

RULE MAKING ACTIVITIES

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

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

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

Department of Agriculture and Markets

NOTICE OF ADOPTION

Updating Regulations That Apply to the Production and Processing of Milk and Milk Products

I.D. No. AAM-28-14-00004-A

Filing No. 837

Filing Date: 2014-09-23

Effective Date: 2014-10-08

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

Action taken: Amendment of section 2.8; and repeal of Parts 10, 12 and 13 of Title 1 NYCRR.

Statutory authority: Agriculture and Markets Law, sections 16, 18, 46-a, 47, 254 and 255

Subject: Updating regulations that apply to the production and processing of milk and milk products.

Purpose: To repeal unnecessary and obsolete regulations applicable to the production and processing of milk and milk products.

Text or summary was published in the July 16, 2014 issue of the Register, I.D. No. AAM-28-14-00004-P.

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

Text of rule and any required statements and analyses may be obtained from: Casey McCue, NYS Dept. of Agriculture and Markets, 10B Airline Drive, Albany, NY 12235, (518) 457-1772, email: Casey.McCue@agriculture.ny.gov

Revised Job Impact Statement The Department has reviewed the potential

job impact of this rulemaking, and has determined that the amendments to Parts 2.8, 10, 12 and 13 will not have a substantial adverse impact on jobs and employment opportunities. It is evident from the subject matter of the rule making that the changes will not have a substantial adverse impact on jobs and employment opportunities. Rather, the rules seek to repeal superfluous or unenforced rules, and to conform state regulations to regulations of the United States Department of Agriculture. By removing superfluous rules and promoting uniformity between state and federal regulations, the amendments will have a slight positive or no impact on job and employment opportunities. Accordingly, a full job impact statement is not required pursuant to State Administrative Procedure Act § 201-a(2)(a).

Assessment of Public Comment

The agency received no public comment.

Department of Audit and Control

NOTICE OF ADOPTION

Meeting and Action of the Real Estate Advisory Committee

I.D. No. AAC-30-14-00028-A

Filing No. 836

Filing Date: 2014-09-23

Effective Date: 2014-10-08

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

Action taken: Amendment of section 330.3 of Title 2 NYCRR.

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

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

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

Text or summary was published in the July 30, 2014 issue of the Register, I.D. No. AAC-30-14-00028-P.

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

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

Assessment of Public Comment

The agency received no public comment.

Office of Children and Family Services

EMERGENCY RULE MAKING

Protection of Vulnerable Persons

I.D. No. CFS-40-14-00001-E

Filing No. 824

Filing Date: 2014-09-17

Effective Date: 2014-09-17

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

Action taken: Amendment of Subpart 166-1 and Parts 180 and 182 of Title 9 NYCRR; and amendment of Parts 402, 414, 416, 417, 418, 421, 433, 435, 441, 442, 443, 447, 448, 449, 476, 477 and 489 of Title 18 NYCRR.

Statutory authority: Social Services Law, sections 20(3)(d) and 34(3)(f); Executive Law, sections 501(5) and 532-e; 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: Chapter 501 of the Laws of 2012 established the Justice Center for the Protection of People with Special Needs ("Justice Center"). The Justice Center is tasked with overseeing and improving consistency in responses to incidents of abuse and neglect of vulnerable people. The Justice Center has also been tasked with establishing standards for tracking and investigating complaints and enforcement against those who commit substantiated acts of abuse and neglect. The legislation requires the Office of Children and Family Services, as a state oversight agency of vulnerable persons, to develop standards consistent with the Justice Center. These standards are to protect vulnerable people against abuse, neglect and other conduct that may jeopardize their health, safety and welfare, and to provide fair treatment and notice to the employees. The Office of Children and Family Services must promulgate regulations to provide notice, guidance and standards to all facilities, provider agencies and employees who are affected by the legislation. The Justice Center took effect June 30, 2013.

Facilities and provider agencies covered by the legislation include voluntary agencies that operate residential programs that are licensed or certified by the Office of Children and Family Services, residential runaway and homeless youth programs, family type homes for adults, certified detention programs, OCFS operated juvenile justice programs, and any local department of social services that runs a detention program or has a contract with an authorized agency for detention services or has a contract(s) for care of foster children in out of state facilities.

Effective on June 30, 2013 reports of suspected child abuse or neglect in a residential program no longer fall under the jurisdiction of the Statewide Central Register of Child Abuse and Maltreatment (SCR). Any concerns regarding abuse or neglect of a child in a residential care program must be reported to the Vulnerable Persons Central Register (VPCR). The VPCR will also register reports of suspected abuse or neglect of persons residing in Family Type Homes for Adults (FTHA). Reports registered by the VPCR will be forwarded to Justice Center investigative staff or to investigative staff at the State Agency that licenses, certifies or operates the facility or provider agency. Regulations are required to provide direction to facilities, provider agencies, employees, local government staff and the public. It is imperative that rules be in place for the proper implementation of the Justice Center legislation.

In addition, these emergency regulations re-insert language at section 182-1.5 of Title 9 NYCRR to prohibit discrimination on the basis of sexual orientation, gender identity or expression. This language had been part of the regulations until June 2014 when they were inadvertently overwritten by other regulatory changes. This language is necessary to provide protection from such discrimination for the persons receiving services in the programs regulated by section 182-1.5 of Title 9 NYCRR.

Promulgating emergency regulations will ensure compliance with legislative requirements and provide the necessary guidance to affected persons. Absent the filing of emergency regulations, guidance, protections and processes will not be available to the aforementioned listed facilities and agencies.

Subject: Protection of Vulnerable Persons.

Purpose: Create a durable set of consistent safeguards for vulnerable persons that protect them against abuse, neglect and other conduct.

Substance of emergency rule: Chapter 501 of the Laws of 2012 established the Justice Center for the Protection of People with Special Needs ("Justice Center"). The legislation requires the Office of Children and Family Services ("OCFS") to promulgate regulations consistent with the Justice Center oversight, regulations and enforcement. These regulations enact changes in line with the legislation to protect vulnerable people against abuse, neglect and other conduct that may jeopardize their health, safety and welfare, and to provide fair treatment and notice to the employees. The included additions and amendments allow OCFS to comply with the statutory requirements that became effective June 30, 2013.

The facilities and provider agencies that are licensed, operated or certified by OCFS that are affected are the following: residential runaway and homeless youth programs; family type homes for adults; certified detention programs; OCFS operated juvenile justice programs; voluntary agency run institutions, group residences, group homes, agency operated boarding homes including supervised independent living programs; and, any local department of social services that runs a detention program or has a contract with an authorized agency for detention services or has a contract(s) for care of foster children in out-of-state facilities. In addition, additional background check requirements were added for foster family boarding homes, families applying to adopt a child and child care providers. Regulations were added or amended to incorporate reporting, investigative, record keeping, record production, administrative and personnel requirements, among others.

The first category of regulations added or amended address jurisdiction of the newly created Vulnerable Persons Central Register (VPCR). Regulations will now reflect that reports of suspected abuse or neglect of persons receiving services in OCFS licensed, certified or operated residential care programs will be reported to the VPCR. Additionally reports regarding significant incidents that harm or put a service recipient at risk of harm at those same programs will be reported to the VPCR.

The second category of regulations added or amended addresses requirements of mandated reporters and what mandated reporters will be required to report to the VPCR. Acts of abuse/neglect and significant incidents are defined and procedures regarding making a report to the VPCR are outlined.

The third category of regulations added or amended provides for the requirement of data collection by the facility or provider agencies in response to requests by the Justice Center and standards for release of that information by the Justice Center.

The fourth category of regulations added or amended provides for the creation of incident review committees to affected facilities and provider agencies.

The fifth category of regulations added or amended provides criminal history background checks and checks of the Justice Center's list of substantiated category one reports of abuse and neglect prior to hiring certain employees, use of volunteers or contractors with certain entities have been added or amended.

Lastly, language inadvertently overwritten in June 2014 was re-insert at section 182-1.5 of Title 9 NYCRR. The re-inserted language prohibits discrimination on the basis of sexual orientation, gender identity or expression. Inclusion of this language provides protection from such discrimination for the persons receiving services in the regulated programs.

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 15, 2014.

Text of rule and any required statements and analyses may be obtained from: Public Information Office, NYS Office of Children and Family Services, 52 Washington Street, Rensselaer, NY 12144, (518) 473-7793

Regulatory Impact Statement

1. Statutory authority:

Section 20(3)(d) of the Social Services Law (SSL) authorizes the Office of Children and Family Services (OCFS) to establish rules and regulations to carry out its powers and duties pursuant to the provisions of the SSL.

Section 34(3)(f) of the SSL requires the Commissioner of OCFS to establish regulations for the administration of public assistance and care within the State.

Section 501(5) and 532-e of the New York State Executive Law authorizes the Commissioner of OCFS to promulgate rules and regulations for the establishment, operation and maintenance of division facilities and programs.

Section 490 of the SSL as found in Chapter 501 of the Laws of 2012 requires the Commissioner of OCFS to promulgate regulations that contain procedures and requirements consistent with guidelines and standards developed by the justice center and addressing incident management programs required by the Chapter Law.

2. Legislative objectives:

The proposed changes to the regulations concerning vulnerable persons in programs licensed, certified or operated by OCFS are necessary to further the legislative objective that vulnerable persons be safe and afforded appropriate care.

3. Needs and benefits:

To the extent a change to the run away and homeless youth regulations is a technical change, the need is to reauthorize language already found in regulation and implemented by program.

The proposed changes to the regulations concerning vulnerable persons in programs licensed, certified or operated by OCFS providers is in response to the recognized need to strengthen and standardize the safety net for vulnerable persons, adults and children alike, who are receiving care from New York's human service agencies and programs. The Protection of People with Special Needs Act creates a set of uniform safeguards, to be implemented by a justice center whose primary focus will be on the protection of vulnerable persons. Accordingly, the benefit of this legislation is to create a durable set of consistent safeguards for all vulnerable persons that will protect them against abuse, neglect and other conduct that may jeopardize their health, safety and welfare, and to provide fair treatment to the employees upon whom they depend.

4. Costs:

The proposed regulatory changes are not expected to have an adverse fiscal impact on authorized agencies, family type homes for adults, or on the social services districts with regard to reporting and record keeping requirements. Current laws and regulations impose similar levels of reporting and record keeping. In conforming to and complying with the new statutory and regulatory requirements authorized agencies and other facilities will necessarily have to reconfigure current utilization of staff and duties. The enhancement of services for the protections of Vulnerable Persons will incur additional costs.

To the extent a change to the run away and homeless youth regulations is a technical change, there is no anticipated cost.

5. Local government mandates:

The proposed regulations will not impose any additional mandates on social services districts. Local Districts have been provided with an amended model contract for use in securing out of state residential services for children in foster care. This model contract replaced a model contract already in existence and used by Local Districts.

To the extent a change to the run away and homeless youth regulations is a technical change, there are no additional mandates.

6. Paperwork:

The proposed regulations do not require any additional paperwork. Requirements regarding documentation are currently in regulation. These regulations will require sharing such documentation with the Justice Center.

7. Duplication:

The proposed regulations do not duplicate any other State or Federal requirements.

8. Alternatives:

These regulations are required to comply with Chapter 501 of the Laws of 2012 and add a technical change to 9 NYCRR 182-1.5.

9. Federal standards:

The regulatory amendments do not conflict with any federal standards.

10. Compliance schedule:

The regulations will be effective on September 17, 2014 to ensure compliance with Chapter 501 of the Laws of 2012.

Regulatory Flexibility Analysis

1. Types and estimated number of small businesses and local governments:

Social services districts and voluntary authorized agencies contracting with such social services districts to provide residential foster care services to children, authorized agencies providing juvenile detention services, runaway and homeless youth shelters and adult family type homes will be affected by the proposed regulations, as well as state operated juvenile justice facilities.

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

Prior to Chapter 501 of the Laws of 2012, authorized agencies, facilities and mandated reporters employed by the same were required reporters of suspected child abuse or maltreatment to the New York Statewide Central Register of Child Abuse and Maltreatment. Pursuant to the statutory requirements of Social Services Law Sections 490 and 491, those mandated reporters are now required to report all reportable incidents, which will include but not be limited to those things previously falling within the definitions of abuse and neglect of a child in residential care, to the Vulnerable Persons Central Register. Authorized Agencies and facilities will be required to maintain the same level of practice as it relates to recordkeeping, and prevention and remediation plans. Authorized agencies and facilities will be required to comply with investigations and infor-

mation requests as required by the Justice Center for the Protection of People with Special Needs, as defined in Article 20 of the Executive Law.

The proposed regulations and amendments alter practice to conform to statutory obligations set forth in Chapter 501 of the Laws of 2012.

3. Costs:

To the extent a change to the run away and homeless youth regulations is a technical change, there is no anticipated cost. All affected programs such as authorized agencies or facilities are currently subject to requirements governing reporting, record keeping, management of approved procedures and policies. As such the proposed regulations should not impose any additional costs associated with those functions. The statutory and regulatory requirements will necessarily require a reconfiguration of the current utilization of administrative costs to conform and comply with the requirements of the new law and conforming regulations. The statutory scheme provides for the enhancement of services for the protection of Vulnerable Persons, which will have added costs.

4. Economic and technological feasibility:

The proposed regulatory changes would not require any additional technology and should not have any adverse economic consequences for regulated parties.

5. Minimizing adverse impact:

The proposed changes to the regulations will require authorized agencies and facilities to conform to new reporting and record keeping requirements, however inconsistent and duplicative measures have been addressed by the regulations to minimize the impact. Trainings will be taking place across systems, as well as the dissemination of guidance documentation in advance of the effective date of the regulations.

6. Small business and local government participation:

Potential changes to the regulations governing the protection of people with special needs will be thoroughly addressed through statewide trainings and guidance documentation distributed to local representatives of social services, authorized agencies and facilities.

Rural Area Flexibility Analysis

1. Types and estimated number of rural areas:

Social services districts in rural areas and voluntary authorized agencies contracting with such social services districts to provide residential foster care services to children, authorized agencies providing juvenile detention services, runaway and homeless youth shelters and adult family type homes will be affected by the proposed regulations, as well as state operated juvenile justice facilities.

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

Prior to Chapter 501 of the Laws of 2012, authorized agencies, facilities and mandated reporters employed by the same were required reporters of suspected child abuse or maltreatment to the New York Statewide Central Register of Child Abuse and Maltreatment. Pursuant to the statutory requirements of Social Services Law Sections 490 and 491, those mandated reporters are now required to report all reportable incidents, which will include but not be limited to those things previously falling within the definitions of abuse and neglect of a child in residential care, to the Vulnerable Persons Central Register. Authorized Agencies and facilities will be required to maintain the same level of practice as it relates to recordkeeping, and prevention and remediation plans. Authorized agencies and facilities will be required to comply with investigations and information requests as required by the Justice Center for the Protection of People with Special Needs, as defined in Article 20 of the Executive Law.

The proposed regulations and amendments alter practice to conform to statutory obligations set forth in Chapter 501 of the Laws of 2012.

