the names of custodians found to have committed substantiated acts of abuse or neglect using a preponderance of evidence standard. All custodians found to have committed such acts have the right to a hearing before an administrative law judge to challenge those findings. Custodians having committed egregious or repeated acts of abuse or neglect are prohibited from future employment in providing services for vulnerable persons, and may be subject to criminal prosecution. Less serious acts of misconduct are subject to progressive discipline and retraining. Applicants with criminal records who seek employment serving vulnerable persons will be individually evaluated as to suitability for such positions.

Pursuant to the PPSNA, the Justice Center is charged with recommending policies and procedures to OPWDD for the protection of people with developmental disabilities; this effort involves the development of requirements and guidelines in areas including but not limited to incident management, rights of people receiving services, criminal background checks, and training of custodians. In accordance with the PPSNA, these requirements and guidelines must be reflected, wherever appropriate, in OPWDD’s regulations. Consequently, these amendments incorporate the requirements in regulations and guidelines developed by the Justice Center.

The amendments also make numerous changes to OPWDD’s incident management process to strengthen the process and to provide further protection to people receiving services from harm and abuse. For example,

the amendments make changes related to definitions, reporting, investigation, notification, and committee review of events and situations both under and not under the auspices of OPWDD or a provider agency. It is OPWDD's expectation that implementation of the emergency amendments will enhance safeguards for people with developmental disabilities, which will in turn allow individuals to focus on achieving maximum independence and living richer lives.

The amendments also include requirements addressing background checks for prospective employees and volunteers to determine if an applicant was involved in substantiated abuse or neglect in the OPWDD system before June 30, 2013, in accordance with section 16.34 on the Mental Hygiene Law. These requirements, applicable to all programs and services operated, certified, approved, and/or funded by OPWDD, will augment the protections provided to people receiving services by the PPSNA.

4. Costs:

a. Costs to the Agency and to the State and its local governments: OPWDD will not incur significant additional costs as a provider of services. While the regulations impose new requirements on providers, OPWDD expects that they will comply with the new requirements with no additional staff. Furthermore, OPWDD has already implemented some of the new requirements contained in the regulations in state-operated services through implementation of policy/procedure changes. There may be minimal one-time costs associated with notification and training of staff.

The PPSNA creates the Justice Center, which will assume designated functions that are now performed by OPWDD. The Justice Center will manage the criminal background check process and will conduct some investigations that had previously been conducted by OPWDD. OPWDD will experience savings associated with the reduction in staff performing these functions; however, the staff will be shifting to the Justice Center so the net effect will be cost neutral. Minimal additional OPWDD staff will be needed to implement some provisions of the PPSNA and implementing regulations, such as staff to coordinate MHL 16.34 background checks.

Any costs or savings will have no impact on Medicaid rates, prices or fees. Therefore, there is no impact on New York State in its role paying for Medicaid services.

There are no costs to local governments as there are no changes to Medicaid reimbursement and even if there were, the contribution of local governments to Medicaid has been capped. Chapter 58 of the Laws of 2005 places a cap on the local share of Medicaid costs and local governments are already paying for Medicaid at the capped level.

b. Costs to private regulated parties: It is difficult to estimate the cost impact on private regulated parties, however, OPWDD expects that cost to providers will be minimal. OPWDD already requires the reporting and investigation of incidents. The implementation of these reforms in general will not result in costs. There may be costs associated with the amendment of Section 424-a of the Social Service Law (as reflected in these regulations) which requires background checks of the Statewide Central Register of Child Abuse and Maltreatment (which cost \$25 per check). However, OPWDD cannot estimate how many additional checks will be required. There may also be additional costs associated with the need for clinical assessments needed to demonstrate psychological abuse. There may be costs associated with the requirement that agencies conduct a "reasonably diligent search" for records of past abuse/neglect related to background checks required in accordance with Section 16.34 of the Mental Hygiene Law. Again, OPWDD is not able to estimate these cost impacts. Concerning the reforms to Part 624 that are in addition to the changes needed to implement the PPSNA, most of the amendments have either already been implemented by OPWDD policy directives (e.g. mandate to use IRMA), merely clarify existing requirements or interpretive guidance, or can be implemented without cost to the agency (e.g. restrictions on committee review).

There may be minor costs as a result of other amendments; however, OPWDD anticipates that generally any potential costs incurred would be mitigated by savings that the provider will realize from the improvements to the incident management process. OPWDD expects that in the long-term the amendments will ultimately reduce incidents and abuse in its system and increase efficiency and quality in the reporting, investigation, notification, and review of such events. OPWDD is not able to quantify the minor potential costs or the savings that might be realized by the promulgation of these amendments.

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

6. Paperwork: The new regulations require additional paperwork to be completed by providers. Examples of additional paperwork are found in new requirements pertaining to reporting reportable incidents to the Justice Center and making additional notifications. The regulations require that all custodians with regular and direct contact in programs certified or operated by OPWDD review and sign the Justice Center's code of conduct

on an annual basis. In addition, new paperwork is associated with the requirements for additional background checks (Staff Exclusion List, MHL 16.34 and Statewide Central Register of Child Abuse and Maltreatment). However, the regulations remove paperwork requirements in other ways, such as the deletion of the requirement for the completion of a paper based incident report for specified events or situations.

7. Duplication: The amendments do not duplicate any existing State or Federal requirements that are applicable to services for persons with developmental disabilities. In some instances, the regulations reiterate requirements in NYS law.

8. Alternatives: Current definitions of incidents in OPWDD regulations that require reporting and investigation exceed the criteria in the new statutory definitions in the PPSNA. OPWDD considered reducing or eliminating requirements applying to events and situations that do not meet the criteria in the statutory definitions for "reportable incidents," but OPWDD decided to include the continuation of protections associated with these events and situations as reflected in the definitions of notable occurrences.

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

10. Compliance schedule: The regulations will be effective on September 17, 2014 to ensure continued compliance with Chapter 501 of the Laws of 2012. The emergency regulations replace prior emergency regulations that were effective June 22, 2014 and expired on September 16, 2014.

Regulatory Flexibility Analysis

1. Effect on small business: OPWDD has determined, through a review of the certified cost reports, that most OPWDD-funded services are provided by non-profit agencies that employ more than 100 people overall. However, some smaller agencies that employ fewer than 100 employees overall would be classified as small businesses. Currently, there are approximately 700 agencies providing services that are certified, authorized or funded by OPWDD. OPWDD is unable to estimate the portion of these providers that may be considered to be small businesses.

The amendments have been reviewed by OPWDD in light of their impact on small businesses. The regulations make extensive changes to OPWDD's requirements for incident management that will necessitate significant changes in compliance activities and result in additional costs and savings to providers, including small business providers. However, OPWDD is unable to quantify the potential additional costs and savings to providers as a result of these amendments. In any event, OPWDD considers that the improvements in protections for people served in the OPWDD system will help safeguard individuals from harm and abuse and that the benefits more than outweigh any potential negative impacts on providers.