3. Costs:

To the extent a change to the runaway and homeless youth regulations is a technical change, there is no anticipated cost. An authorized agency or facility is currently subject to requirements governing reporting, record keeping, management of approved procedures and policies, so the proposed regulations should not impose any additional costs associated with those functions. The statutory and regulatory requirements will necessarily require a reconfiguration of the current utilization of administrative costs to conform and comply with the requirements of the new law and conforming regulations. The statutory scheme provides for the enhancement of services for the protection of Vulnerable Persons, which will have added costs.

4. Minimizing adverse impact:

The proposed changes to the regulations require authorized agencies and facilities approved, licensed, certified or operated by the Office of Children and Family Services to protect Vulnerable Persons as defined by Social Services Law Section 488. The regulations are in direct response to the need to strengthen and standardize the protection of vulnerable people in residential care. The Protection of People with Special Needs Act creates uniform standards across systems to be implemented and monitored by the Justice Center.

5. Rural area participation:

Potential changes to the regulations governing implementation of the statute regarding the protection of people with special needs will be addressed through trainings and guidance documentation distributed to representatives of social services districts, authorized agencies, including those that serve rural communities.

Job Impact Statement

The proposed regulations are not expected to have a negative impact on jobs or employment opportunities in either public or private sector service providers. A full job statement has not been prepared for the proposed regulations as it is not anticipated that the proposed regulations will have any adverse impact on jobs or employment opportunities.

Assessment of Public Comment

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

Education Department

EMERGENCY RULE MAKING

Flexibility Relating to Teacher Performance Assessment (edTPA)

I.D. No. EDU-19-14-00021-E

Filing No. 835

Filing Date: 2014-09-23

Effective Date: 2014-09-23

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

Action taken: Amendment of sections 52.21, 80-3.3, 80-3.4 and 80-5.13 of Title 8 NYCRR.

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

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

Specific reasons underlying the finding of necessity: As discussed at the December 2012 and October 2013 Regents meetings, the Department has partnered with the Teacher Performance Assessment Consortium (TPAC) and is utilizing the edTPA as its teacher performance assessment, which was developed by the Stanford Center for Assessment, Learning and Equity (SCALE). The edTPA is a performance-based assessment designed to measure a candidate's readiness to teach by assessing teaching behaviors designed to foster student learning such as the candidate's ability to demonstrate effective planning, instruction, and assessment. In order for candidates to complete the edTPA, they need to submit a video of their performance in the classroom.

We are five years into the implementation of the new and revised certification examinations. The Department has already provided a one year extension of the teacher performance assessment and \$11.5 million to CUNY, SUNY, and the independent colleges to support the provision of faculty professional development on topics such as the Common Core and the new certification examinations. However, in spite of five years of awareness raising, professional development offerings related to transitioning to the new assessment, and the one year extension that was already provided for programs and candidates, in order to address the concerns raised by the field while at the same time recognizing the previous extension and investments made in faculty development around the edTPA, the proposed amendment attempts to provide additional flexibility for candidates who take and fail the edTPA on their first attempt. The proposed amendment authorizes the Commissioner to issue an initial certificate to a candidate who applies for and meets all the requirements for an initial certificate on or before June 30, 2015, except he/she does not receive a satisfactory passing score on the teacher performance assessment; if the candidate either receives a satisfactory score on the Assessment of Teaching Skills – Written after receipt of his/her score on the teacher performance assessment and prior to June 30, 2015; or passes the Assessment of Teaching Skills - Written on or before April 30, 2014 (before the new certification examination requirements became effective) and the candidate has taken and failed the teacher performance assessment prior to June 30, 2015.

The proposed amendment was adopted as an emergency rule at the April 28-29, 2014 Regents meeting, effective April 29, 2014. A Notice of Emergency Adoption and Proposed Rule Making was published in the State Register on May 14, 2014. The proposed amendment has now been revised

to clarify that the edTPA "safety net" approved by the Board of Regents at their April meeting allows any candidate who applies for and meets the requirements of an initial certificate on or before June 30, 2015, except he/she does not receive a passing score on the edTPA, may either: (1) take and pass the ATS-W after receipt of his/her score on the edTPA and prior to June 30, 2015, or (2) if the candidate had previously passed the ATS-W on or before April 30, 2014 (before the new certification examination requirements became effective) and the candidate has taken and failed the edTPA prior to June 30, 2015, the candidate will be issued an initial certificate.

Because the Board of Regents meets at scheduled intervals, the earliest the revised proposed amendment could be presented for regular (non-emergency) adoption, after publication of the Notice of Emergency Action and Revised Rule Making in the State Register on August 13, 2014 and expiration of the 30-day public comment period for a Revised Rule Making, as provided for in State Administrative Procedure Act (SAPA) section 202(1) and (5), is the October 2014 Regents meeting. Pursuant to SAPA § 203(1), the earliest effective date of the permanent rule, if adopted at the October Regents meeting, would be November 5, 2014, the date a Notice of Adoption will be published in the State Register. However, the April emergency rule will expire on September 22, 2014, 60 days after the filing of the Notice of Emergency Adoption and Emergency Rule Making with the Department of State. A lapse in the rule's effective date could disrupt the certification process for teacher candidates who are subject to the rule and who will be applying for certification on or after May 1, 2014 and prior to June 30, 2015.

Emergency action is therefore necessary for the preservation of the general welfare to ensure that the proposed rule adopted by emergency action at the April 2014 and July 2014 Regents meetings remain continuously in effect until the effective date of its permanent adoption.

Furthermore, emergency action to adopt the proposed rule is necessary now for the preservation of the general welfare in order to ensure that teacher candidates who will be applying for certification on or after May 1, 2014 and prior to June 30, 2015, have timely and sufficient notice that, if they fail the edTPA and subsequently take and pass the ATS-W prior to June 30, 2015 or if they passed the ATS-W on or before April 30, 2014 (before the new certification examination requirements became effective) and fail the edTPA prior to June 30, 2015, they may receive an initial certificate.

Subject: Flexibility Relating to Teacher Performance Assessment (edTPA).

Purpose: To provide teacher Candidates, who apply for teacher certification prior to June 30, 2015 and who take and fail the teacher performance assessment (edTPA), with the option of obtaining an initial certificate if the candidate passes the ATS-W.

Text of emergency rule: 1. Subclause (1) of clause (b) of subparagraph (iv) of paragraph (2) of subdivision (b) of section 52.21 of the Regulations of the Commissioner of Education is amended, effective September 23, 2014, to read as follows:

(1) The department shall conduct a registration review in the event that fewer than 80 percent of students, who have satisfactorily completed the institution's program during a given academic year and have also completed one or more of the examinations required for a teaching certificate, pass each such examination that they have completed; *provided that for the 2014-2015 and 2015-2016 academic years, the department shall not conduct a registration review based solely upon students having less than an 80 percent passage rate on the teacher performance assessment. However, programs with less than an 80 percent passage rate for the 2013-2014 and 2014-2015 academic years on the teacher performance assessment will be required to submit a professional development plan to the Department that describes how the program plans to improve the readiness of faculty and pass rate for candidates on the teacher performance assessment.* For purposes of this clause, students who have satisfactorily completed the institution's program shall mean students who have met each educational requirement of the program, excluding any institutional requirement that the student pass each required examination of the New York State teacher certification examinations for a teaching certificate in order to complete the program. Students satisfactorily meeting each educational requirement may include students who earn a degree or students who complete each educational requirement without earning a degree. For determining this percentage, the department shall consider the performance on each certification examination of those students completing an examination not more than five years before the end of the academic year in which the program is completed or not later than the September 30th following the end of such academic year, academic year defined as July 1st through June 30th, and shall consider only the highest score of individuals taking a test more than once.

2. Paragraph (2) of subdivision (b) of section 80-3.3 of the Regulations of the Commissioner of Education is amended, effective September 23, 2014, to read as follows:

(2) Examination. The candidate shall meet the examination requirement by meeting the requirements in one of the following subparagraphs:

(i)(a) Except as otherwise provided in this section, for candidates who have completed all requirements for initial certification on or before April 30, 2014 and who apply for certification on or before April 30, 2014, the candidate shall submit evidence of having achieved a satisfactory level of performance on the New York State Teacher Certification Examination liberal arts and sciences test, written assessment of teaching skills, and content specialty test(s) in the area of the certificate on or before April 30, 2014, except that a candidate seeking an initial certificate in the title of Speech and Language Disabilities (all grades) shall not be required to achieve a satisfactory level of performance on the content specialty test. Instead of meeting the examination requirements of this subdivision, a candidate applying for certification on or before April 30, 2014 may achieve a satisfactory level of performance on the set of certification examinations described in subdivision (b) of this section, *except that such candidate may receive a satisfactory level of performance on either the teacher performance assessment or the written assessment of teaching skills.*

(b) Except as otherwise provided in this section, for candidates applying for certification on or after May 1, 2014 or candidates who applied for certification on or before April 30, 2014 but did not meet all the requirements for an initial certificate on or before April 30, 2014, such candidates shall submit evidence of having achieved a satisfactory level of performance on the New York State Teacher Certification Examination teacher performance assessment, the educating all students test, the academic literacy skills test and the content specialty test(s) in the area of the certificate, except that a candidate seeking an initial certificate in the title of Speech and Language Disabilities (all grades) shall not be required to achieve a satisfactory level of performance on the content specialty test or the teacher performance assessment and a candidate seeking an initial certificate in the title of Educational Technology Specialist (all grades) shall not be required to achieve a satisfactory level of performance on the teacher performance assessment. *Provided however, if a candidate applies for and meets all the requirements for an initial certificate on or before June 30, 2015 (including completing and submitting for scoring the teacher performance assessment), except the candidate does not receive a satisfactory score on the teacher performance assessment, the candidate may meet the requirements for an initial certificate, if the candidate either:*

- (i) receives a satisfactory score on the written assessment of teaching skills after receipt of his/her score on the teacher performance assessment and prior to June 30, 2015, or
- (ii) passed the written assessment of teaching skills on or before April 30, 2014 (before the new certification examination requirements became effective) and the candidate has taken and failed the teacher performance assessment prior to June 30, 2015.

(c) . . .
(ii) . . .

(c) . . .
3. Section 80-3.4 of the Regulations of the Commissioner of Education is amended, effective September 23, 2014, as follows:

Section 80-3.4. Requirements for the professional certificate in the classroom teaching service.

(a) . . .
(b) Requirements for professional certificates in all titles in classroom teaching service, except in a specific career and technical subject within the field of agriculture, business and marketing, family and consumer sciences, health, a technical area, or a trade (grades 7 through 12). The candidate shall meet the requirements in each of the following paragraphs:

- (1) . . .
- (2) . . .
- (3) Examination.

(i)(a) . . .
(b) Candidates who hold a transitional C certificate for career changers and others holding a graduate academic or graduate professional degree, pursuant to the requirements of section 80-5.14 this Part, and who apply for certification on or after May 1, 2014 or candidates who apply for professional certification on or before April 30, 2014 but do not meet all the requirements for a professional certificate on or before April 30, 2014 shall submit evidence of having achieved a satisfactory level of performance on the New York State Teacher Certification Examination teacher performance assessment. *Provided, however, if a candidate applies for and meets all the requirements for a professional certificate on or before June 30, 2015 (including completing and submitting for scoring the teacher performance assessment), except the candidate does not receive a satisfactory score on the teacher performance assessment, the candidate may meet the requirements for a professional certificate, if the candidate either:*

- (i) receives a satisfactory score on the written assessment of teaching skills after receipt of his/her score on the teacher performance assessment and prior to June 30, 2015; or

(ii) passes the written assessment of teaching skills on or before April 30, 2014 (before the new certification examination requirements became effective) and the candidate has taken and failed the teacher performance assessment prior to June 30, 2015.

(c) . . .
4. Subparagraph (ii) of paragraph (1) of subdivision (b) of section 80-5.13 of the Regulations of the Commissioner of Education is amended, effective September 23, 2014, to read as follows:

(ii) Examination.
(a) A candidate who applies for an initial certificate on or before April 30, 2014, and who has completed all other requirements for an initial certificate or who has completed all requirements for an initial certificate except completion of their registered Transitional B program, on or before April 30, 2014 shall submit evidence of having achieved a satisfactory level of performance on the New York State Teacher certification examination written assessment of teaching skills test, and any other examination required for the provisional or initial certificate, as applicable, and/or a bilingual education extension of such certificate, as applicable, on or before April 30, 2014 or a satisfactory level of performance on teacher performance assessment, if applicable for that certificate title, and any other examination required for the provisional or initial certificate, as applicable, and/or a bilingual education extension of such certificate, as applicable.

(b) A candidate who applies for [certification] *an initial certificate* on or after May 1, 2014 or who applies for [certification] *an initial certificate* on or before April 30, 2014 but does not meet all the requirements for [a professional] *an initial certificate* on April 30, 2014, shall submit evidence of having achieved a satisfactory level of performance on the teacher performance assessment, if applicable for that certificate title, and any other examination required for the provisional or initial certificate, as applicable, and/or a bilingual education extension of such certificate, as applicable. *Provided however, if a candidate applies for and meets all the requirements for an initial certificate on or before June 30, 2015 (including completing and submitting for scoring the teacher performance assessment), except the candidate does not receive a satisfactory score on the teacher performance assessment, the candidate may meet the requirements for an initial certificate, if the candidate either:*

- (i) receives a satisfactory score on the written assessment of teaching skills after receipt of his/her score on the teacher performance assessment and prior to June 30, 2015; or
- (ii) passes the written assessment of teaching skills on or before April 30, 2014 (before the new certification examination requirements became effective) and the candidate has taken and failed the teacher performance assessment prior to June 30, 2015.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. EDU-19-14-00021-EP, Issue of May 14, 2014. The emergency rule will expire November 21, 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 207 grants general rule-making authority to the Regents to carry into effect State educational laws and policies.

Education Law section 305(1) and (2) empowers the Commissioner of Education to be the chief executive officer of the state system of education and authorizes the Commissioner to execute educational policies determined by the Regents.

Education Law section 3001(2) establishes certification by the State Education Department as a qualification to teach in the State's public schools.

Education Law section 3004(1) authorizes the Commissioner of Education to prescribe regulations governing the certification of teachers.

Education Law section 3006(1)(b) provides that the Commissioner of Education may issue such teacher certificates as the Regents Rules prescribe.

Education Law section 3009(1) provides that no part of the school moneys apportioned to a district shall be applied to the payment of the salary of an unqualified teacher, nor shall his salary or part thereof, be collected by a district tax except as provided in the Education Law.

2. LEGISLATIVE OBJECTIVES:

The amendment carries out the legislative objectives of the above-referenced statutes by providing flexibility relating to the teacher performance assessment (edTPA), a certification examination that is required for certain teachers who are seeking to be certified in New York State.

3. NEEDS AND BENEFITS:

At the November and December 2009 Board of Regents meetings, the Board approved a number of initiatives for the purpose of transforming teaching and learning and school leadership in New York State. The Board of Regents discussion included the development of new examinations, creation of performance assessments for teachers and school building leaders, and the revision of the current Content Specialty Tests (CSTs). The teacher performance assessment was intended to measure candidates' readiness for the classroom consistent with the New York State Teaching Standards, which were adopted with extensive stakeholder input.

In May 2010, the Board reaffirmed the direction for the new examinations, which includes the Academic Literacy Skills Test (ALST), the Educating All Students test (EAS), the edTPA, and the School Building Leader performance assessment (SBL), as well as revisions to the CSTs. The new certification examinations were described in New York's Race to the Top (RTTT) application in 2010, are part of New York's RTTT scope of work, and were scheduled to be implemented in May 2013. Stakeholder engagement – particularly teacher preparation program faculty – in the development of the new teacher performance assessment began in 2010. The NYS-developed performance assessment was similar in construct and was field tested twice (spring and fall of 2011) and over 250 faculty members and over 550 students participated. Work continued on the NYS-developed performance assessment until we learned about the opportunity to partner with SCALE to implement the edTPA. NYS also conducted an edTPA statewide field test in 2013. At its February 2012 meeting, the Board of Regents approved a shift in the implementation date of the new certification examinations (edTPA, ALST, EAS and the SBL) from May 1, 2013 to May 1, 2014. This implementation date was selected in order to provide educator preparation programs with an additional year to prepare teaching candidates, while at the same time ensuring that the timeframes in the State's RTTT application are met.

As discussed at the December 2012 and October 2013 Regents meetings, the Department partnered with the Teacher Performance Assessment Consortium (TPAC) in February 2012 and is utilizing the edTPA as its teacher performance assessment, which was developed by the Stanford Center for Assessment, Learning and Equity (SCALE). The edTPA is a multiple-choice measure assessment system aligned to state and national standards, including the Common Core State Standards and the Interstate Teacher Assessment and Support Consortium (InTASC). Most importantly, the edTPA is on the cutting edge of teacher candidate assessment practices nationally and has been adopted by 34 states and the District of Columbia. The assessment is based on the National Board for Professional Teaching Standards (NBPTS). The edTPA is designed to measure a candidate's readiness to teach by assessing teaching behaviors designed to foster student learning such as the candidate's ability to demonstrate effective planning, instruction, and assessment. In order for candidates to complete the edTPA, they need to submit a video of their performance in the classroom.

Early on, the Department established strong systems of support to ensure that each college and university had the information needed to successfully prepare its candidates. In April 2012, the Office of Higher Education announced the creation of a set of agreements with SUNY, CUNY, and the Commission on Independent Colleges and Universities (cIcu) to provide professional development to enhance collaboration between schools of education and colleges of arts and sciences around the Regents Reform Agenda. The project has funded trainings focused on the Common Core Learning Standards, Data-Driven Instruction, Clinically Rich Teacher Preparation, the new certification examinations, and APPR. Funding from RTTT was used to provide a total of \$10 million to SUNY, CUNY, and cIcu. In November 2013, the Office of Higher Education offered SUNY, CUNY and cIcu an additional \$1.5 million total to continue faculty professional development using RTTT funding. The faculty development scope of work is outlined and fully described in each sector's work plan, available online at <http://www.highered.nysed.gov/mou.html>.

Statewide field tests of the edTPA – with optional campus participation – occurred during the 2012-13 academic year. Fifty-one campuses participated.

In January 2013, the Governor's Education Reform Commission, recognizing the need for excellent teachers, released its preliminary report and recommended the establishment of a "bar" like exam for entry into the teaching and principal profession. In March 2013, the state budget was enacted with a provision requiring the creation of standards for a teacher and principal bar exam certification program.

We are five years into the implementation of the new and revised certification examinations. The Department has already provided a one-year extension and \$11.5 million to CUNY, SUNY, and cIcu to support the provision of faculty professional development on topics such as the Common Core and the new certification examinations. Further, with a modest, but meaningful number of operational test takers so far, (approximately 1,660), the Department has estimated that the pass rate is approximately 83%.

However, in an effort to address the concerns raised by the field, the proposed amendment provides flexibility to teacher candidates who have taken and failed the edTPA. Specifically, the proposed amendment authorizes the Commissioner to issue an initial certificate to a candidate who applies for and meets all the requirements for an initial certificate on or before June 30, 2015, except he/she fails the edTPA, and either: (1) takes and pass the ATS-W after receipt of his/her failing score on the edTPA and prior to June 30, 2015, or (2) if the candidate had previously passed the ATS-W on or before April 30, 2014 (before the new certification examination requirements became effective) and the candidate has taken and failed the edTPA prior to June 30, 2015, the candidate will be issued an initial certificate (this applies to Transitional B program candidates who apply for an initial certificate as well). Transitional C certificate holders (generally Career and Technical Education teachers who are career changers or hold a graduate academic or professional degree) would be provided similar flexibility in meeting the edTPA requirement for a professional certificate.

In addition, under the current Section 52.21(b)(2)(iv) of the Commissioner's Regulations, an institution shall be required to submit a comprehensive corrective action plan in the event that fewer than 80 percent of students, who have satisfactorily completed the institution's program during a given academic year and have also completed one or more of the examinations required for a teaching certificate, pass each such examination that they have completed. If the Department does not approve the corrective action plan, the institution shall be subject to denial of re-registration in accordance with the requirements of Section 52.23 of the Commissioner's Regulations. The Department recommends that the 80% passage requirement be waived for students who take the edTPA in the 2013-2014 and 2014-2015 academic years. Instead, programs with fewer than 80% of students who pass the edTPA in these academic years will be required to submit a professional development plan to the Department that describes how the program plans to improve the readiness of faculty and pass rate for candidates on the edTPA. The Department will not use edTPA scores in the State's institutional profiles until the 2015-2016 academic year.

4. COSTS:

Cost to the State: none.

Costs to local government: none.

Cost to private regulated parties: none.

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

The proposed amendment does not impose any costs on the State, local governments, private regulated parties or the State Education Department. The proposed amendment will provide additional flexibility for candidates who take and fail the edTPA on their first attempt.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment does not impose any mandatory program, service, duty, or responsibility upon local government, including school districts or BOCES.

6. PAPERWORK:

There are no additional paperwork requirements beyond those currently imposed.

7. DUPLICATION:

The amendment does not duplicate any existing State or Federal requirements.

8. ALTERNATIVES:

There were no significant alternatives and none were considered.

9. FEDERAL STANDARDS:

There are no Federal standards that establish requirements for the certification of teachers for service in the State's public schools.

10. COMPLIANCE SCHEDULE:

The proposed amendment does not impose any additional compliance requirements or costs and instead provides additional flexibility for candidates who take and fail the edTPA on their first attempt. It is anticipated that regulated parties will be able to achieve compliance with the proposed amendment by its effective date.

Regulatory Flexibility Analysis

In order to address the concerns raised by the field while at the same time recognizing the previous extension and investments made in faculty development around the edTPA, the proposed amendment attempts to provide additional flexibility for candidates who take and fail the edTPA on their first attempt. The proposed amendment authorizes the Commissioner to issue an initial certificate to a candidate who applies for and meets all the requirements for an initial certificate on or before June 30, 2015, except he/she fails the edTPA, and either: (1) takes and pass the ATS-W after receipt of his/her failing score on the edTPA and prior to June 30, 2015, or (2) if the candidate had previously passed the ATS-W on or before April 30, 2014 (before the new certification examination requirements became effective) and the candidate has taken and failed the edTPA prior to June 30, 2015, the candidate will be issued an initial certificate

(this applies to Transitional B program candidates who apply for an initial certificate as well). Transitional C certificate holders (generally Career and Technical Education teachers who are career changers or hold a graduate academic or professional degree) would be provided similar flexibility in meeting the edTPA requirement for a professional certificate.

In addition, under the current section 52.21(b)(2)(iv) of the Commissioner's Regulations, an institution shall be required to submit a comprehensive corrective action plan in the event that fewer than 80 percent of students, who have satisfactorily completed the institution's program during a given academic year and have also completed one or more of the examinations required for a teaching certificate, pass each such examination that they have completed. If the Department does not approve the corrective action plan, the institution shall be subject to denial of re-registration in accordance with the requirements of Section 52.23 of the Commissioner's Regulations. The Department recommends that the 80% passage requirement be waived for students who take the edTPA in the 2013-2014 and 2014-2015 academic years. Instead, programs with fewer than 80% of students who pass the edTPA in these academic years will be required to submit a professional development plan to the Department that describes how the program plans to improve the readiness of faculty and pass rate for candidates on the edTPA. The Department will not use edTPA scores in the State's institutional profiles until the 2015-2016 academic year.

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

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed amendment will affect teacher candidates who are applying for an initial certificate and who have completed all the requirements for certification prior to June 1, 2015, except the teacher performance assessment (edTPA) and registered programs with less than an 80 percent passage rate on the edTPA, 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:

In order to address the concerns raised by the field while at the same time recognizing the previous extension and investments made in faculty development around the edTPA, the proposed amendment attempts to provide additional flexibility for candidates who take and fail the edTPA on their first attempt. The proposed amendment authorizes the Commissioner to issue an initial certificate to a candidate who applies for and meets all the requirements for an initial certificate on or before June 30, 2015, except he/she fails the edTPA, and either: (1) takes and pass the ATS-W after receipt of his/her failing score on the edTPA and prior to June 30, 2015, or (2) if the candidate had previously passed the ATS-W on or before April 30, 2014 (before the new certification examination requirements became effective) and the candidate has taken and failed the edTPA prior to June 30, 2015, the candidate will be issued an initial certificate (this applies to Transitional B program candidates who apply for an initial certificate as well). Transitional C certificate holders (generally Career and Technical Education teachers who are career changers or hold a graduate academic or professional degree) would be provided similar flexibility in meeting the edTPA requirement for a professional certificate.

In addition, under the current section 52.21(b)(2)(iv) of the Commissioner's Regulations, an institution shall be required to submit a comprehensive corrective action plan in the event that fewer than 80 percent of students, who have satisfactorily completed the institution's program during a given academic year and have also completed one or more of the examinations required for a teaching certificate, pass each such examination that they have completed. If the Department does not approve the corrective action plan, the institution shall be subject to denial of re-registration in accordance with the requirements of Section 52.23 of the Commissioner's Regulations. The Department recommends that the 80% passage requirement be waived for students who take the edTPA in the 2013-2014 and 2014-2015 academic years. Instead, programs with fewer than 80% of students who pass the edTPA in these academic years will be required to submit a professional development plan to the Department that describes how the program plans to improve the readiness of faculty and pass rate for candidates on the edTPA. The Department will not use edTPA scores in the State's institutional profiles until the 2015-2016 academic year.

The proposed amendment does not require any professional services to comply.

3. COSTS:

The proposed amendment does not impose any costs on the State, local governments, private regulated parties or the State Education Department. The proposed amendment will provide additional flexibility for candidates who take and fail the edTPA on their first attempt.

4. MINIMIZING ADVERSE IMPACT:

The proposed amendment does not impose any additional compliance requirements or costs and instead provides additional flexibility for candidates who take and fail the edTPA on their first attempt. The State Education Department does not believe any changes for candidates who live or work in rural areas is warranted because uniform standards for certification are necessary across the State.

5. RURAL AREA PARTICIPATION:

The State Education Department has sent the proposed amendment to the Rural Advisory Committee, which has members who live or work in rural areas across the State.

Job Impact Statement

The proposed amendment authorizes the Commissioner to issue an initial certificate to a candidate who applies for and meets all the requirements for an initial certificate on or before June 30, 2015, except he/she fails the edTPA, and either: (1) takes and pass the ATS-W after receipt of his/her failing score on the edTPA and prior to June 30, 2015, or (2) if the candidate had previously passed the ATS-W on or before April 30, 2014 (before the new certification examination requirements became effective) and the candidate has taken and failed the edTPA prior to June 30, 2015, the candidate will be issued an initial certificate (this applies to Transitional B program candidates who apply for an initial certificate as well). Transitional C certificate holders (generally Career and Technical Education teachers who are career changers or hold a graduate academic or professional degree) would be provided similar flexibility in meeting the edTPA requirement for a professional certificate.

The proposed amendment will not have a substantial impact on jobs and employment opportunities. Because it is evident from the nature of the proposed rule that it 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.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Pupils with Limited English Proficiency

I.D. No. EDU-40-14-00006-P

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

Proposed Action: Amendment of sections 154-2.3 and 154-2.4 of 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 enact certain technical amendments; allow parents an additional five days to return to the school district the signed notification form regarding student placement; and permit school districts to apply for an exemption from the professional development requirements addressing the needs of English Language Learners under certain circumstances.

Text of proposed rule: 1. Paragraph (5) of subdivision (a) of section 154-2.3 is amended, effective December 31, 2014, as follows:

(5) If the student receives a score below a state designated level of proficiency established by the Commissioner on the statewide English language proficiency identification assessment, or in the case of a student with a disability, the process defined in Subpart 154-3 has led to a determination that the student shall be *initially* identified as an English Language Learner, within five (5) school days of such identification, the school district must provide the student, if the student is 18 years of age or older, or the student's parent or person in parental relation written notice of such identification determination the right to seek review of such identification determination pursuant to section 154-2.3(b).

2. Subparagraph (iv) of paragraph (2) of subdivision (f) of section 154-2.3 is amended, effective December 31, 2014, as follows:

(iv) In a school *district* where the number of eligible students requires that a Bilingual Education program be provided, but the school

district has been granted an exemption pursuant to section 154-2.3(d)(8)(7) and [(9)](8) of this Subpart, the notification must explain how the school will offer to support home language as defined in Section 154-2.3(d)(7)(ii) of this Subpart, and provide a summary of its plans for instituting a Bilingual Education program the following school year.

3. Paragraph (3) of subdivision (f) of section 154-2.3 is amended, effective December 31, 2014, as follows:

(3) Upon notification of the parent or person in parental relation, the school district shall provide the parent or person in parental relation [five (5)] *ten (10)* school days to sign and return to the district a statement that the parent or person in parental relation is either in agreement with the child being placed in a Bilingual Education program or directs the district to place the child in an English as a New Language program. If a parent or person in parental relation does not return the signed notification form within [five (5)] *ten (10)* school days of receiving the notice, the student shall be placed in a Bilingual Education program if there is one in the school that serves the grade and home language spoken by the student or in an English as a New Language program if the school is not required to provide a Bilingual Education program. In the event that a parent or person in parental relation does not return the signed notification form within [five (5)] *ten (10)* school days, the parent or person in parental relation shall retain the right to make a final decision regarding the placement of their child in a Bilingual Education or English as a New Language program.

4. Subdivision (k) of section 154-2.3 is amended, effective December 31, 2014, as follows:

(k) Professional Development. Each school district shall provide professional development to all teachers and administrators that specifically addresses the needs of English Language Learners.

(1) Consistent with section 80-3.6 and section 100.2(dd) of this Title, a minimum of fifteen percent (15%) of the required professional development clock hours for all teachers prescribed by Part 80 of this Title shall be dedicated to language acquisition, including a focus on best practices for co-teaching strategies and integrating language and content instruction for English Language Learners. For all Bilingual and English as a Second Language teachers, a minimum of fifty (50%) of the required professional development clock hours prescribed by Part 80 of this Title shall be dedicated to language acquisition in alignment with core content area instruction, including a focus on best practices for co-teaching strategies and integrating language and content instruction for English Language Learners. All school districts must align and integrate such professional development for Bilingual and English as a Second Language teachers with the professional development plan for core content area for all teachers in the district.