2. Compliance requirements:

The regulations add a number of new requirements with which providers must comply. Amendments associated with the implementation of the PPSNA include a requirement that providers report "reportable incidents" and deaths to the Justice Center. In addition, the regulations impose an obligation on providers to obtain an examination for physical injuries. For psychological abuse, a clinical assessment could be needed in order to demonstrate the impact of suspected psychological abuse. While OPWDD anticipates that providers are already obtaining examinations of physical injuries, clinical assessments of suspected psychological abuse are not generally obtained.

The regulations impose requirements that all new custodians with regular and direct contact in such programs must read and sign the code of conduct at the time of employment or affiliation, and that all custodians with regular and direct contact in such programs must read and sign the code of conduct at an annual basis.

The PPSNA expanded requirements to obtain background checks of the Statewide Central Register of Child Abuse and Maltreatment to require checks of employees (and others) who have the potential for regular and substantial contact with individuals receiving services in programs that are certified or operated by OPWDD. Prior to June 30, 2013 the statute limited this requirement to employees who have the potential for regular and substantial contact with children. The emergency regulations reflect the statutory changes to section 424-a of the Social Services Law in the PPSNA. While many providers that also serve children have been obtaining these checks, the new requirements clearly expand the pool of employees and others who must be checked. Further, OPWDD regulations require that agencies conduct SCR checks of applicants when the check is permitted by the Social Services Law.

The regulations also include requirements addressing background checks for potential employees and volunteers to determine if an applicant was involved in substantiated abuse or neglect in the OPWDD system before June 30, 2013, in accordance with section 16.34 on the Mental Hygiene Law.

Prior OPWDD regulations already required reporting and investigation of incidents, and that providers request criminal background checks. While the amendments incorporate many changes and reforms, the basic require-

ments are conceptually unchanged. OPWDD therefore expects that additional compliance activities (except as noted above) will be minimal. Aside from the provisions related to implementation of the PPSNA, and section 16.34 of the Mental Hygiene Law, the amendments have either already been implemented by OPWDD policy directives, clarify existing requirements or interpretive guidance, or can be implemented without cost to the agency.

Agencies must comply with the new requirement to complete investigations within a 30 day timeframe. Agencies must also comply with new requirements to enhance the independence of investigators and agency incident review committees. However, OPWDD expects that additional compliance activities will be minimal since agencies are already required to comply with existing requirements that prohibit situations which compromise the independence of investigators and committee members.

The new requirements pertaining to the dissemination of agency policies and procedures, OPWDD incident management regulations, and written information specified by OPWDD add new compliance activities; however, the regulations minimize compliance activities by requiring that providers offer to provide such information in electronic format (unless paper copies are specifically requested) as opposed to requiring the provision of paper copies only. The amendments require that information be provided in conjunction with training that is mandated by current regulations in order to consolidate efforts, increase efficiency, and reduce compliance activities.

Enhancements in required notification to service coordinators will also add compliance activities for providers because providers will have to make additional notifications and/or provide subsequent information about an incident or occurrence to these parties.

The amendments that add a new requirement that agencies enter minutes of their incident review committee meetings into IRMA within three weeks of the meeting for serious incidents, allegations of abuse, and all deaths, may result in a minimal amount of additional clerical work. OPWDD expects that most agencies have adopted an electronic record-keeping system to maintain their minutes and that these agencies would only have to copy and paste their minutes into IRMA. Agencies that do not have an electronic recordkeeping system and that maintain handwritten or typed minutes will have to assign staff to type the minutes into IRMA. OPWDD expects that these agencies will add this task to the duties of clerical staff who are trained and experienced in data entry and who can perform this function in an efficient manner.

The amendments extend access to information in accordance with Jonathan's Law and add a new requirement that agencies retain records pertaining to incidents and allegations of abuse for a minimum time period of seven years. In cases when there is a pending audit or litigation, the pertinent records must be retained throughout the pendency of the audit or litigation. The amendments specify what information must be retained. OPWDD considers that the new requirements will not add any additional compliance activities for agencies. OPWDD expects that generally most agencies have been implementing agency specific policies on record retention and that the new required record retention schedule merely standardizes existing policies/procedures. The amendments will have no effect on local governments.

3. Professional services: There may be additional professional services required for small business providers as a result of these amendments. The definition of psychological abuse references specific impacts on an individual receiving services that must be supported by a clinical assessment. The amendments will not add to the professional service needs of local governments.

4. Compliance costs: There may be modest costs for small business providers associated with the amendments. There may be costs associated with obtaining a clinical assessment in the case of suspected psychological abuse. Additionally, there may be nominal costs for agencies to comply with the expanded notification requirements and requirements for the provision of policies and procedures when it is necessary to provide paper copies of information to the appropriate parties upon request. There are costs associated with the change to Section 424-a of the Social Services Law and OPWDD regulations which will require agencies to obtain additional background checks for employees and other individuals associated with the agencies. These checks cost \$25 per check. However, OPWDD is unable to estimate how many additional checks will be needed and therefore cannot estimate the cost impact. There may be costs associated with new background check requirements in MHL 16.34, including costs associated with the requirement that agencies conduct a "reasonably diligent search" for past records of abuse/neglect. There may also be costs associated with requirements that agencies request a search of the "Staff Exclusion List." There may be costs associated with the requirement to train members of the Incident Review Committee.

Providers may experience savings if the Justice Center or OPWDD assume responsibility for investigations that were previously conducted by provider agency staff.

In the long term, compliance activities associated with the implementation of these amendments are expected to reduce future incidents and abuse, resulting in savings for providers as well as benefits to the wellbeing of individuals receiving services.

5. Economic and technological feasibility: The amendments may impose the use of new technological processes on small business providers. Providers have already been reporting incidents and abuse in IRMA in accordance with an existing OPWDD policy directive so the new requirements related to IRMA do not impose the use of new technological processes on small business providers. However, requirements to report reportable incidents to the Justice Center in the manner specified by the Justice Center may impose a requirement to use an electronic reporting system for that purpose, if that is the manner specified by the Justice Center. Currently the Justice Center is directing that reports be made either by telephone or by using a Web form, so the use of the Web form is optional.

6. Minimizing adverse economic impact: The amendments may result in an adverse economic impact for small business providers due to additional compliance activities and associated compliance costs. However, as stated earlier, OPWDD expects that compliance with these new regulations will result in savings in the long term and there may be some short term savings as a result of the conduct of investigations by the Justice Center. Further, OPWDD expects that the amendments will provide some relief to providers by the removal of the previous requirement for a paper based incident report for reporting serious reportable incidents, allegations of abuse, and all deaths. OPWDD expects that these provisions will mitigate any adverse economic impact that results from complying with other new requirements.