(2) *A school district may seek permission on an annual basis from the commissioner for an exemption from the professional development requirements of this subdivision where there are fewer than thirty (30) English Language Learner students enrolled or English language learners make up less than five percent (5%) of the district's total student population as of such date as established by the Commissioner. A district seeking permission for such exemption shall submit to the commissioner for approval an application, in such format and according to such timeline as may be prescribed by the commissioner, that includes:*

(i) *evidence that, as part of the required professional development clock hours prescribed by Part 80 of this Title, all teachers receive training, sufficient to meet the needs of the district's English Language Learner students, in language acquisition, including a focus on best practices for co-teaching strategies and integrating language and content instruction for English Language Learners; and*

(ii) *evidence that, as part of the required professional development clock hours prescribed by Part 80 of this Title, all Bilingual and English as a Second Language teachers receive training, sufficient to meet the needs of the district's English Language Learner students, in language acquisition in alignment with core content area instruction, including a focus on best practices for co-teaching strategies and integrating language and content instruction for English Language Learners.*

5. Paragraph (8) of subdivision (b) of section 154-2.4 of the Regulations of the Commissioner of Education is amended, effective December 31, 2014, as follows:

(8) The district's policies and procedures [to refer] *regarding* English Language Learners who are students with disabilities [to the Language Proficiency Team (LPT) during the 2015-2016 school year, or to the Committee on Special Education (CSE) during the 2016-2017 school year and thereafter, to make determinations] *are* consistent with the requirements of this Subpart *and Subpart 154-3 of this Title.*

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: 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

STATUTORY AUTHORITY:

Education Law section 207 empowers 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 208 authorizes the Regents to establish examinations as to attainments in learning and to award and confer suitable certificates, diplomas and degrees on persons who satisfactorily meet the requirements prescribed.

Education Law section 215 authorizes the Board of Regents and the Commissioner of Education to require school districts to prepare and submit reports containing such information as they may prescribe.

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

Education Law section 2117(1) empowers the Board of Regents and the Commissioner of Education to require school districts to submit any information they deem appropriate.

Education Law section 3204(2) and (2-a) provide for instructional programs for pupils with limited English proficiency to be conducted in accordance with regulations of the Commissioner. Education Law section 3204(3) authorizes the Commissioner to establish standards for the instruction of children with limited English proficiency, and section 3204(6) requires the Commissioner to establish such standards by regulation.

LEGISLATIVE OBJECTIVES:

The proposed amendment is consistent with the above statutory authority, and is necessary to implement Regents policy on instruction standards for 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, and the Equal Educational Opportunities Act of 1974 (EEOA).

NEEDS AND BENEFITS:

At their September 16-17, 2014 meeting, the Board of Regents amended Part 154 of the Commissioner's Regulations to add new Subparts 154-1 and Subpart 154-2 as part of the Department's effort to improve instruction and programming for English Language Learner (ELL) students to ensure stronger outcomes for this student population.

Included in the new Subpart 154-2 is section 154-2.3(f)(3), which provides that the parent or person in parental relation shall have five school days to sign and return to the school district a statement that he/she is either in agreement with the child being placed in a Bilingual Education program or directs the district to place the child in an English as a New Language program.

Also included in the new subpart 154-2 is section 154-2.3(k), which requires each school district to provide professional development to all teachers and administrators that specifically addresses the needs of ELL students, including that a minimum of fifteen percent (15%) of the required professional development clock hours for all teachers prescribed by Part 80 of this Title be dedicated to language acquisition, including a focus on best practices for co-teaching strategies and integrating language and content instruction for ELL students and, for all Bilingual and English as a Second Language teachers, a minimum of fifty (50%) of the required professional development clock hours prescribed by Part 80 of this Title be dedicated to language acquisition in alignment with core content area instruction, including a focus on best practices for co-teaching strategies and integrating language and content instruction for ELL students.

The proposed amendment is the result of further consideration by the State Education Department of: (1) the need to provide parents with additional time to return to the district the signed notification form regarding their child's placement in a Bilingual Education or English as a New Language program, and (2) the need to provide districts with an option for flexibility in the manner in which they provide professional development addressing the needs of English Language Learners in the form of an exemption. The proposed amendment is necessary to make certain technical amendments.

Specifically, the proposed amendments to Subpart 154-2 would:

- Afford parents ten school days, rather than five school days as currently provided in the regulations, to sign and return to the district a state-

ment that the parent is either in agreement with the child being placed in a Bilingual Education program or directs the district to place the child in an English as a New Language program;

- Under certain circumstances, allow school districts to apply for an exemption from the requirement that a minimum of 15% of the required professional development clock hours for all teachers and a minimum of 50% of the required professional development clock hours for all Bilingual and English as a Second Language teachers be dedicated to certain areas related to the needs of English Language Learners. A school district may seek permission on an annual basis from the Commissioner for an exemption from the professional development requirements of this subparagraph where there are fewer than thirty English Language Learner students enrolled or English language learners make up less than 5% of the district's total student population as of such date as established by the Commissioner. School districts would apply for an exemption in a format and timeline as may be prescribed by the Commissioner, and would be required to submit evidence that all teachers, including Bilingual and English as a Second Language teachers, receive training in specific areas sufficient to meet the needs of the district's English Language Learner students;

- Enact certain technical amendments to section 154-2.3(a)(5) to add a clarifying reference to "initial" identification, and to section 154-2.4(b)(8) to replace language referring to specific procedures originally proposed in new Subpart 154-3 that are being separately revised with a generic reference to requiring consistency with Subpart 154-3; and to conform section 154-3(f)(2)(iv) to section 154-2.3(d) by replacing "school" with "school district" and correcting certain citations.

COSTS:

(a) Costs to State government: none.

(b) Cost to local governments: The proposed amendment provides school districts with an option for flexibility in the manner in which they provide professional development addressing the needs of English Language Learners in the form of an exemption. A school district may, but is not required to, seek permission on an annual basis from the Commissioner for an exemption from the professional development requirements in section 154-2.3(k) where there are fewer than thirty English Language Learner students enrolled or English Language Learner students make up less than five percent (5%) of the district's total student population. A district seeking permission for such exemption shall submit to the Commissioner for approval an application, in such format and according to such timeline as may be prescribed by the Commissioner. It is anticipated that any costs to school districts that are associated with such application will be minimal and capable of being absorbed using existing school district staff and resources.

In addition, the proposed amendment provides that school districts shall afford parents ten school days, rather than five school days as currently set forth in the regulations, to sign and return to the district a statement that the parent is either in agreement with the child being placed in a Bilingual Education program or directs the district to place the child in an English as a New Language program. There are no costs associated with this extension.

(c) Cost to private regulated parties: none.

(d) Costs to regulating agency for implementation and continued administration of this rule: It is anticipated that any costs to the State Education Department that are associated with the processing of applications will be minimal and capable of being absorbed using existing Department staff and resources.

LOCAL GOVERNMENT MANDATES:

The proposed amendment does not impose any additional program, service, duty or responsibility upon local governments. The proposed amendment provides school districts with an option for flexibility in the manner in which they provide professional development addressing the needs of English Language Learners in the form of an exemption. A school district may, but is not required to, seek permission on an annual basis from the Commissioner for an exemption from the professional development requirements in section 154-2.3(k) where there are fewer than thirty English Language Learner students enrolled or English Language Learner students make up less than five percent (5%) of the district's total student population.

In addition, the proposed amendment provides that school districts shall afford parents ten school days, rather than five school days as currently set forth in the regulations, to sign and return to the district a statement that the parent is either in agreement with the child being placed in a Bilingual Education program or directs the district to place the child in an English as a New Language program.

PAPERWORK:

A school district may seek permission on an annual basis from the Commissioner for an exemption from the professional development requirements in section 154-2.3(k) where there are fewer than thirty English Language Learner students enrolled or English Language Learner students

make up less than five percent (5%) of the district's total student population. A district seeking permission for such exemption shall submit to the Commissioner for approval an application, in such format and according to such timeline as may be prescribed by the Commissioner, that includes:

(i) evidence that, as part of the required professional development clock hours prescribed by Part 80 of this Title, all teachers receive training, sufficient to meet the needs of the district's English Language Learner students, in language acquisition, including a focus on best practices for co-teaching strategies and integrating language and content instruction for English Language Learners; and

(ii) evidence that, as part of the required professional development clock hours prescribed by Part 80 of this Title, all Bilingual and English as a Second Language teachers receive training, sufficient to meet the needs of the district's English Language Learner students, in language acquisition in alignment with core content area instruction, including a focus on best practices for co-teaching strategies and integrating language and content instruction for English Language Learners.

DUPLICATION:

The proposed amendment does not duplicate existing State or Federal requirements, and is necessary to implement Regents policy on instruction standards for 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).

ALTERNATIVES:

There were no significant alternatives and none were considered.

FEDERAL STANDARDS:

The proposed amendment is necessary to ensure compliance with Title I and III of the ESEA, Title IV of the Civil Rights Act of 1964, and the EEOA.

COMPLIANCE SCHEDULE:

It is anticipated that regulated parties can achieve compliance with the proposed amendment by its effective date.

Regulatory Flexibility Analysis

Small Businesses:

The proposed amendment relates to criteria for bilingual education and English as a New Language programs for students who are English Language Learners and does not impose any adverse economic impact, reporting, record keeping or other compliance requirements on small businesses. No further steps were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses is not required and one has not been prepared.

Local Governments:

1. EFFECT OF RULE:

The proposed amendment applies to each of the 689 public school districts and 37 boards of cooperative educational services (BOCES) in the State.

2. COMPLIANCE REQUIREMENTS:

The proposed amendment does not impose any additional program, service, duty or responsibility upon local governments. The proposed amendment provides school districts with an option for flexibility in the manner in which they provide professional development addressing the needs of English Language Learners in the form of an exemption. A school district may, but is not required to, seek permission on an annual basis from the Commissioner for an exemption from the professional development requirements in section 154-2.3(k) where there are fewer than thirty English Language Learner students enrolled or English Language Learner students make up less than five percent (5%) of the district's total student population.

A school district may seek permission on an annual basis from the Commissioner for an exemption from the professional development requirements in section 154-2.3(k) where there are fewer than thirty English Language Learner students enrolled or English Language Learner students make up less than five percent (5%) of the district's total student population. A district seeking permission for such exemption shall submit to the Commissioner for approval an application, in such format and according to such timeline as may be prescribed by the Commissioner, that includes:

(i) evidence that, as part of the required professional development clock hours prescribed by Part 80 of this Title, all teachers receive training, sufficient to meet the needs of the district's English Language Learner students, in language acquisition, including a focus on best practices for co-teaching strategies and integrating language and content instruction for English Language Learners; and

(ii) evidence that, as part of the required professional development clock hours prescribed by Part 80 of this Title, all Bilingual and English as a Second Language teachers receive training, sufficient to meet the needs of the district's English Language Learner students, in language acquisition in alignment with core content area instruction, including a focus on best

practices for co-teaching strategies and integrating language and content instruction for English Language Learners.

In addition, the proposed amendment provides that school districts shall afford parents ten school days, rather than five school days as currently set forth in the regulations, to sign and return to the district a statement that the parent is either in agreement with the child being placed in a Bilingual Education program or directs the district to place the child in an English as a New Language program.

3. PROFESSIONAL SERVICES:

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

4. COMPLIANCE COSTS:

The proposed amendment provides school districts with an option for flexibility in the manner in which they provide professional development addressing the needs of English Language Learners in the form of an exemption. A school district may, but is not required to, seek permission on an annual basis from the Commissioner for an exemption from the professional development requirements in section 154-2.3(k) where there are fewer than thirty English Language Learner students enrolled or English Language Learner students make up less than five percent (5%) of the district's total student population. A district seeking permission for such exemption shall submit to the Commissioner for approval an application, in such format and according to such timeline as may be prescribed by the Commissioner. It is anticipated that any costs to school districts that are associated with such application will be minimal and capable of being absorbed using existing school district staff and resources.

In addition, the proposed amendment provides that school districts shall afford parents ten school days, rather than five school days as currently set forth in the regulations, to sign and return to the district a statement that the parent is either in agreement with the child being placed in a Bilingual Education program or directs the district to place the child in an English as a New Language program. There are no costs associated with this extension.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

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

6. MINIMIZE ADVERSE IMPACT:

The proposed amendment provides increased flexibility to parents and to school districts.

The proposed amendment provides school districts with an option for flexibility in the manner in which they provide professional development addressing the needs of English Language Learners in the form of an exemption. A school district may, but is not required to, seek permission on an annual basis from the Commissioner for an exemption from the professional development requirements in section 154-2.3(k) where there are fewer than thirty English Language Learner students enrolled or English Language Learner students make up less than five percent (5%) of the district's total student population.

In addition, the proposed amendment provides that school districts shall afford parents ten school days, rather than five school days as currently set forth in the regulations, to sign and return to the district a statement that the parent is either in agreement with the child being placed in a Bilingual Education program or directs the district to place the child in an English as a New Language program.

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.

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 the proposed amendment 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 long-range Regents policy relating to bilingual education and English as a New Language programs for students who are English Language Learners. 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 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 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 program, service, duty or responsibility upon entities in rural areas. The proposed amendment provides school districts with an option for flexibility in the manner in which they provide professional development addressing the needs of English Language Learners in the form of an exemption. A school district may, but is not required to, seek permission on an annual basis from the Commissioner for an exemption from the professional development requirements in section 154-2.3(k) where there are fewer than thirty English Language Learner students enrolled or English Language Learner students make up less than five percent (5%) of the district's total student population. A district seeking permission for such exemption shall submit to the Commissioner for approval an application, in such format and according to such timeline as may be prescribed by the Commissioner, that includes:

(i) evidence that, as part of the required professional development clock hours prescribed by Part 80 of this Title, all teachers receive training, sufficient to meet the needs of the district's English Language Learner students, in language acquisition, including a focus on best practices for co-teaching strategies and integrating language and content instruction for English Language Learners; and

(ii) evidence that, as part of the required professional development clock hours prescribed by Part 80 of this Title, all Bilingual and English as a Second Language teachers receive training, sufficient to meet the needs of the district's English Language Learner students, in language acquisition in alignment with core content area instruction, including a focus on best practices for co-teaching strategies and integrating language and content instruction for English Language Learners.

In addition, the proposed amendment provides that school districts shall afford parents ten school days, rather than five school days as currently set forth in the regulations, to sign and return to the district a statement that the parent is either in agreement with the child being placed in a Bilingual Education program or directs the district to place the child in an English as a New Language program.

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

3. COMPLIANCE COSTS:

The proposed amendment provides school districts, including those in rural areas, with an option for flexibility in the manner in which they provide professional development addressing the needs of English Language Learners in the form of an exemption. A school district may, but is not required to, seek permission on an annual basis from the Commissioner for an exemption from the professional development requirements in section 154-2.3(k) where there are fewer than thirty English Language Learner students enrolled or English Language Learner students make up less than five percent (5%) of the district's total student population. A district seeking permission for such exemption shall submit to the Commissioner for approval an application, in such format and according to such timeline as may be prescribed by the Commissioner. It is anticipated that any costs to school districts that are associated with such application will be minimal and capable of being absorbed using existing school district staff and resources.

In addition, the proposed amendment provides that school districts shall afford parents ten school days, rather than five school days as currently set forth in the regulations, to sign and return to the district a statement that the parent is either in agreement with the child being placed in a Bilingual Education program or directs the district to place the child in an English as a New Language program. There are no costs associated with this extension.

4. MINIMIZING ADVERSE IMPACT:

The proposed amendment provides increased flexibility to parents and to school districts, including those located in rural areas.

The proposed amendment provides school districts with an option for flexibility in the manner in which they provide professional development addressing the needs of English Language Learners in the form of an exemption. A school district may, but is not required to, seek permission on an annual basis from the Commissioner for an exemption from the professional development requirements in section 154-2.3(k) where there are fewer than thirty English Language Learner students enrolled or English Language Learner students make up less than five percent (5%) of the district's total student population.

In addition, the proposed amendment provides that school districts shall afford parents ten school days, rather than five school days as currently set forth in the regulations, to sign and return to the district a statement that the parent is either in agreement with the child being placed in a Bilingual Education program or directs the district to place the child in an English as a New Language program.

The proposed amendment 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). Since these requirements apply to all school districts and BOCES in the State, it is not possible to adopt different standards for those located in rural areas.

5. RURAL AREA PARTICIPATION:

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

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

Pursuant to State Administrative Procedure Act section 207(1)(b), the State Education Department proposes that the initial review of the proposed amendment 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 long-range Regents policy relating to bilingual education and English as a New Language programs for students who are English Language Learners. 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 here-with, and must be received within 45 days of the State Register publication date of the Notice.

Job Impact Statement

The proposed amendment is necessary to implement 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.

The proposed amendment provides school districts with an option for flexibility in the manner in which they provide professional development addressing the needs of English Language Learners in the form of an exemption. A school district may, but is not required to, seek permission on an annual basis from the Commissioner for an exemption from the professional development requirements in section 154-2.3(k) where there are fewer than thirty English Language Learner students enrolled or English Language Learner students make up less than five percent (5%) of the district's total student population.

In addition, the proposed amendment provides that school districts shall afford parents ten school days, rather than five school days as currently set forth in the regulations, to sign and return to the district a statement that the parent is either in agreement with the child being placed in a Bilingual Education program or directs the district to place the child in an English as a New Language program.

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

Department of Financial Services

EMERGENCY RULE MAKING

Credit Exposure Arising from Derivative Transactions

I.D. No. DFS-40-14-00002-E

Filing No. 827

Filing Date: 2014-09-17

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 117 to Title 3 NYCRR.

Statutory authority: Banking Law, sections 103 and 235; and Financial Services Law, section 302

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

Specific reasons underlying the finding of necessity: Derivative transactions, including swaps and options, are a basic tool used by many banking organizations in New York and elsewhere to hedge their exposure to various types of risk, including interest rate, currency and credit risk.

The federal Dodd-Frank Wall Street Reform and Consumer Protection Act [cite] ("DFA") became effective [date]. Section 611 of DFA amended Section 18 of the Federal Deposit Insurance Act to provide that effective January 21, 2013, an insured state bank (including an insured state savings bank) may only engage in derivative transactions if the law of its chartering state regarding lending limits "takes into consideration credit exposure to derivative transactions."

In light of federal enactment of the DFA, the Legislature amended the Banking Law provision regarding loan limits in July 2011 to authorize the Superintendent to determine the manner and extent to which credit exposure resulting from derivative transactions should be taken into account. Laws of 2011, c. 182, § 2.

This regulation sets forth the manner in which derivative transactions will be taken into account for purposes of the lending limit provisions of the Banking Law. Emergency adoption of the regulation is necessary in order to ensure that New York banking organizations continue to be able to engage in derivative transactions on and after January 21, 2013.

Subject: Credit exposure arising from derivative transactions.

Purpose: To provide for the consideration of credit exposure relating to derivative transactions in calculating bank loan limits.

Text of emergency rule: PART 117

LENDING LIMITS: INCLUSION OF CREDIT EXPOSURES ARISING FROM DERIVATIVE TRANSACTIONS

§ 117.1 Definitions.

For the purposes of this Part:

a) *The appropriate Federal banking agency of a bank shall be the agency specified by Section 3(q) of the Federal Deposit Insurance Act (FDIA), 12 USC § 1813(q), or the successor to such provision.*

b) *Bank includes a bank or trust company or a savings bank formed under the Banking Law whose deposits are insured by the Federal Deposit Insurance Corporation (FDIC).*

c) *Credit derivative means a financial contract that allows one party (the protection purchaser) to transfer the credit risk of one or more exposures (reference exposure) to another party (the protection provider).*

d) *The current credit exposure of a bank to a counterparty on a particular date with respect to a derivative transaction other than a credit derivative shall be the amount that the bank reasonably determines would be its loss under the terms of the derivative contract covering such transaction if the counterparty defaulted on such date.*

e) *The credit exposure of a bank to a counterparty arising from derivative transactions other than credit derivatives is the higher of zero or the sum of the then positive current credit exposures with respect to such derivative transactions, provided, however, that in calculating such credit exposure, the bank may take into account netting to the extent specified in section 117.4(a).*

f) *Derivative transaction includes any transaction that is a contract, agreement, swap, warrant, note, or option that is based, in whole or in part, on the value of, any interest in, or any quantitative measure or the occurrence of any event relating to, one or more commodities, securities, currencies, interest or other rates, indices, or other assets.*

g) *Effective margining arrangement means a master legal agreement governing derivative transactions between a bank and a counterparty that requires the counterparty to post, on a daily basis, variation margin to fully collateralize that amount of the bank's net credit exposure to the counterparty that exceeds \$25 million created by the derivative transactions covered by the agreement.*

h) *Eligible credit derivative means a single-name credit derivative or a standard, non-tranched index credit derivative, provided that:*

(1) *The derivative contract is executed under standard industry credit derivative documentation and meets the requirements of an eligible guarantee and has been confirmed by both the protection purchaser and the protection provider;*

(2) *Any assignment of the derivative contract has been confirmed by all relevant parties;*

(3) *If the credit derivative is a credit default swap, the derivative contract includes the following credit events:*

(i) *Failure to pay any amount due under the terms of the reference exposure, subject to any applicable minimal payment threshold that is consistent with standard market practice and with a grace period that is closely in line with the grace period of the reference exposure; and*

(ii) *Bankruptcy, insolvency, restructuring (for obligors not subject*

to bankruptcy or insolvency) or inability of the obligor on the reference exposure to pay its debts, or its failure or admission in writing of its inability generally to pay its debts as they become due and similar events;

(4) The terms and conditions dictating the manner in which the derivative contract is to be settled are incorporated into the contract; and

(5) If the derivative contract allows for cash settlement, the contract incorporates a robust valuation process.

i) Eligible protection provider means:

(1) A sovereign entity (a central government, including the United States government; an agency; department; ministry; or central bank);

(2) This state or any city, county, town, village or school district of this state, the New York State Thruway Authority, the Metropolitan Transportation Authority, the Triborough Bridge and Tunnel Authority or The Port Authority of New York and New Jersey;

(3) Any state other than the State of New York;

(4) The Bank for International Settlements, the International Monetary Fund, the European Central Bank, the European Commission, or a multilateral development bank;

(5) A Federal Home Loan Bank;

(6) The Federal Agricultural Mortgage Corporation;

(7) A depository institution, as defined in Section 3(c) of the FDIA, 12 U.S.C. § 1813(c);

(8) A bank holding company, as defined in Section 2 of the Bank Holding Company Act, 12 U.S.C. § 1841;

(9) A savings and loan holding company, as defined in Section 10 of the Home Owners' Loan Act, 12 U.S.C. § 1467a;

(10) A securities broker or dealer registered with the Securities and Exchange Commission (SEC) under the Securities Exchange Act of 1934, 15 U.S.C. § 78a et seq.;

(11) An insurance company that is subject to the supervision of a state insurance regulator;

(12) A foreign banking organization;

(13) A non-United States-based securities firm or a non-United States-based insurance company that is subject to consolidated supervision and regulation comparable to that imposed on U.S. depository institutions, securities broker-dealers, or insurance companies;

(14) A qualifying central counterparty; and

(15) Such other entity or entities as may be designated from time to time by the superintendent.

j) Readily marketable collateral means financial instruments and bullion that are salable under ordinary market conditions with reasonable promptness at a fair market value.

k) Financial market utility shall have the same meaning as used in Section 803(6) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, 12 U.S.C. § 5462(6).

l) The following terms shall have the same meaning as used in the Capital Adequacy Guidelines for Banks: Internal-Ratings-Based and Advanced Measurement Approaches (Capital Adequacy Guidelines) of the bank's appropriate Federal banking agency.¹

(1) Eligible guarantee;

(2) Qualifying netting agreement;

(3) Qualifying central counterparty.

§ 117.2 General Rule.

a) In computing the amount of loans of a bank outstanding to a person under Section 103.1 of the Banking Law or to a borrower under Section 235.8-c of the Banking Law at any specific time, the credit exposures of the bank arising from derivative transactions with respect to such person or borrower shall be included.

b) Such credit exposures shall be calculated as the sum of the bank's credit exposure to such person or borrower as a counterparty arising from derivative transactions other than credit derivatives plus the bank's credit exposure to such person or borrower as a counterparty arising from credit derivatives plus, where such person or borrower is the obligor on a reference exposure, the bank's credit exposure with respect to such person or borrower as obligor on such reference exposure arising from credit derivatives.

§ 117.3 Credit Derivatives.

a) Credit exposure to a counterparty. A bank shall calculate its credit exposure to a counterparty arising from credit derivatives by adding the net notional value of all protection purchased from the counterparty with respect to each reference exposure.

b) Credit exposure with respect to a reference exposure. A bank shall calculate the credit exposure with respect to a reference exposure arising from credit derivatives entered by the bank by adding the notional value of all protection sold on such reference exposure.

c) Exposure mitigants. In computing the exposures in paragraphs a and b hereof, the bank may take into account exposure mitigants to the extent specified in section 117.4.

§ 117.4 Exposure Mitigants.

a) Netting. In computing the credit exposures arising from derivative

transactions of a bank with a particular counterparty with whom such bank has in force a qualifying master netting agreement, such bank may net the credit exposures covered by such qualifying master netting agreement.

b) Collateral. In computing the credit exposures arising from derivative transactions of a bank with a particular counterparty, such credit exposures may be reduced to the extent that such credit exposures have been secured with readily marketable collateral under an effective margining arrangement. The amount of such reduction shall be equal to the value of such collateral multiplied by the percentage applicable to such type of collateral as may be prescribed by the superintendent from time to time.

c) Hedging. In computing the credit exposures arising from derivative transactions of a bank with a particular counterparty or with respect to a particular reference exposure, such credit exposures may be reduced to the extent hedged by an eligible credit derivative from an eligible protection provider.

§ 117.5 Exception.

In computing its credit exposures arising from derivative transactions, a bank need not include credit exposures to a qualifying central counterparty that has been designated by the Financial Stability Oversight Council as a financial market utility that is, or is likely to become, systemically important.

§ 117.6 Alternate Valuation Method.

With the permission of the superintendent, a bank may utilize an alternate method to evaluate its credit exposures arising from derivative transactions.

§ 117.8 Residual Authority of the Superintendent.

Where the method or methods used by a bank fails to appropriately reflect the credit exposures of the bank arising from derivative transactions, the superintendent may direct such bank to use an alternate method or methods.

¹ In the case of a bank that is a member of the Federal Reserve System (member bank), the applicable definitions appear at Section 2 of Appendix F to 12 C.F.R. Part 208, and the case an Federally-insured bank that is not a member of the Federal Reserve System (nonmember insured bank), the applicable definitions appear at Section 2 of Appendix D to 12 C.F.R. Part 325.

This notice is intended to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires December 15, 2014.

Text of rule and any required statements and analyses may be obtained from: Hadas A. Jacobi, New York State Department of Financial Services, One State Street, New York, NY 10004, (212) 480-5890, email: hadas.jacobi@dfs.ny.gov

Regulatory Impact Statement

1. Statutory Authority

Section 14 of the Banking Law provides that the Superintendent of Financial Services (the "Superintendent") shall have the power to make, alter and amend regulations not inconsistent with law. Sections 103 and 235(8-c) of the New York Banking Law (the "Banking Law") authorize the Superintendent to prescribe regulations limiting the credit extended to any one person by state banks and savings banks, respectively. Section 302 of the Financial Services Law (the "FSL") authorizes the Superintendent to prescribe regulations involving financial products and services to effectuate any power given to the Superintendent under the FSL, the Banking Law or any other law.

2. Legislative Objectives

The federal Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203 ("DFA") became effective July 22, 2010. Section 611 of DFA amended Section 18 of the Federal Deposit Insurance Act to provide that effective January 21, 2013, an "insured state bank" (which term includes an insured state savings bank) may engage in a derivative transaction only if the law of its chartering state concerning lending limits "takes into consideration credit exposure to derivative transactions." 12 U.S.C. § 1828(y).

In response to federal enactment of Section 611 of DFA, the New York Legislature amended the Banking Law regarding loan limits in July 2011 to authorize the Superintendent to determine the manner and extent to which credit exposure resulting from certain types of transactions, including derivative transactions, shall be taken into account for purposes of the statutory loan limits. (L. 2011, c. 182).

This emergency regulation implements the Superintendent's authority by setting forth the manner in which derivative transactions will be taken into account for purposes of the lending limit provisions of the Banking Law. Note that state chartered or licensed entities subject to DFA Section 610, including savings associations, and branches and agencies of foreign banking organizations, are not covered by the regulation.

3. Needs and Benefits

Derivative transactions, including swaps and options, are a basic tool

used by many banking organizations to manage exposure to various types of risk, including interest rate, currency and credit risk. If the state's lending limit rules do not take account of credit exposure from derivatives transactions, DFA Section 611 will prohibit insured state banks from engaging in derivatives transactions starting January 21, 2013.

Such a prohibition would have a severely adverse effect on state banks' ability to manage the exposures embedded in their existing balance sheets (including exposures from any derivatives contracts entered into prior to the cutoff date), as well as the risks arising out of their ongoing business. The inability to manage such risks using derivatives would have the effect of limiting the banks' ability to conduct their usual business in a safe and sound manner. It would also leave state banks at a substantial competitive disadvantage relative to federally chartered banking organizations, which will be able to continue to enter into derivatives transactions so long as they do so in compliance with applicable federal regulations.

While noting that there already exists some flexibility in the lending limit statute to interpret what constitutes credit exposure, the objective of the amendment was to provide certainty that New York law will comply with the requirements of DFA so as to ensure that insured banks in New York could continue to engage in derivative transactions after the cutoff date in Section 611 of DFA.

4. Costs

Banks that use derivatives already have systems in place to measure and manage the exposures incurred and their effect on the banks' overall risk position. The Department currently reviews such systems as part of its regular safety and soundness examination of regulated organizations.

It is believed that most state banks which use derivatives to manage the risk exposures arising out of their activities engage in a relatively limited number of non-complex derivatives transactions. For those banks, it is anticipated that the credit exposure computation required by the regulation will be comparatively simple and straightforward, and the information necessary to make the computation will be readily available from their existing risk management systems. Compliance costs for these banks are expected to be minimal.