OPWDD has reviewed and considered the approaches for minimizing adverse economic impact as suggested in section 202-b(1) of the State Administrative Procedure Act. OPWDD modified several requirements to minimize adverse economic impact. As noted above, OPWDD eliminated the requirement that agencies complete paper forms when information about incidents is submitted electronically. In addition, the new regulations allow agencies to provide instructions on how to access information on incident management electronically to individuals, families and others, rather than requiring the provision of paper copies in all instances. Agencies are only required to make paper copies available upon request. OPWDD did not consider the exemption of small businesses from the amendments or the establishment of differing compliance or reporting requirements since OPWDD considers compliance with the emergency amendments to be crucial for the health, safety, and welfare of the individuals served by small business providers. Related to the requirement to conduct background checks in accordance with Section 16.34 of the Mental Hygiene Law, OPWDD has implemented several significant measures to streamline the process, such as the use of web-based forms.

7. Small business participation: The PPSNA was originally a Governor's Program Bill which received extensive media attention. Providers have had opportunities to become familiar with its provisions since it was made available on various government websites during June 2013. Related to the components of the regulations that are unrelated to implementation of the PPSNA, draft regulations containing these components were sent out for review and comment to representatives of providers, including the New York State Association of Community and Residential Agencies (NYSACRA), on March 12, 2012. Some of the members of NYSACRA have fewer than 100 employees. OPWDD carefully considered the comments received and made some suggested changes to the amendments (e.g. eliminated the paper based incident report and allowed for the provision of policies and procedures in electronic format). OPWDD also presented the reforms at a widely-attended provider training in the fall of 2012. OPWDD also hosted many informational sessions regarding the requirements in the prior emergency regulations during the spring and summer of 2013, including in-person sessions, webinars and state-wide videoconferences. OPWDD informed providers about the new requirements and invited public comment on the requirements. OPWDD has also responded to numerous questions and comments on prior emergency regulations. Finally, OPWDD has posted extensive information about the new requirements on its website.

8. (IF APPLICABLE) For rules that either establish or modify a violation or penalties associated with a violation: The emergency amendments do not establish or modify a violation or penalties associated with a violation.

Rural Area Flexibility Analysis

1. Description of the types and estimation of the number of rural areas in which the rule will apply: OPWDD services are provided in every county in New York State. 43 counties have a population of less than 200,000: Allegany, Cattaraugus, Cayuga, Chautauqua, Chemung, Chenango, Clinton, Columbia, Cortland, Delaware, Essex, Franklin, Fulton, Genesee, Greene, Hamilton, Herkimer, Jefferson, Lewis, Livingston, Madison, Montgomery, Ontario, Orleans, Oswego, Otsego, Putnam,

Rensselaer, St. Lawrence, Schenectady, Schoharie, Schuyler, Seneca, Steuben, Sullivan, Tioga, Tompkins, Ulster, Warren, Washington, Wayne, Wyoming and Yates. Additionally, 10 counties with certain townships have a population density of 150 persons or less per square mile: Albany, Broome, Dutchess, Erie, Monroe, Niagara, Oneida, Onondaga, Orange, and Saratoga.

The amendments have been reviewed by OPWDD in light of their impact on rural areas. The regulations make extensive changes to OPWDD's requirements for incident management that will necessitate significant changes in compliance activities and result in additional costs and savings to providers, including small business providers. However, OPWDD is unable to quantify the potential additional costs and savings to providers as a result of these amendments. In any event, OPWDD considers that the improvements in protections for people served in the OPWDD system will help safeguard individuals from harm and abuse and that the benefits more than outweigh any potential negative impacts on providers.

The geographic location of any given program (urban or rural) will not be a contributing factor to any additional costs to providers.

2. Compliance requirements: The regulations add a number of new requirements with which providers must comply. Amendments associated with the implementation of the PPSNA include a requirement that providers report "reportable incidents" and deaths to the Justice Center. In addition, the regulations impose an obligation on providers to obtain an examination for physical injuries. For psychological abuse, a clinical assessment could be needed in order to demonstrate the impact of suspected psychological abuse. While OPWDD anticipates that providers are already obtaining examinations of physical injuries, clinical assessments of suspected psychological abuse are not generally obtained.

The regulations impose requirements that all new custodians with regular and direct contact in such programs must read and sign the code of conduct at the time of employment or affiliation, and that all custodians with regular and direct contact in such programs must read and sign the code of conduct on an annual basis.

The PPSNA expanded requirements to obtain background checks of the Statewide Central Register of Child Abuse and Maltreatment to require checks of employees (and others) who have the potential for regular and substantial contact with individuals receiving services. Prior to June 30, 2013 the statute limited this requirement to employees who have the potential for regular and substantial contact with children. The emergency regulations reflect the statutory changes to section 424-a of the Social Services Law in the PPSNA. While many providers that also serve children have been obtaining these checks, the new requirements clearly expand the pool of employees who must be checked. Further, OPWDD regulations require that agencies conduct SCR checks of applicants when the check is permitted by the Social Services Law.

The regulations also include requirements addressing background checks for prospective employees and volunteers to determine if an applicant was involved in substantiated abuse or neglect in the OPWDD system before June 30, 2013, in accordance with section 16.34 on the Mental Hygiene Law. Agencies are also required to request a check of the Staff Exclusion List maintained by the Justice Center.

Prior OPWDD regulations already required reporting and investigation of incidents, and that providers request criminal background checks. While the amendments incorporate many changes and reforms, the basic requirements are conceptually unchanged. OPWDD therefore expects that additional compliance activities (except as noted above) will be minimal. Aside from the provisions related to implementation of the PPSNA, and section 16.34 of the Mental Hygiene Law, the amendments have either already been implemented by OPWDD policy directives, clarify existing requirements or interpretive guidance, or can be implemented without cost to the agency.

Agencies must comply with the new requirement to complete investigations within a 30 day timeframe. Agencies must also comply with new requirements to enhance the independence of investigators and agency incident review committees. However, OPWDD expects that additional compliance activities will be minimal since agencies are already required to comply with existing requirements that prohibit situations which compromise the independence of investigators and committee members.

The new requirements pertaining to the dissemination of agency policies and procedures, OPWDD incident management regulations, and written information specified by OPWDD add new compliance activities; however, the regulations minimize compliance activities by requiring that providers offer to provide such information in electronic format (unless paper copies are specifically requested) as opposed to requiring the provision of paper copies only. The amendments require that information be provided in conjunction with training which is mandated by current regulations in order to consolidate efforts, increase efficiency, and reduce compliance activities.

Enhancements in required notification to service coordinators will also add compliance activities for providers because providers will have to

make additional notifications and/or provide subsequent information about an incident or occurrence to these parties.