Banks that engage in a larger volume of more complex derivatives transactions already have more sophisticated systems and processes in place for managing their risks, including those associated with derivatives transactions. The regulation provides that these institutions may, with the permission of the Superintendent, use an "alternative valuation method" to measure their credit exposure resulting from derivatives. Such institutions are expected to seek permission to use measurement methods which reflect their existing risk management procedures, thus minimizing the additional compliance costs resulting from the regulation.

5. Local Government Mandates

None.

6. Paperwork

The regulation does not require that state banks produce any additional reports. Banks that use derivatives have internal systems to measure their exposures, including exposures resulting from derivatives. In the course of its regular safety and soundness examination, the Department expects to be able to review the bank's records and computations regarding compliance with applicable lending limits.

While a bank seeking permission from the Department to utilize an alternative valuation model will be expected to provide information supporting the reasonableness of the proposed model, it is anticipated that such models will normally already have been reviewed by the Department during the examination process.

7. Duplication

The 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 loan limits that takes into consideration credit exposure to derivative transactions. However, under DFA Section 611 if such a regulation is not adopted insured state banks will not be able to engage in derivative transactions, a basic tool used by many banking organizations to manage their exposure to various types of risk, including interest rate, currency and credit risk. In addition, not adopting such a regulation would put state banks at a competitive disadvantage, since federally chartered banks will be able to continue to engage in derivative transactions to manage their exposure to risk.

The Department also considered adoption of a regulation similar to the interim rule adopted by the federal Office of the Comptroller of the Currency (the "OCC") regarding credit exposure arising from derivatives and securities financing transactions (the "OCC Interim Rule"). 77 FR 37265, 37275 (June 21, 2012), C.F.R. § 32 (2012). However, that rule is quite complex and requires institutions to devote significant resources to compliance. Given the non-complex nature of the derivatives activity of most state banks, the Department did not consider it necessary to impose such extensive requirements.

9. Federal Standards

Although DFA Section 611 prohibits state banks from engaging in derivative transactions after January 20, 2013 if state's law does not take into account credit exposure to derivative transactions, there are no federal standards for how state law is to do so.

The OCC Interim Rule applies to national banks and federal and state savings associations. Under Section 4 of the International Banking Act of 1978, federally licensed branches and agencies of foreign banks are generally subject to the same limitations on their activities as national banks. Thus, the OCC Interim Rule effectively applies to them as well and through the Foreign Bank Supervision Enhancements Act applies to state-licensed branches and agencies. See 12 USC § 3105(h). However, the OCC Interim Rule does not apply to state-chartered banks and savings banks.

10. Compliance Schedule

The regulation is effective immediately. However, it is recognized that banks will require a period of time to ensure that their systems for calculating credit exposure from derivative transactions are consistent with the method of calculation required by the new rule, or to apply for and receive approval from the Superintendent to use an alternative calculation method. Therefore, the rule provides that until July 1, 2013, a bank may use any reasonable methodology to calculate its credit exposure from derivative transactions, subject to the Superintendent's Section 117.8 authority to require use of a different methodology.

Regulatory Flexibility Analysis

1. Effect of the Rule

The federal Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203 ("DFA") became effective July 22, 2010. Section 611 of DFA amended Section 18 of the Federal Deposit Insurance Act to provide that effective January 21, 2013, an "insured state bank" (which term includes an insured state savings bank) may engage in a derivative transaction only if the law of its chartering state concerning lending limits "takes into consideration credit exposure to derivative transactions." 12 U.S.C. § 1828(y). This emergency regulation implements the authority of the Superintendent of Financial Services (the "Superintendent") under Sections 14, 103 and 235(8-c) of the New York Banking Law (the "Banking Law") and under Section 302 of the Financial Services Law (the "FSL").

Section 14 of the Banking Law provides that the Superintendent shall have the power to make, alter and amend regulations not inconsistent with law. Sections 103 and 235(8-c) of the Banking Law authorize the Superintendent to prescribe regulations limiting the credit extended to any one person by state banks and savings banks, respectively. Section 302 of the Financial Services Law authorizes the Superintendent to prescribe regulations involving financial products and services to effectuate any power given to the Superintendent under the FSL, the Banking Law or any other law.

Those banks that are small businesses are predominantly in the business of making commercial loans. To the extent these banks utilize derivatives, they generally use non-complex derivative transactions to manage their exposure to interest rate risk. If this regulation is adopted, such banks will continue to be able to manage their risk exposure using derivatives. However, under DFA Section 611, failure to adopt a regulation applicable to these banks would have the effect of prohibiting them from engaging in derivative transactions, which would have a severe adverse effect on their ability to manage the risks embedded in their existing balance sheets as well as the risks arising out of their ongoing business. Such banks would also be left at a substantial competitive disadvantage relative to federally-chartered banking organizations, which will be able to continue to enter into derivative transactions so long as they do so in compliance with applicable federal regulations.

This regulation does not have any impact on local governments.

2. Compliance Requirements

It is believed that most banks which are small businesses and which use derivatives to manage the risk exposures arising out of their activities engage in a relatively limited number of non-complex derivatives transactions. For those banks, it is anticipated that the credit exposure computation required by the regulation will be relatively simple and straightforward. The regulation does not require that banks, including banks that are small businesses, produce any additional reports.

3. Professional Services

Banks that are small businesses and engage in derivative transactions will already have the information necessary to make the computation regarding the regulation from their existing risk management systems.

4. Compliance Costs

Those banks that are small businesses and use derivatives generally engage in a relatively limited number of non-complex derivative transactions. For such banks it is anticipated that the credit exposure computation required by the regulation will be relatively simple and straightforward, and the information necessary to make the computation

will be readily available from their existing risk management systems. Compliance costs for such banks are expected to be minimal.

While new Part 117 is effective immediately, it is recognized that some banks may require a period of time to ensure that their systems for calculating credit exposure from derivative transactions are consistent with the method of calculation required by the new rule, or to apply for and receive approval from the Superintendent to use an alternative calculation method. Therefore, the rule provides that until July 1, 2013, a bank may use any reasonable methodology to calculate its credit exposure from derivative transactions, subject to the Superintendent's Section 117.8 authority to require use of a different methodology. This provision should further serve to minimize compliance costs for those banks that are small businesses.

5. Economic and Technological Feasibility

The regulation will provide an economic benefit to banks, including banks that are small businesses, since they will be able to continue using derivatives to manage the risk exposures resulting from their normal business activities.

Compliance with the regulation should not present a technological challenge, since banks that use derivatives, including banks that are small businesses, already have in place systems to measure and manage their exposures from derivative transactions. Moreover, the provision of the rule effectively giving banks until to July 1, 2013, to start using the credit exposure calculation methodology set forth in the regulation, or to get the Superintendent's approval to use an alternative calculation methodology, will facilitate the resolution of any remaining economic or technological issues facing individual banks, including banks that are small businesses.

6. Minimizing Adverse Impacts

If the state's lending limit does not take account of credit exposure from derivatives transactions, DFA Section 611 will prohibit insured state banks from engaging in derivatives transactions starting January 21, 2013.

Such a prohibition would have a severely adverse effect on the ability of banks, including banks that are small businesses, to manage the exposures embedded in their balance sheets. The inability to manage such risks using derivatives would have the effect of limiting the banks' ability to conduct their usual business in a safe and sound manner. It would also leave banks, including banks which are small businesses, at a substantial competitive disadvantage relative to federally chartered banking organizations, which will be able to continue to enter into derivatives transactions so long as they do so in compliance with applicable federal regulations.

7. Small Business and Local Government Participation

The Department has had informal discussions regarding preliminary versions of the regulation with industry associations representing banks which engage in derivatives activities, including banks that engage in significant derivatives activities as well as banks that are small businesses. The regulation takes account of the comments received in the course of this process.

Rural Area Flexibility Analysis

1. Effect of the Rule

The federal Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203 ("DFA") became effective July 22, 2010. Section 611 of DFA amended Section 18 of the Federal Deposit Insurance Act to provide that effective January 21, 2013, an "insured state bank" (which term includes an insured state savings bank) may engage in a derivative transaction only if the law of its chartering state concerning lending limits "takes into consideration credit exposure to derivative transactions." 12 U.S.C. § 1828(y). This emergency regulation implements the authority of the Superintendent of Financial Services (the "Superintendent") under Sections 14, 103 and 235(8-c) of the New York Banking Law (the "Banking Law") and under Section 302 of the Financial Services Law (the "FSL").

Section 14 of the Banking Law provides that the Superintendent shall have the power to make, alter and amend regulations not inconsistent with law. Sections 103 and 235(8-c) of the Banking Law authorize the Superintendent to prescribe regulations limiting the credit extended to any one person by state banks and savings banks, respectively. Section 302 of the Financial Services Law authorizes the Superintendent to prescribe regulations involving financial products and services to effectuate any power given to the Superintendent under the FSL, the Banking Law or any other law.

Those banks that are located in rural areas are predominantly in the business of making commercial loans. To the extent these banks utilize derivatives, they generally use non-complex derivative transactions to manage their exposure to interest rate risk. If this regulation is adopted, such banks will continue to be able to manage their risk exposure using derivatives. However, under DFA Section 611, failure to adopt a regulation applicable to these banks would have the effect of prohibiting them from engaging in derivative transactions, which would have a severe adverse effect on their ability to manage the risks embedded in their existing balance sheets, as well as the risks arising out of their ongoing business. Such banks would also be left at a substantial competitive disadvantage

relative to federally chartered banking organizations, which will be able to continue to enter into derivative transactions so long as they do so in compliance with applicable federal regulations.

2. Compliance Requirements

It is believed that most banks which are located in rural areas and which use derivatives to manage the risk exposures arising out of their activities engage in a relatively limited number of non-complex derivatives transactions. For those banks, it is anticipated that the credit exposure computation required by the regulation will be relatively simple and straightforward. The regulation does not require that banks, including banks that are located in rural areas, produce any additional reports.

3. Professional Services

Banks which are located in rural areas and engage in derivative transactions will already have the information necessary to make the computation regarding the regulation from their existing risk management systems.

4. Compliance Costs

To the extent banks located in rural areas use derivatives, they generally engage in a relatively limited number of non-complex derivative transactions. For such banks, it is anticipated that the credit exposure computation required by the regulation will be relatively simple and straightforward, and the information necessary to make the computation will be readily available from their existing risk management systems. Compliance costs for such banks are expected to be minimal.

While new Part 117 is effective immediately, it is recognized that some banks may require a period of time to ensure that their systems for calculating credit exposure from derivative transactions are consistent with the method of calculation required by the new rule, or to apply for and receive approval from the Superintendent to use an alternative calculation method. Therefore, the rule provides that until July 1, 2013, a bank may use any reasonable methodology to calculate its credit exposure from derivative transactions, subject to the Superintendent's Section 117.8 authority to require use of a different methodology. This provision should further serve to minimize compliance costs for banks that are located in rural areas.

5. Economic and Technological Feasibility

The regulation will provide an economic benefit to banks, including banks that are located in rural areas, since they will be able to continue using derivatives to manage the risk exposures resulting from their normal business activities.

Compliance with the regulation should not present a technological challenge, since banks that use derivatives, including banks that are located in rural areas, already have in place systems to measure and manage their exposures from derivative transactions. Moreover, the provision of the rule effectively giving banks until to July 1, 2013 to start using the credit exposure calculation methodology set forth in the regulation, or to get the Superintendent's approval to use an alternative calculation methodology, will facilitate the resolution of any remaining economic or technological issues facing individual banks, including banks that are located in rural areas.

6. Minimizing Adverse Impacts

If the state's lending limit did not take account of credit exposure from derivatives transactions, DFA Section 611 would prohibit insured state banks from engaging in derivatives transactions starting January 21, 2013.

Such a prohibition would have a severely adverse effect on the ability of banks, including banks that are located in rural areas, to manage the exposures embedded in their balance sheets. The inability to manage such risks using derivatives would have the effect of limiting the banks' ability to conduct their usual business in a safe and sound manner. It would also leave banks, including banks which are located in rural areas, at a substantial competitive disadvantage relative to federally chartered banking organizations, which will be able to continue to enter into derivatives transactions so long as they do so in compliance with applicable federal regulations.

7. Rural Area Participation

The Department has had informal discussions regarding preliminary versions of the regulation with industry associations representing banks which engage in derivatives activities, including banks that engage in significant derivatives activities as well as banks that are located in rural areas. The regulation takes account of the comments received in the course of this process.

Job Impact Statement

The regulation will not have an adverse impact on employment in the state. Banking organizations that engage in derivative transactions already have systems and staff in place to manage the credit and other risks associated with those transactions.

Conversely, failing to adopt the regulation could have an adverse impact on employment. Under DFA Section 611, state banks would be prohibited from engaging in derivative transactions and therefore would need to find other uses for staff currently involved in derivatives activity. Moreover, if state banks were no longer able to use derivatives to manage the risks resulting from their current types and levels of business, they might be

forced to reduce or restructure the banking services they provide, which could have a further adverse impact on employment levels for both the banks and their customers.

**EMERGENCY
RULE MAKING**

Mandatory Reporting of ATM Safety Act Compliance by Banking Institutions

I.D. No. DFS-40-14-00003-E

Filing No. 828

Filing Date: 2014-09-17

Effective Date: 2014-09-25

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 (ATM Safety Act)

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

Specific reasons underlying the finding of necessity: 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. Emergency adoption is necessary in order to implement the changed reporting requirements prior to the first report under the amended statute, which is due January, 2014.

Subject: Mandatory reporting of ATM Safety Act Compliance by banking institutions.

Purpose: To be consistent with changes in the ATM Safety Act (Article II-A of the Banking Law) made by Chapter 27 of the Laws of 2013.

Text of emergency rule: Section 301.6. Report of compliance.

(a)

(1) The *semi*-annual report of compliance required to be filed pursuant to the provisions of section 75-g of the Banking Law shall be filed [within 75 days after the close of each calendar year covering the preceding calendar year] *with the Department of Financial Services no later than the fifteenth day of January and July of each year or the following business day if that day is not a business day.* This report shall be certified, under the penalties of perjury, and shall contain language substantially similar to the following:

I, _____, (person at the institution charged with enforcing compliance with article II-AA of the Banking Law) hereby certify, under the penalties of perjury, that all answers contained herein are true, accurate and complete.

[(2)] (A) All of the automated teller machine facilities operated by _____ (name of institution) which are subject to the provisions of article II-AA of the Banking Law (choose one or more of the following, as applicable):

(i) _____ are in full compliance with the provisions of that article; and/or

(ii) _____ are in full compliance with the variance or exemption (as the case may be) granted by the superintendent for the automated teller machine facility (or facilities) located at _____ (specific address); and/or

(iii) _____ are not in compliance with the provisions of article II-AA.

[(3)] (B) _____ (name of institution) uses and maintains only T-120 (commercial/industrial) grade video tapes, or better, in accordance with the provisions of section 301.5 of this Part.

[(i)] (2) In cases in which some or all of a banking institution’s automated teller machine facilities are not in compliance with the provisions of article II-AA, the *semi*-annual report shall indicate the following additional information:

[(a)] (A) the specific address of each such facility;

[(b)] (B) the manner in which each such facility fails to meet the requirements of that article and the reasons for such non-compliance; and

[(c)] (C) a plan to remedy such non-compliance at each such facility, *including the expected correction date.*

(b) [Upon notification] *After notice of any violation of the provisions of section 75-c of the Banking Law is provided to the Department in any semi-annual report or such banking institution is notified of any violation of section 75-c of the Banking Law, such banking institution shall file a report of corrective action [required] pursuant to section 75-[j]g(2) of the Banking Law [shall be filed within] no later than 10 business days [from] following the filing of the semi-annual report or receipt of such notification*

of violation. That report shall be certified, under the penalties of perjury, and shall contain language substantially similar to the following:

I, _____, (person at the institution charged with enforcing compliance with article II-AA of the Banking Law) hereby certify, under the penalties of perjury, that all answers contained herein are true, accurate and complete. The automated teller machine facility operated by _____ (name of institution) located at _____ (specific address) which is the subject of one or more violations of the provisions of section 75-c of the Banking Law, is (choose one of the following):

(1) _____ in full compliance with the provisions of section 75-c as of _____ (date); or

(2) _____ not presently in compliance with the provisions of section 75-c and the annexed remedial plan has been implemented and shall be completed by _____ [(date no later than 30 days after initial notification of violation from the Department of Financial Services)]; upon the date of completion of the remedial plan, _____ (name of institution) shall file a certified report of compliance with the Department of Financial Services stating that the location meets the requirements of section 75-c. Annexed hereto is a description of *the* remedial plan.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire December 15, 2014.

Text of rule and any required statements and analyses may be obtained from: Hadas A. Jacobi, Assistant Attorney, New York State Department of Financial Services, One State Street, New York, NY 10004-1417, (212) 480-5890, email: hadas.jacobi@dfs.ny.gov

Regulatory Impact Statement

1. Statutory Authority.

Section 227 of the laws of 2013 became effective on July 31, 2013. It made amendments to Banking Law Sections 75-g and 75-j. The changes to Subsection 301(6) of Part 301 made herein are intended to make the regulation consistent with the changes made to Section 75-g.

The ATM Safety Act (the “Act”), Article II-A of the Banking Law, is intended to protect members of the public by imposing lighting, security camera and other requirements on bank controlled ATM facilities operating in New York State. Section 75-n of the Banking Law grants the Superintendent with authority to adopt implementing regulations. Part 301 of the Superintendent’s Regulations implements the Act.

Subsection 301(6) of Part 301 relates to periodic reporting obligations by banking institutions with respect to the compliance of their ATM facilities with the requirements of the Act. The changes made herein are intended to make the reporting process for banking institutions more efficient and less expensive. Changes are also made to make the regulation consistent with the newly amended law.

Chapter 227 made amendments to Subdivision 1 of Section 75-g of the Banking Law. It also added a new Subdivision 2 to the statute. The amendments to Subdivision 1 make clear that the reporting is to be on a semi-annual basis. It also made clear that all such reporting is to be done on an electronic basis. New Section 75-g(2) provides that any institution filing a semi-annual compliance report that shows noncompliance shall thereafter submit an additional report to the Department indicating whether the failure has been corrected, the reason for any failure that has not been corrected and the expected date of correction. Finally, for any violation not corrected within ten business days after the filing of the applicable compliance report, the institution also must report the date of completion of the corrective action.

2. Legislative Objectives.

As noted, the Act is intended to protect members of the public by imposing lighting, security camera and other requirements on bank controlled ATM facilities operating in New York State. The recent amendments are intended to automate the reporting of violations, thus enhancing the efficiency of the reporting process.

Part 301 implements the Act. The following is a summary of the major changes to Section 301(6) to implement Chapter 227:

1. The numbering of the section is changed to make the regulation consistent with the intent of the statute. Individuals who originate loans on manufactured homes will be subject to the regulation for the first time.

2. Paragraph (a) has been changed to make clear that compliance reporting is to be done on a semi-annual basis.

3. Clause (C) of subparagraph (2) of paragraph (a) has been changed to add a requirement that the banking institution indicate the expected date of completion of the corrective action.

4. Paragraph (b) has been modified to clarify that any banking institution that submitted a notice of violation in any semi-annual report or has otherwise been notified of any violation must file a report of corrective action no later than 10 business days following the filing of the semi-annual

report or receipt of notice of a violation. This report must state whether the violation has been corrected or, if not, the expected date of completion. When the corrective action has been completed, Paragraph (b) also requires the banking institution to report the date of completion.

5. All reports must be certified.

3. Needs and Benefits.

Prior to the amendments described above, the Act required banking institutions to make annual reports to the Department regarding their ATM compliance with the Act. This reporting was supported by on-site examinations by employees of the Department. This reporting obligation has been changed to a semi-annual reporting process. The statute also was amended to allow the reporting to be done electronically. In effect, while the Department retains its examination authority, the compliance emphasis has been changed from a primarily examination-based system handled by the Department to a more comprehensive self-reporting system. Since banking institutions will have primary responsibility for monitoring and reporting, it is anticipated that the costs of compliance for both banks with ATMs and for the Department will be reduced.

The changes described herein are expected to simplify reporting and the cost of reporting for banking institutions. In addition, it is expected that the changes to the regulation will facilitate reporting by making the process somewhat more straight forward. They will also conform the regulation to the statute.

4. Costs.

As under the existing Part 301, banking institutions remain primarily responsible for ensuring that their ATMs are in compliance with the Act. Nevertheless, the cost of demonstrating their compliance with Act in writing will be significantly simplified as all such reporting will now be done electronically. The Department is developing an online system to provide for such reporting. This system is expected to be in place for the first scheduled semi-annual reporting now set for January of 2014.

5. Local Government Mandates.

None.

6. Paperwork.

Going forward, reporting will be done electronically.

7. Duplication.

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

8. Alternatives.

The purpose of the regulation is to conform the regulation to changes in the statute and to carry out the statutory mandate to regulate bank controlled ATM facilities pursuant to the Act. Failure to act would result in regulations that are inconsistent with the statute.

9. Federal Standards.

None applicable.

10. Compliance Schedule.

Chapter 227 became effective on July 31, 2013. The first semi-annual report is due in January. The proposed emergency regulation would be effective immediately.

Regulatory Flexibility Analysis

1. Effect of the Rule:

The revised regulation will not have any impact on local governments. However, a number of the banking institutions that maintain automatic teller facilities ("ATMs") and will be affected by revised regulation are considered small businesses. Overall, there are in excess of 5000ATMs regulated by the Department of Financial Services (the "Department") (formerly, the Banking Department).

2. Compliance Requirements:

As noted, the Department regulates over 5000ATMs in the state. Chapter 227 of the laws of 2013 became effective on July 31, 2013. It made amendments to Section 75-g and 75-j of the Banking Law. The changes to Subsection 301(6) of Part 301 made herein are intended to make the regulation more consistent with the statute and also make compliance easier.

The ATM Safety Act (the "Act") is intended to protect members of the public by imposing lighting, security camera and other requirements on bank controlled ATMs operating in New York State. Subsection 301(6) of Part 301 relates to periodic reporting obligations by banking institutions with respect to the compliance of their ATMs with the requirements of the Act. The changes made herein are intended to make the filing process for banking institutions more efficient and less expensive. Changes are also made to make the regulation more consistent with law and easier to follow.

3. Professional Services:

None.

4. Compliance Costs:

As under the existing Part 301, banking institutions remain primarily responsible for ensuring that their ATMs are in compliance with the Act. Nevertheless, the cost of demonstrating their compliance with Act will be significantly simplified as all such reporting will now be done electronically. The Department is developing an online system to provide

for such reporting. This system is expected to be in place for the first scheduled semi-annual reporting now required for January of 2014.

5. Economic and Technological Feasibility:

The rule-making should impose no adverse economic or technological burden on small businesses. Indeed, banking institutions should benefit from new electronic systems for reporting.

6. Minimizing Adverse Impacts:

It is expected that electronic reporting will significantly reduce overall compliance costs for industry. Also, the cost to the Department of its supervision of compliance with the Act should similarly be reduced. Since the Department assesses industry for these costs, the changes contemplated by these regulations should assist in further reducing industry costs.

7. Small Business and Local Government Participation:

The Department is in regular contact with banking institutions, including those that are small businesses, and industry associations regarding compliance with the Act. Banking institutions are interested in both improving their compliance and reducing the costs of compliance. The proposed adoption should facilitate banking institutions in attaining both goals. This regulation does not impact local governments.

Rural Area Flexibility Analysis

Types and Estimated Numbers: The New York State Department of Financial Services (the "Department") (formerly the Banking Department) regulates over 5000 bank controlled automatic teller machines facilities ("ATMs") in the state, including numerous ATMs in rural area. The changes to Subsection 301(6) of Part 301 made herein are intended to make the regulation consistent with the changes made to Section 75-g.

The ATM Safety Act (the "Act"), Article II-A of the Banking Law, is intended to protect members of the public by imposing lighting, security camera and other requirements on ATMs operating in New York State. Section 75-n of the Banking Law grants the Superintendent with authority to adopt implementing regulations. Part 301 of the Superintendent's Regulations implements the Act.

Subsection 301(6) of Part 301 relates to periodic reporting obligations by banking institutions with respect to the compliance of their ATMs with the requirements of the Act. The changes made herein are intended to make the filing process for banking institutions more efficient and less expensive. Changes are also made to make the regulation more consistent with law and easier to follow.

Chapter 227 made amendments to Subdivision 1 of Section 75-g of the Banking law. It also added a new Subdivision 2 to the statute. The amendments to Subdivision 1 make clear that the reporting was to be on a semi-annual basis. It also made clear that all such reporting was to be done on an electronic basis. New Section 75-g(2) provides that any institution filing a semi-annual compliance report that shows noncompliance shall thereafter submit an additional report to the Department indicating whether the failure has been corrected, the reason for any failure that has not been corrected and the expected date of correction. Finally, for any violation not corrected within ten business days after the filing of the applicable compliance report, the institution also must report the date of completion of the corrective action.

Compliance Requirements: Prior to the amendments described above, the Act required banking institutions to make annual reports to the Department regarding their ATMs' compliance with the Act. This reporting was supported by on-site examinations by employees of the Department. In effect, while the Department retains its examination authority, the compliance emphasis has been changed from a primarily examination-based system handled by the Department to a more comprehensive self-reporting system. This reporting obligation has been changed to a semi-annual reporting process. The statute also was amended to allow the reporting to be done electronically. Since banking institutions will have primary responsibility for monitoring and reporting, it is anticipated that the costs of compliance for both banks with ATMs and for the Department will be reduced.

Costs: Banking institutions in rural areas should experience a more efficient compliance reporting system going forward. Indeed, expenses for compliance will remain the same as banking institutions will continue to have the primary responsibility for ensuring that there ATMs comply with Act. However, ongoing reporting costs should be reduced as banks will have both a more streamlined reporting system and the ability to report electronically.

Minimizing Adverse Impacts: It is expected that electronic reporting will significantly reduce overall compliance costs for industry. Also, the cost to the Department of its supervision of compliance with the Act should similarly be reduced. Since the Department assesses industry for these costs, the changes contemplated by these regulations should assist in further reducing industry costs.

Rural Area Participation: The Department is in regular contact with banking institutions, including those that are small businesses, and industry associations regarding compliance with the Act. Banking institutions are interested in both improving their compliance and reducing the

costs of compliance. The proposed adoption should facilitate banking institutions in attaining both goals. This regulation does not impact local governments.

Job Impact Statement

The requirement to comply with this regulation is not expected to have a significant adverse effect on jobs or employment. Section 227 of the laws of 2013 became effective on July 31, 2013. It made amendments to Banking Law Sections 75-g and 75-j. The changes to Subsection 301(6) of Part 301 made herein are intended to make the regulation consistent with the changes made to Section 75-g.

The ATM Safety Act (the "Act"), Article II-A of the Banking Law, is intended to protect members of the public by imposing lighting, security camera and other requirements on ATMs operating in New York State. Section 75-n of the Banking Law grants the Superintendent with authority to adopt implementing regulations. Part 301 of the Superintendent's Regulations implements the Act.

Subsection 301(6) of Part 301 relates to periodic reporting obligations by banking institutions with respect to the compliance of their ATMs with the requirements of the Act. The changes made herein are intended to make the filing process for banking institutions more efficient and less expensive. Changes are also made to make the regulation more consistent with law and easier to follow.

Chapter 227 made amendments to Subdivision 1 of Section 75-g of the Banking Law. It also added a new Subdivision 2 to the statute. The amendments to Subdivision 1 make clear that the reporting was to be on a semi-annual basis. It also made clear that all such reporting was to be done on an electronic basis. New Section 75-g(2) provides that any institution filing a semi-annual compliance report that shows noncompliance shall thereafter submit an additional report to the Department indicating whether the failure has been corrected, the reason for any failure that has not been corrected and the expected date of correction. Finally, for any violation not corrected within ten business days after the filing of the applicable compliance report, the institution also must report the date of completion of the corrective action.

Banking institutions have and will continue to have primary responsibility for ensuring compliance with the Act. Indeed, the associated costs of reporting should be reduced as all reporting going forward is to be completed electronically. This compliance with the amended regulation is not expected to have an adverse effect on employment.

EMERGENCY RULE MAKING

Assessment of Entities Regulated by the Banking Division of the Department of Financial Services

I.D. No. DFS-40-14-00019-E

Filing No. 838

Filing Date: 2014-09-23

Effective Date: 2014-09-25

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

Action taken: Addition of Part 501 to Title 3 NYCRR.

Statutory authority: Banking Law, section 17; and Financial Services Law, section 206

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

Specific reasons underlying the finding of necessity: Pursuant to the Financial Services Law ("FSL"), the New York State Banking Department ("Banking Department") and the New York State Insurance Department were consolidated, effective October 3, 2011, into the Department of Financial Services ("Department").

Prior to the consolidation, assessments of institutions subject to the Banking Law ("BL") were governed by Section 17 of the BL; effective on October 3, 2011, assessments are governed by Section 206 of the Financial Services Law, provided that Section 17 continues to apply to assessments for the fiscal year which commenced April 1, 2011.

Both Section 17 of the Banking Law and Section 206 of the Financial Services Law provide that all expenses (compensation, lease costs and other overhead) of the Department in connection with the regulation and supervision (including examination) of any person or entity licensed, registered, incorporated or otherwise formed pursuant to the BL are to be charged to, and paid by, the regulated institutions subject to the supervision of in the Banking Division of the Department (the "Banking Division"). Under both statutes, the Superintendent is authorized to assess regulated institutions in the Banking Division in such proportions as the Superintendent shall deem just and reasonable.

Litigation commenced in June, 2011 challenged the methodology used by the Banking Department to assess mortgage bankers. On May 3, 2012, the Appellate Division invalidated this methodology for the 2010 State Fiscal Year, finding that the former Banking Department had not followed the requirements of the State Administrative Procedures Act.

In response to this ruling, the Department has determined to adopt this new rule setting forth the assessment methodology applicable to all entities regulated by the Banking Division for fiscal years beginning with fiscal year 2011.