The amendments that add a new requirement that agencies enter minutes of their incident review committee meetings into IRMA within three weeks of the meeting for serious incidents, allegations of abuse, and all deaths, may result in a minimal amount of additional clerical work. OPWDD expects that most agencies have adopted an electronic record-keeping system to maintain their minutes and that these agencies would only have to copy and paste their minutes into IRMA. Agencies that do not have an electronic recordkeeping system and that maintain handwritten or typed minutes will have to assign staff to type the minutes into IRMA. OPWDD expects that these agencies will add this task to the duties of clerical staff who are trained and experienced in data entry and who can perform this function in an efficient manner.

The amendments extend access to information in accordance with Jonathan's Law and add a requirement that agencies retain records pertaining to incidents and allegations of abuse for a minimum time period of seven years. In cases when there is a pending audit or litigation, the pertinent records must be retained throughout the pendency of the audit or litigation. The amendments specify what information must be retained. OPWDD considers that the new requirements will not add any additional compliance activities for agencies. OPWDD expects that generally most agencies have been implementing agency specific policies on record retention and that the new required record retention schedule merely standardizes existing policies/procedures. The amendments will have no effect on local governments.

3. Professional services: There may be additional professional services required for small business providers as a result of these amendments. The definition of psychological abuse references specific impacts on an individual receiving services that must be supported by a clinical assessment. The amendments will not add to the professional service needs of local governments.

4. Compliance costs: There may be modest costs for small business providers associated with the amendments. There may be costs associated with obtaining a clinical assessment in the case of suspected psychological abuse. Additionally, there may be nominal costs for agencies to comply with the expanded notification requirements and requirements for the provision of policies and procedures when it is necessary to provide paper copies of information to the appropriate parties upon request. There are costs associated with the change to Section 424-a of the Social Services Law and OPWDD regulations which will require agencies to obtain additional background checks for employees and other individuals associated with the agencies. These checks cost \$25 per check. However, OPWDD is unable to estimate how many additional checks will be needed and therefore cannot estimate the cost impact. There may be costs associated with new background check requirements in MHL 16.34, including costs associated with the requirement that agencies conduct a "reasonably diligent search" for past records of abuse/neglect. There may also be costs associated with requirements that agencies request a search of the "Staff Exclusion List." There may be costs associated with the requirement to train members of the Incident Review Committee.

Providers may experience savings if the Justice Center or OPWDD assumes responsibility for investigations that were previously conducted by provider agency staff.

In the long term, compliance activities associated with the implementation of these amendments are expected to reduce future incidents and abuse, resulting in savings for providers as well as benefits to the wellbeing of individuals receiving services.

5. Minimizing adverse impact: The amendments may result in an adverse economic impact for small business providers due to additional compliance activities and associated compliance costs. However, as stated earlier, OPWDD expects that compliance with these new regulations will result in savings in the long term and there may be some short term savings as a result of the conduct of investigations by the Justice Center. Further, OPWDD expects that the amendments will provide some relief to providers by the removal of the previous requirement for a paper based incident report for reporting serious reportable incidents, allegations of abuse, and all deaths. OPWDD expects that these provisions will mitigate any adverse economic impact that results from complying with other new requirements.

OPWDD has reviewed and considered the approaches for minimizing adverse economic impact as suggested in section 202-bb(2)(b) of the State Administrative Procedure Act. OPWDD modified several requirements to minimize adverse economic impact. As noted above, OPWDD eliminated the requirement that agencies complete paper forms when information about incidents is submitted electronically. In addition, the new regulations allow agencies to provide instructions on how to access information on incident management electronically to individuals, families and others, rather than requiring the provision of paper copies in all instances. Agencies are only required to make paper copies available upon request. Re-

lated to the requirement to conduct background checks in accordance with Section 16.34 of the Mental Hygiene Law, OPWDD has implemented several significant measures to streamline the process, such as the use of web-based forms.

OPWDD did not consider the exemption of small businesses from the emergency amendments or the establishment of differing compliance or reporting requirements since OPWDD considers compliance with the emergency amendments to be crucial for the health, safety, and welfare of the individuals served by providers in rural areas.

6. Participation of public and private interests in rural areas: The PPSNA was originally a Governor's Program Bill that received extensive media attention. Providers have had opportunities to become familiar with its provisions since it was made available on various government websites during June 2013. Related to the components of the regulations that are unrelated to implementation of the PPSNA, draft regulations containing these components were sent out for review and comment to representatives of providers, including NYSARC, the NYS Association of Community and Residential Agencies, NYS Catholic Conference, and CP Association of NYS, which represent providers in rural areas, on March 12, 2012. OPWDD carefully considered the comments received and made some suggested changes to the amendments (e.g. eliminated the paper based incident report and allowed for the provision of policies and procedures in electronic format). OPWDD also presented the reforms at a widely-attended provider training in the fall of 2012. OPWDD also hosted many informational sessions regarding the requirements in the prior emergency regulations during the spring and summer of 2013, including in-person sessions, webinars, and state-wide videoconferences. OPWDD informed providers about the new requirements and invited public comment on the requirements. OPWDD has also responded to numerous questions and comments on the prior emergency regulations. Finally, OPWDD has posted extensive information about the new requirements on its website.

Job Impact Statement

OPWDD is not submitting a Job Impact Statement for these amendments because OPWDD does not anticipate a substantial adverse impact on jobs and employment opportunities.

The amendments incorporate a number of reforms to improve the quality and consistency of incident management activities throughout the OPWDD system. Most of these reforms have already been implemented by OPWDD policy directive, such as the mandates to use IRMA and a standardized investigation format. Consequently these amendments will not affect jobs or employment opportunities.

The amendments that impose new requirements on providers, such as additional reporting requirements, the timeframe for completion of investigations, notification to the service coordinator and other parties of subsequent information about incidents and abuse, retention of records, and the provision of policies and procedures to specified parties, will not result in an adverse impact on jobs. OPWDD anticipates that there will be no effect on jobs as agencies will use current staff to perform the required compliance activities.

The PPSNA and these implementing regulations will require that providers request additional checks from the Statewide Central Register of Child Abuse and Maltreatment. The regulations also include requirements addressing background checks for prospective employees and volunteers to determine if an applicant was involved in substantiated abuse or neglect in the OPWDD system before June 30, 2013, in accordance with section 16.34 of the Mental Hygiene Law. OPWDD anticipates that the requests and checks will be made using current staff.

The PPSNA and these implementing regulations will also mean that some functions that are currently performed by OPWDD staff will instead be performed by the staff of the Justice Center. OPWDD expects that the volume of incidents and occurrences investigated will be roughly similar. To the extent that the Justice Center performs investigations, oversees the management of reportable incidents, and manages requests for criminal history record checks, the result is expected to be neutral in that positions lost by OPWDD will be gained by the Justice Center. OPWDD may add minimal new staff to perform functions required by the regulations, such as the requirements for MHL 16.34 checks.

It is therefore apparent from the nature and purpose of the rule that it will not have a substantial adverse impact on jobs and employment opportunities.

NOTICE OF ADOPTION

HCBS Waiver Community Habilitation

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

Filing No. 823

Filing Date: 2014-09-16

Effective Date: 2014-10-01

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

Action taken: Amendment of Subpart 635-10 of Title 14 NYCRR.

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

Subject: HCBS Waiver Community Habilitation.

Purpose: To make revisions to HCBS Community Habilitation Services.

Text or summary was published in the July 23, 2014 issue of the Register, I.D. No. PDD-29-14-00005-P.

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

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

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

Assessment of Public Comment

OPWDD received one comment from a provider association. Below is the assessment of the comment and OPWDD's response.

COMMENT: OPWDD stated that the goal of the regulation is to increase the availability of self-directed services, allow individuals more service options, and increase the ability of individuals residing in certified settings to participate in activities in the community in lieu of more traditional day services. The day and time restriction placed on billing, and on when community habilitation can occur (weekdays up to 3 PM), contradicts this goal. The provider association recognized that there needs to be a restriction on the level of community habilitation that an individual who resides in a supervised setting can receive in a given week, and proposed a weekly cap of 30 hours of community habilitation. This would provide the individual with maximum flexibility to set their own schedule, while controlling the amount of hours they can receive.

RESPONSE: OPWDD will not change the regulation at this time. The intent of the regulation is to offer a service option during the time when individuals would otherwise attend a traditional day service. Allowing community habilitation at other times will require residences to change staffing patterns to provide coverage for any individual who receives community habilitation at non-traditional hours and is therefore home when all the other residents are in traditional day services. It should be noted that CH services are allowed to take place outside of traditional day service time frames, provided they begin within the traditional day service timeframes (i.e. prior to 3:00 pm). Moreover, as long as providers are allowed to bill for units larger than a quarter hour, OPWDD will need to set limits to prevent duplicative billing for services. The federal Centers for Medicare and Medicaid Services is adamant that limitations on combinations of residential habilitation and community habilitation be maintained.

Power Authority of the State of New York

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Rates for the Sale of Power and Energy

I.D. No. PAS-39-14-00009-P

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

Proposed Action: Revision in Electric Rates for the City of Sherrill.

Statutory authority: Public Authorities Law, section 1005(5)

Subject: Rates for the Sale of Power and Energy.

Purpose: To maintain the system’s fiscal integrity. This increase in rates is not the result of a Authority rate increase to the City.

Text of proposed rule:

City of Sherrill Proposed Monthly Rates	
	Proposed ¹ Rates
<u>Residential S.C.1</u>	
Customer Charge	\$10.10
Energy Charge, per kWh	
First 1,750 kWh	\$.047294
Over 1,750 kWh only	\$.0588003
<u>S. Commercial S.C.2</u>	
Customer Charge	\$13.00
Energy Charge, per kWh	\$.048868
<u>L. Commercial S.C.3</u>	
Demand Charge, per kW	\$4.82
Energy Charge, per kWh	\$.037662
<u>Outdoor Lighting S.C.4</u>	
(Charge per Lamp, per month)	
70W High Pressure Sodium	\$4.80
100 High Pressure Sodium	\$6.87
150 High Pressure Sodium	\$10.26
250 High Pressure Sodium	\$17.12
400 High Pressure Sodium	\$27.38
1000 High Pressure Sodium	\$68.59
100 Mercury Vapor	\$6.87
175 Mercury Vapor	\$12.04
200 Mercury Vapor	\$13.74
1000 Mercury Vapor	\$68.59
70 Mercury Halogen	\$4.80
100 Mercury Halogen	\$6.87
175 Mercury Halogen	\$12.04
250 Mercury Halogen	\$17.12
400 Mercury Halogen	\$27.38
1000 Mercury Halogen	\$68.59
<u>Industrial S.C.5</u>	
Demand Charge, per kW	\$4.82
Energy Charge, per kWh	\$.033903

¹ Purchased Power Adjustment reflected in proposed rates.

Text of proposed rule and any required statements and analyses may be obtained from: Karen Delince, Corporate Secretary, Power Authority of the State of New York, 123 Main Street, 11-P, White Plains, New York 10601, (914) 390-8085, email: secretarys.office@nypa.gov

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

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

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

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

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

Rates for the Sale of Power and Energy

I.D. No. PAS-39-14-00010-P

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

Proposed Action: Revision in Electric Rates for the Village of Tupper Lake.

Statutory authority: Public Authorities Law, section 1005(5)

Subject: Rates for the Sale of Power and Energy.

Purpose: To maintain the system’s integrity. This increase in rates is not the result of a Authority rate increase to the Village.

Text of proposed rule:

Village of Tupper Lake Proposed Monthly Rates	
	Proposed ¹ Rates
<u>Residential S.C.1</u>	
Customer Charge	\$3.28
Energy Charge Non-Winter (May-October), per kWh	\$.043857
Energy Charge Winter (November-April), per kWh	
First 1,500 kWh	\$.043857
1,501 – 4,500 kWh	\$.077121
Over 4,500 kWh	\$.112783
<u>Small Commercial S.C.2</u>	
Customer Charge	\$3.62
Energy Charge Non-Winter (May-October), per kWh	\$.049929
Energy Charge Winter (November-April), per kWh	\$.071322
<u>Large Industrial S.C.3A</u>	
Demand Charge, per kW	\$5.02
Energy Charge, per kWh	\$.040708
<u>Large Industrial S.C.3B</u>	
Demand Charge, per kW	\$5.23
Energy Charge, per kWh	\$.043530
<u>Large Industrial S.C.4</u>	
Demand Charge, per kW	\$6.16
Energy Charge, per kWh	\$.043675
<u>Security Lighting S.C.5</u>	
(Charge per Lamp, per month)	
150 High Pressure Sodium	\$9.99
175 Mercury Vapor	\$9.99
250 High Pressure Sodium	\$17.89
400 Mercury Vapor	\$17.89
<u>Street Lighting S.C.6</u>	
Facility Charge, per lamp	\$7.37
Energy Charge, per kWh	\$.017735

¹ Purchased Power Adjustment reflected in proposed rates.

Text of proposed rule and any required statements and analyses may be obtained from: Karen Delince, Corporate Secretary, Power Authority of the State of New York, 123 Main Street, 11-P, White Plains, New York 10601, (914) 390-8085, email: secretarys.office@nypa.gov

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

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

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

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

Public Service Commission

NOTICE OF ADOPTION

Approval of Petition of Rudin Management Co. to Submeter Electricity at 130 West 12th Street, NY

I.D. No. PSC-07-14-00005-A

Filing Date: 2014-09-10

Effective Date: 2014-09-10

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

Action taken: On 9/4/14, the PSC adopted an order approving the petition of Rudin Management Company, Inc. to submeter electricity at 130 West 12th Street, located in the territory of Consolidated Edison Company of New York, Inc.

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

Subject: Approval of petition of Rudin Management Co. to submeter electricity at 130 West 12th Street, NY.

Purpose: To approve the petition of Rudin Management Co. to submeter electricity at 130 West 12th Street, NY.

Substance of final rule: The Commission, on September 4, 2014, adopted an order approving the petition of Rudin Management Company, Inc. to submeter electricity at 130 West 12th Street, New York, New York, located in the territory of Consolidated Edison Company of New York, Inc., subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(13-E-0582SA1)

NOTICE OF ADOPTION

Approval of Petition of Riverwalk 7, LLC to Submeter Electricity at 480 Main Street, NY

I.D. No. PSC-19-14-00013-A

Filing Date: 2014-09-10

Effective Date: 2014-09-10

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

Action taken: On 9/4/14, the PSC adopted an order approving the petition of Riverwalk 7, LLC to submeter electricity at 480 Main Street, located in the territory of Consolidated Edison Company of New York, Inc.

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

Subject: Approval of petition of Riverwalk 7, LLC to submeter electricity at 480 Main Street, NY.

Purpose: To approve the petition of Riverwalk 7, LLC to submeter electricity at 480 Main Street, NY.

Substance of final rule: The Commission, on September 4, 2014, adopted an order approving the petition of Riverwalk 7, LLC to submeter electricity at 480 Main Street, New York, New York, located in the territory of Consolidated Edison Company of New York, Inc., subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Deborah Swatling, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2659, email: deborah.swatling@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25

cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(14-E-0145SA1)

NOTICE OF ADOPTION

Approval of Petition of Lafayette Development, LLC to Submeter Electricity at 2239 Adam Clayton Powell Jr. Blvd.

I.D. No. PSC-24-14-00003-A

Filing Date: 2014-09-10

Effective Date: 2014-09-10

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

Action taken: On 9/4/14, the PSC adopted an order approving the petition of Lafayette Development, LLC to submeter electricity at 2239 Adam Clayton Powell Jr. Boulevard, located in the territory of Consolidated Edison Company of New York, Inc.

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

Subject: Approval of petition of Lafayette Development, LLC to submeter electricity at 2239 Adam Clayton Powell Jr. Blvd.

Purpose: To approve the petition of Lafayette Development, LLC to submeter electricity at 2239 Adam Clayton Powell Jr. Blvd.

Substance of final rule: The Commission, on September 4, 2014, adopted an order approving the petition of Lafayette Development, LLC to submeter electricity at 2239 Adam Clayton Powell Jr. Boulevard, New York, New York, located in the territory of Consolidated Edison Company of New York, Inc., subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(14-E-0154SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Minor Electric Rate Filing

I.D. No. PSC-39-14-00012-P

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

Proposed Action: The Public Service Commission is considering whether to approve, modify or reject, in whole or in part, a proposal filed by the Village of Sherburne to make various changes to the rates, charges, rules and regulations contained in PSC No. 1 — Electricity.

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

Subject: Minor electric rate filing.

Purpose: For approval to increase total annual revenues by about \$300,000 or 8.1%.

Substance of proposed rule: The Public Service Commission is considering whether to approve, modify or reject, in whole or in part, the September 9, 2014 tariff filing by the Village of Sherburne. The tariff revisions would increase the Village of Sherburne's total annual electric revenues by about \$300,000 or 8.1%. The monthly bill of a residential customer using about 750 kilowatt-hours will increase from \$39.41 to approximately \$42.71, or 8.37%. The proposed amendments have an effective date of February 1, 2015. The Commission may also consider other related matters.

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

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

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

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

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

(14-E-0410SP1)

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

Transfer of Ownership Interests in Lockport Energy Associates, L.P.

I.D. No. PSC-39-14-00013-P

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

Proposed Action: The Commission is considering a petition filed by Lockport Energy Associates, L.P., et al., regarding a transfer of ownership interests in it and its 200 MW cogeneration facility in Lockport, New York.

Statutory authority: Public Service Law, sections 5(1)(b), 70 and 83

Subject: Transfer of ownership interests in Lockport Energy Associates, L.P.

Purpose: Consideration of transfer of ownership interests in Lockport Energy Associates, L.P.

Substance of proposed rule: The Public Service Commission is considering a petition filed by Lockport Energy Associates, L.P. (LEA), LEA A4 LLC (A4), Lockport Power Cogeneration, LLC (Lockport Power), and LEA LP IV LLC (LEA LP) (collectively, the Petitioners) regarding the proposed transfer to A4 of a 19.3% and a 5.0% partnership interest in LEA from Lockport Power and LEA LP, respectively (the Transfer). The Petitioners request that the Commission either issue a declaratory ruling that it need not review the Transfer under Public Service Law (PSL) §§ 70 and 83, or review and approve the Transfer pursuant to PSL §§ 70, 83, and any other relevant statutory or regulatory provisions. In addition, the Petitioners request that the lightened regulatory scheme approved for LEA continue unchanged. The Commission may adopt, reject or modify, in whole or in part, the relief proposed and may resolve related matters.

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

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

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

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

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

(14-M-0381SP1)

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

Whether to Permit the Use of the SATEC EM133 Electric Submeter

I.D. No. PSC-39-14-00014-P

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

Proposed Action: The Public Service Commission is considering whether to approve, deny or modify, in whole or in part, a petition filed by SATEC Incorporated for approval to use the SATEC EM133 electric submeter.

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

Subject: Whether to permit the use of the SATEC EM133 electric submeter.

Purpose: Pursuant to 16 NYCRR Parts 93 and 96, is necessary to permit the use of the SATEC EM133 electric submeter.

Substance of proposed rule: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by SATEC Incorporated to use the SATEC EM133 electric submeter in residential submetering applications.

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

Data, views or arguments may be submitted to: Kathleen H. Burgess, Secretary, Public Service Commission, Three Empire State Plaza, Albany, NY 10007, (518) 474-6530, email: Secretary@dps.ny.gov

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

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

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

(14-E-0409SP1)

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

Whether to Permit the Use of the Mueller Systems 400 Series and 500 Series of Water Meters

I.D. No. PSC-39-14-00020-P

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

Proposed Action: The Public Service Commission is considering whether to approve, deny or modify, in whole or in part, a petition filed by New York American Water Company Incorporated for approval to use the Mueller Systems 400 Series, and 500 Series of water meters.

Statutory authority: Public Service Law, section 89-d(1)

Subject: Whether to permit the use of the Mueller Systems 400 Series and 500 Series of water meters.

Purpose: Pursuant to 16 NYCRR section 500.3, whether to permit the use of the Mueller Systems 400, and 500 Series of water meters.

Substance of proposed rule: On September 4, 2014, New York American Water Company, Inc. (NYAW) filed a petition requesting that the Public Service Commission authorize the use of Mueller 400 Series and 500 Series of water meters, under the provisions of 16 NYCRR § 500.3(c). NYAW reports that it has installed over 900 of these meters in its Sea Cliff and Merrick service areas before learning that the models were not approved by the Commission for use in New York State. NYAW reports that the meters in question are used by American Water subsidiaries in 15 other states and states that it estimates the cost of replacing the meters, if the company's petition is not approved, at \$215,000. The Commission will decide whether to grant, deny or modify, in whole or in part, in commercial and domestic water accounts considering whether to grant, deny or modify, in whole or part, NYAW's petition and may address any related matters.

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

Data, views or arguments may be submitted to: Kathleen H. Burgess, Secretary, Public Service Commission, Three Empire State Plaza, Albany, NY 10007, (518) 474-6530, email: Secretary@dps.ny.gov

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

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

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

(14-W-0387SP1)

State University of New York

NOTICE OF ADOPTION

State University of New York Tuition and Fees Schedule

I.D. No. SUN-29-14-00004-A

Filing No. 826

Filing Date: 2014-09-16

Effective Date: 2014-10-01

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

Action taken: Amendment of section 302.1(b) of Title 8 NYCRR.

Statutory authority: Education Law, section 355(2)(b) and (h)

Subject: State University of New York Tuition and Fees Schedule.

Purpose: To amend the Tuition and Fees Schedule to increase tuition for students in all programs of the State University of New York.

Text or summary was published in the July 23, 2014 issue of the Register, I.D. No. SUN-29-14-00004-EP.

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

Text of rule and any required statements and analyses may be obtained from: Lisa S. Campo, State University of New York, State University Plaza, Albany, New York 12246, (518) 320-1400, email: Lisa.Campo@SUNY.edu

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

State Basic Financial Assistance for Operating Expenses of Community Colleges Under the Program of SUNY and CUNY

I.D. No. SUN-29-14-00010-A

Filing No. 807

Filing Date: 2014-09-16

Effective Date: 2014-10-01

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

Action taken: Amendment of section 602.8(c) of Title 8 NYCRR.

Statutory authority: Education Law, sections 355(1)(c) and 6304(1)(b); L. 2014, ch. 53

Subject: State basic financial assistance for operating expenses of community colleges under the program of SUNY and CUNY.

Purpose: To modify limitations formula for basic State Financial assistance and conform to the Education Law and the 2014-15 Budget Bill.

Text or summary was published in the July 23, 2014 issue of the Register, I.D. No. SUN-29-14-00010-P.

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

Text of rule and any required statements and analyses may be obtained from: Lisa S. Campo, State University of New York, State University Plaza, Albany, New York 12246, (518) 320-1400, email: Lisa.Campo@SUNY.edu

Assessment of Public Comment

The agency received no public comment.

Susquehanna River Basin Commission

INFORMATION NOTICE

Notice of Proposed Rulemaking and Public Hearing 18 CFR Part 806

Review and Approval of Projects

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice of proposed rulemaking and public hearing.

SUMMARY: This document contains proposed rules that would amend the regulations of the Susquehanna River Basin Commission (Commission) to clarify the water uses involved in hydrocarbon development that are subject to the consumptive use regulations, as implemented by the Approval By Rule program.

DATES: Comments on these proposed rules may be submitted to the Commission on or before November 17, 2014. The Commission has scheduled a public hearing on the proposed rulemaking, to be held November 6, 2014, in Harrisburg, Pennsylvania. The location of the public hearing is listed in the addresses section of this notice.

ADDRESSES: Comments may be mailed to: Jason E. Oyler, Esq., Regulatory Counsel, Susquehanna River Basin Commission, 4423 N. Front Street, Harrisburg, PA 17110-1788, or by e-mail to regcomments@srbc.net.

The public hearing will be held on November 6, 2014, at 1:30 p.m., at the Pennsylvania State Capitol, Room 8E-B, East Wing, Commonwealth Avenue, Harrisburg, Pa. 17101. Those wishing to testify are asked to notify the Commission in advance, if possible, at the regular or electronic addresses given below.

FOR FURTHER INFORMATION CONTACT: Jason E. Oyler, Esq., Regulatory Counsel, telephone: 717-238-0423, ext. 1312; fax: 717-238-2436; e-mail: joyler@srbc.net. Also, for further information on the proposed rulemaking, visit the Commission's web site at www.srbc.net.

SUPPLEMENTARY INFORMATION:

Background and Purpose of Amendments

The basic purpose of the regulatory amendments set forth in this proposed rulemaking is to clarify the water uses involved in hydrocarbon development that are subject to the consumptive use regulations, as implemented by the Approval By Rule (ABR) program.

Currently, certain hydrocarbon development projects and unconventional natural gas development projects are subject to the Commission's consumptive water use regulations. The Commission is proposing changes to the definitions in 18 CFR § 806.3 to clarify the water uses subject to regulation along with corresponding changes to 18 CFR § 806.22 pertaining to the ABR program. The Commission is also considering whether to increase the duration of approvals issued under the ABR program in 18 CFR § 806.22(f)(10) and is seeking public comment regarding a longer term.

The Commission is proposing a number of changes to the definitions in 18 CFR § 806.3. The Commission proposes to clarify and expand the definition of "hydrocarbon development" to "hydrocarbon development project." The new definition would retain the current language referring to "the drilling, casing, cementing, stimulation and completion" of oil and gas wells, and would add new language to cover all water-related activities and facilities on the drilling pad site as well as specific uses of water off the drilling pad site. On the drilling pad site, the definition would cover activities and facilities associated with the production, maintenance, operation, closure, plugging and restoration of wells or drilling pad sites that would require consumptive water usage. The revised definition contains an illustrative, but not exhaustive, list of water uses on the drilling pad site. Off the drilling pad site, the regulated uses would be water used for hydro-seeding, dust suppression, and hydro-excavation of access roads and underground lines, as well as tank cleanings, related to a drilling pad site or centralized impoundments. The Commission's jurisdiction under § 806.22(f) would cease after all post-plugging restoration is completed according to applicable member jurisdiction regulations.

The Commission also proposes to add a new definition of "drilling pad site." This term is currently used in SRBC regulations, but is not defined. The Commission's intent with the proposed definition is to cover the physical four corners of the well site where drilling actually occurs or is intended to occur and not to activities and facilities off the pad site.

The Commission has also proposed corresponding changes to the definition of "project," "unconventional natural gas development," and "construction." The last sentence in the definition of "project" is deleted

in this proposal, as it is not necessary with the changes proposed to “hydrocarbon development project.” The definition of “unconventional natural gas development” is proposed to be amended to “unconventional natural gas development project” to match the “hydrocarbon development project” definition. As is currently the case, an “unconventional natural gas development project” remains a subset of the more broadly defined term “hydrocarbon development project.”

The Commission also proposes changes to 18 CFR § 806.22 – Standards for consumptive uses of water. The Commission proposes changes to clarify 18 CFR §§ 806.22(f)(1) and (f)(4). The term “dust control” in 18 CFR § 806.22(f)(4) has been replaced with the broader term “other project related activity.” In addition, changes are proposed to 18 CFR §§ 806.22(f)(11) and (f)(12) to reflect changes in the definitions as proposed. The Commission is proposing revisions to 18 CFR § 806.22(f)(10) to note that the approvals under the ABR program shall be effective upon issuance by the Executive Director. In this subsection, the Commission is also considering whether to change the duration of approvals issued under the ABR program from 5 years to a longer term of up to 15 years and is specifically seeking public comment regarding such change. The Commission is also proposing changes to 18 CFR § 806.22(e)(7) to mirror subsection (f)(10). Nothing in the proposed rulemaking changes the existing overall regulatory structure between hydrocarbon development projects generally versus unconventional natural gas projects specifically.

In addition, the Commission finds it necessary to revise the provisions of 18 CFR § 806.15(e) to reflect proposed revisions in § 806.3.

List of Subjects in 18 CFR Part 806

Administrative practice and procedure, Water resources.

Accordingly, for the reasons set forth in the preamble, the Susquehanna River Basin Commission proposes to amend 18 CFR Part 806 as follows:

PART 806—REVIEW AND APPROVAL OF PROJECTS

Subpart A – General Provisions

1. The authority citation for Part 806 continues to read as follows:

Authority: Secs. 3.4, 3.5(5), 3.8, 3.10 and 15.2, Pub. L. 91-575, 84 Stat. 1509 et seq.

2. In § 806.3, revise the definitions below to read as follows:

§ 806.3 Definitions

Construction. To physically initiate assemblage, installation, erection or fabrication of any facility, involving or intended for the withdrawal, conveyance, storage or consumptive use of the waters of the basin. For purposes of unconventional natural gas development projects subject to review and approval pursuant to § 806.4(a)(8), initiation of construction shall be deemed to commence upon the drilling (spudding) of a gas well, or the initiation of construction of any water impoundment or other water-related facility to serve the project, whichever comes first.

Drilling Pad Site. The area occupied by the equipment or facilities necessary for or incidental to drilling, production or plugging of one or more hydrocarbon development wells and upon which such drilling has or is intended to occur.

Hydrocarbon development project. A project undertaken for the purpose of extraction of liquid or gaseous hydrocarbons from geologic formations, including but not limited to the drilling, casing, cementing, stimulation and completion of unconventional natural gas development wells, and all other activities and facilities associated with the foregoing or with the production, maintenance, operation, closure, plugging and restoration of such wells or drilling pad sites that require water for purposes including but not limited to, re-stimulation and/or re-completion of wells, fresh water injection of production tubing, use of coiled tubing units, pumping, cement hydration, dust suppression, and hydro-seeding, until all post-plugging restoration is completed in accordance with all applicable member jurisdiction requirements. The project includes water used for hydro-seeding, dust suppression and hydro-excavation of access roads and underground lines, as well as cleaning of tanks, related to a drilling pad site and centralized impoundments.

Project. Any work, service, activity or facility undertaken, which is separately planned, financed or identified by the Commission, or any separate facility undertaken or to be undertaken by the Commission or otherwise within a specified area, for the conservation, utilization, control, development, or management of water resources, which can be established and utilized independently, or as an additional to an existing facility, and can be considered as a separate entity for purposes of evaluation.

Unconventional natural gas development project. A hydrocarbon development project undertaken for the purpose of extraction of gaseous hydrocarbons from low permeability geologic formations utilizing enhanced drilling, stimulation or recovery techniques.

3. In § 806.15, revise paragraph (e) to read as follows:

§ 806.15 Notice of application

(e) For applications submitted under § 806.22(f)(13) for a wastewater discharge source, the newspaper notice requirement contained in paragraph (a) of this section shall be satisfied by publication in a newspaper of general circulation in each area within which the water obtained from such source will initially be used for hydrocarbon development.

4. In § 806.22, revise paragraphs (e)(7), (f)(1), (f)(4), (f)(10), (f)(11) and (f)(12) as follows:

§ 806.22 Standards for consumptive uses of water.

(e) Approval by rule for consumptive uses. (1) Except with respect to projects involving hydrocarbon development subject to the provisions of paragraph (f) of this section. . .

(7) Approval by rule shall be effective upon issuance by the Executive Director to the project sponsor, shall expire 15 years from the date of such issuance, and supersede any previous consumptive use approvals to the extent applicable to the project.

(f) Approval by rule for consumptive use related to unconventional natural gas and other hydrocarbon development projects.

(1) Any unconventional natural gas development project subject to review and approval under § 806.4(a)(8), or any other hydrocarbon development project subject to review and approval under §§ 806.4, 806.5, or 806.6 of this part, shall be subject to review and approval by the Executive Director under this paragraph (f) regardless of the source or sources of water being used consumptively.

(4) The project sponsor shall comply with metering, daily use monitoring and quarterly reporting as specified in § 806.30, or as otherwise required by the approval by rule. Daily use monitoring shall include amounts delivered or withdrawn per source, per day, and amounts used per gas well or drilling pad site, per day, for well drilling, hydrofracture stimulation, hydrostatic testing, and other project-related activity. The foregoing shall apply to all water, including stimulation additives, flowback, drilling fluids, formation fluids and production fluids, utilized by the project. The project sponsor shall also submit a post-hydrofracture report in a form and manner as prescribed by the Commission.

(10) Approval by rule shall be effective upon issuance by the Executive Director to the project sponsor, shall expire five years* from the date of such issuance, and supersede any previous consumptive use approvals to the extent applicable to the project.

(11) In addition to water sources approved for use by the project sponsor pursuant to § 806.4 or this section, a project sponsor issued an approval by rule pursuant to paragraph (f)(9) of this section may utilize any of the following water sources at the drilling pad site, subject to such monitoring and reporting requirements as the Commission may prescribe:

...

(12) A project sponsor issued an approval by rule pursuant to paragraph (f)(9) of this section may utilize a source of water approved by the Commission pursuant to § 806.4(a), or by the Executive Director pursuant to paragraph (f)(14) of this section, and issued to persons other than the project sponsor, provided any such source is approved for use in hydrocarbon development, the project sponsor has an agreement for its use, and at least 10 days prior to use, the project sponsor registers such source with the Commission on a form and in the manner prescribed by the Commission.

* Per the preamble to this proposed rulemaking, the Commission is considering a change of the duration of approval in this subsection from 5 years to a longer term of up to 15 years and is seeking public comment regarding the proposed change.

Dated: September 12, 2014.

Stephanie L. Richardson,
Secretary to the Commission.