The emergency adoption of this regulation is necessary to implement the requirements of Section 17 of the Banking Law and Section 206 of the Financial Services Law in light of the determination of the Court and the ongoing need to fund the operations of the Department without interruption.

Subject: Assessment of entities regulated by the Banking Division of the Department of Financial Services.

Purpose: New Part 501 implements Section 17 of the Banking Law and Section 206 of the Financial Services Law and sets forth the basis for allocating all costs and expenses attributable to the operation of the Banking Division of the Department of Financial Services among and between any person or entity licensed, registered, incorporated or otherwise formed pursuant to the Banking Law.

Text of emergency rule: Part 501

BANKING DIVISION ASSESSMENTS

§ 501.1 Background.

Pursuant to the Financial Services Law ("FSL"), the New York State Banking Department ("Banking Department") and the New York State Insurance Department were consolidated on October 3, 2011 into the Department of Financial Services ("Department").

Prior to the consolidation, assessments of institutions subject to the Banking Law ("BL") were governed by Section 17 of the BL. Effective October 3, 2011, assessments are governed by Section 206 of the FSL, provided that Section 17 of the BL continues to apply to assessments for the fiscal year commencing on April 1, 2011.

Both Section 17 of the BL and Section 206 of the FSL provide that all expenses (including, but not limited to, compensation, lease costs and other overhead costs) of the Department attributable to institutions subject to the BL are to be charged to, and paid by, such regulated institutions. These institutions ("Regulated Entities") are now regulated by the Banking Division of the Department. Under both Section 17 of the BL and Section 206 of the FSL, the Superintendent is authorized to assess Regulated Entities for its total costs in such proportions as the Superintendent shall deem just and reasonable.

The Banking Department has historically funded itself entirely from industry assessments of Regulated Entities. These assessments have covered all direct and indirect expenses of the Banking Department, which are activities that relate to the conduct of banking business and the regulatory concerns of the Department, including all salary expenses, fringe benefits, rental and other office expenses and all miscellaneous and overhead costs such as human resource operations, legal and technology costs.

This regulation sets forth the basis for allocating such expenses among Regulated Entities and the process for making such assessments.

§ 501.2 Definitions.

The following definitions apply in this Part:

(a) "Total Operating Cost" means for the fiscal year beginning on April 1, 2011, the total direct and indirect costs of operating the Banking Division. For fiscal years beginning on April 1, 2012, "Total Operating Cost" means (1) the sum of the total operating expenses of the Department that are solely attributable to regulated persons under the Banking Law and (2) the proportion deemed just and reasonable by the Superintendent of the other operating expenses of the Department which under Section 206(a) of the Financial Services Law may be assessed against persons regulated under the Banking Law and other persons regulated by the Department.

(b) "Industry Group" means the grouping to which a business entity regulated by the Banking Division is assigned. There are three Industry Groups in the Banking Division:

(1) The Depository Institutions Group, which consists of all banking organizations and foreign banking corporations licensed by the Department to maintain a branch, agency or representative office in this state;

(2) The Mortgage-Related Entities Group, which consists of all mortgage brokers, mortgage bankers and mortgage loan servicers; and

(3) The Licensed Financial Services Providers Group, which consists of all check cashers, budget planners, licensed lenders, sales finance companies, premium finance companies and money transmitters.

(c) "Industry Group Operating Cost" means the amount of the Total Operating Cost to be assessed to a particular Industry Group. The amount is derived from the percentage of the total expenses for salaries and fringe benefits for the examining, specialist and related personnel represented by such costs for the particular Industry Group.

(d) "Industry Group Supervisory Component" means the total of the Supervisory Components for all institutions in that Industry Group.

(e) "Supervisory Component" for an individual institution means the product of the average number of hours attributed to supervisory oversight by examiners and specialists of all institutions of a similar size and type, as determined by the Superintendent, in the applicable Industry Group, or the applicable sub-group, and the average hourly cost of the examiners and specialists assigned to the applicable Industry Group or sub-group.

(f) "Industry Group Regulatory Component" means the Industry Group Operating Cost for that group minus the Industry Group Supervisory Component and certain miscellaneous fees such as application fees.

(g) "Industry Financial Basis" means the measurement tool used to distribute the Industry Group Regulatory Component among individual institutions in an Industry Group.

The Industry Financial Basis used for each Industry Group is as follows:

(1) For the Depository Institutions Group: total assets of all institutions in the group;

(2) For the Mortgage-Related Entities Group: total gross revenues from New York State operations, including servicing and secondary market revenues, for all institutions in the group; and

(3) For the Licensed Financial Services Providers Group: (i.) for budget planners, the number of New York customers; (ii.) for licensed lenders, the dollar amount of New York assets; (iii.) for check cashers, the dollar amount of checks cashed in New York; (iv.) for money transmitters, the dollar value of all New York transactions; (v.) for premium finance companies, the dollar value of loans originated in New York; and (vi.) for sales finance companies, the dollar value of credit extensions in New York.

(h) "Financial Basis" for an individual institution is that institution's portion of the measurement tool used in Section 501.2(g) to develop the Industry Financial Basis. (For example, in the case of the Depository Institutions Group, an entity's Financial Basis would be its total assets.)

(i) "Industry Group Regulatory Rate" means the result of dividing the Industry Group Regulatory Component by the Industry Financial Basis.

(j) "Regulatory Component" for an individual institution is the product of the Financial Basis for the individual institution multiplied by the Industry Group Regulatory Rate for that institution.

§ 501.3 Billing and Assessment Process.

The New York State fiscal year begins April 1 and ends March 31 of the following calendar year. Each institution subject to assessment pursuant to this Part is billed five times for a fiscal year: four quarterly assessments (each approximately 25% of the anticipated annual amount) based on the Banking Division's estimated annual budget at the time of the billing, and a final assessment (or "true-up"), based on the Banking Division's actual expenses for the fiscal year. Any institution that is a Regulated Entity for any part of a quarter shall be assessed for the full quarter.

§ 501.4 Computation of Assessment.

The total annual assessment for an institution shall be the sum of its Supervisory Component and its Regulatory Component.

§ 501.5 Penalties/Enforcement Actions.

All Regulated Entities shall be subject to all applicable penalties, including late fees and interest, provided for by the BL, the FSL, the State Finance law or other applicable laws. Enforcement actions for nonpayment could include suspension, revocation, termination or other actions.

§ 501.6 Effective Date.

This Part shall be effective immediately. It shall apply to all State Fiscal Years beginning with the Fiscal Year starting on April 1, 2011.

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 21, 2014.

Text of rule and any required statements and analyses may be obtained from: Hadas A. Jacobi, Assistant Attorney, Department of Financial Services, One State Street, New York, NY 10004, (212) 480-5890, email: hadas.jacobi@dfs.ny.gov

Regulatory Impact Statement

1. Statutory Authority

Pursuant to the Financial Services Law ("FSL"), the New York State Banking Department (the "Banking Department") and the New York State Insurance Department were consolidated, effective October 3, 2011, into the Department of Financial Services (the "Department").

Prior to the consolidation, assessments of institutions subject to the

Banking Law ("BL") were governed by Section 17 of the BL; effective on October 3, 2011, assessments are governed by Section 206 of the Financial Services Law, provided that Section 17 continues to apply to assessments for the fiscal year which commenced April 1, 2011.

Both Section 17 of the BL and Section 206 of the FSL provide that all expenses (compensation, lease costs and other overhead) of the Department in connection with the regulation and supervision of any person or entity licensed, registered, incorporated or otherwise formed pursuant to the BL are to be charged to, and paid by, the regulated institutions subject to the supervision of the Banking Division of the Department (the "Banking Division"). Under both statutes, the Superintendent is authorized to assess regulated institutions in the Banking Division in such proportions as the Superintendent shall deem just and reasonable.

In response to a court ruling, *In the Matter of Homestead Funding Corporation v. State of New York Banking Department et al.*, 944 N.Y.S.2d 649 (2012) ("Homestead"), that held that the Department should adopt changes to its assessment methodology for mortgage bankers through a formal assessment rule pursuant to the requirements of the State Administrative Procedures Act ("SAPA"), the Department has determined to adopt this new regulation setting forth the assessment methodology applicable to all entities regulated by the Banking Division for fiscal years beginning with fiscal year 2011.

2. Legislative Objectives

The BL and the FSL make the industries regulated by the former Banking Department (and now by the Banking Division of the new Department) responsible for all the costs and expenses of their regulation by the State. The assessments have covered all direct and indirect expenses of the Banking Department, which are activities that relate to the conduct of banking business and the regulatory concerns of the Department, including all salary expenses, fringe benefits, rental and other office expenses and all miscellaneous and overhead costs such as human resource operations, legal and technology costs.

This reflects a long-standing State policy that the regulated industries are the appropriate parties to pay for their supervision in light of the financial benefits it provides to them to engage in banking and other regulated businesses in New York. The statute specifically provides that these costs are to be allocated among such institutions in the proportions deemed just and reasonable by the Superintendent.

While this type of allocation had been the practice of the former Banking Department for many decades, Homestead found that a change to the methodology for mortgage bankers to include secondary market and servicing income should be accomplished through formal regulations subject to the SAPA process. Given the nature of the Banking Division's assessment methodology - - the calculation and payment of the assessment is ongoing throughout the year and any period of uncertainty as to the applicable rule would be extremely disruptive - - the Department has determined that it is necessary to adopt the rule on an emergency basis so as to avoid any possibility of disrupting the funding of its operations.

3. Needs and Benefits

The Banking Division regulates more than 250 state chartered banks and licensed foreign bank branches and agencies in New York with total assets of over \$2 trillion. In addition, it regulates a variety of other entities engaged in delivering financial services to the residents of New York State. These entities include: licensed check cashers; licensed money transmitters; sales finance companies; licensed lenders; premium finance companies; budget planners; mortgage bankers and brokers; mortgage loan servicers; and mortgage loan originators.

Collectively, the regulated entities represent a spectrum, from some of the largest financial institutions in the country to the smallest, neighborhood-based financial services providers. Their services are vital to the economic health of New York, and their supervision is critical to ensuring that these services are provided in a fair, economical and safe manner.

This supervision requires that the Banking Division maintain a core of trained examiners, plus facilities and systems. As noted above, these costs are by statute to be paid by all regulated entities in the proportions deemed just and reasonable by the Superintendent. The new regulation is intended to formally set forth the methodology utilized by the Banking Division for allocating these costs.

4. Costs

The new regulation does not increase the total costs assessed to the regulated industries or alter the allocation of regulatory costs between the various industries regulated by the Banking Division. Indeed, the only change from the allocation methodology used by the Banking Department in the previous state fiscal years is that the regulatory costs assessed to the mortgage banking industry will be divided among the entities in that group on a basis which includes income derived from secondary market and servicing activities. The Department believes that this is a more appropriate basis for allocating the costs associated with supervising mortgage banking entities.

5. Local Government Mandates

None.

6. Paperwork

The regulation does not change the process utilized by the Banking Division to determine and collect assessments.

7. Duplication

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

8. Alternatives

The purpose of the regulation is to formally set forth the process employed by the Department to carry out the statutory mandate to assess and collect the operating costs of the Banking Division from regulated entities. In light of Homestead, the Department believes that promulgating this formal regulation is necessary in order to allow it to continue to assess all of its regulated institutions in the manner deemed most appropriate by the Superintendent. Failing to formalize the Banking Division's allocation methodology would potentially leave the assessment process open to further judicial challenges.

9. Federal Standards

Not applicable.

10. Compliance Schedule

The emergency regulations are effective immediately. Regulated institutions will be expected to comply with the regulation for the fiscal year beginning on April 1, 2011 and thereafter.

Regulatory Flexibility Analysis

1. Effect of the Rule:

The regulation does not have any impact on local governments.

The regulation simply codifies the methodology used by the Banking Division of the Department of Financial Services (the "Department") to assess all entities regulated by it, including those which are small businesses. The regulation does not increase the total costs assessed to the regulated industries or alter the allocation of regulatory costs between the various industries regulated by the Banking Division.

Indeed, the only change from the allocation methodology used by the Banking Department in the previous state fiscal years is that the regulatory costs assessed to the mortgage banking industry will be divided among the entities in that group on a basis which includes income derived from secondary market and servicing activities. The Department believes that this is a more appropriate basis for allocating the costs associated with supervising mortgage banking entities. It is expected that the effect of this change will be that larger members of the mortgage banking industry will pay an increased proportion of the total cost of regulating that industry, while the relative assessments paid by smaller industry members will be reduced.

2. Compliance Requirements:

The regulation does not change existing compliance requirements. Both Section 17 of the Banking Law and Section 206 of the Financial Services Law provide that all expenses (compensation, lease costs and other overhead) of the Department in connection with the regulation and supervision of any person or entity licensed, registered, incorporated or otherwise formed pursuant to the Banking Law are to be charged to, and paid by, the regulated institutions subject to the supervision of the Banking Division. Under both statutes, the Superintendent is authorized to assess regulated institutions in the Banking Division in such proportions as the Superintendent shall deem just and reasonable.

3. Professional Services:

None.

4. Compliance Costs:

All regulated institutions are currently subject to assessment by the Banking Division. The regulation simply formalizes the Banking Division's assessment methodology. It makes only one change from the allocation methodology used by the Banking Department in the previous state fiscal years. That change affects only one of the industry groups regulated by the Banking Division. Regulatory costs assessed to the mortgage banking industry are now divided among the entities in that group on a basis which includes income derived from secondary market and servicing activities. Even within the one industry group affected by the change, additional compliance costs, if any, are expected to be minimal.

5. Economic and Technological Feasibility:

All regulated institutions are currently subject to the Banking Division's assessment requirements. The formalization of the Banking Division's assessment methodology in a regulation will not impose any additional economic or technological burden on regulated entities which are small businesses.

6. Minimizing Adverse Impacts:

Even within the mortgage banking industry, which is the one industry group affected by the change in assessment methodology, the change will not affect the total amount of the assessment. Indeed, it is anticipated that this change may slightly reduce the proportion of mortgage banking industry assessments that is paid by entities that are small businesses.

7. Small Business and Local Government Participation:

This regulation does not impact local governments.

This regulation simply codifies the methodology which the Banking Division uses for determining the just and reasonable proportion of the Banking Division's costs to be charged to and paid by each regulated institution, including regulated institutions which are small businesses. The overall methodology was adopted in 2005 after extensive discussion with regulated entities and industry associations representing groups of regulated institutions, including those that are small businesses.

Thereafter, the Banking Department applied assessments against all entities subject to its regulation. In addition, for fiscal 2010, the Banking Department changed its overall methodology slightly with respect to assessments against the mortgage banking industry to include income derived from secondary market and servicing activities. Litigation was commenced challenging this latter change, and in a recent decision, *In the Matter of Homestead Funding Corporation v. State of New York Banking Department et al.*, 944 N.Y.S. 2d 649 (2012), the court determined that the Department should adopt a change to its assessment methodology for mortgage bankers through a formal assessment rule promulgated pursuant to the requirements of the State Administrative Procedures Act. The challenged change in methodology had the effect of increasing the proportion of assessments against the mortgage banking industry paid by its larger members, while reducing the assessments paid by smaller participants, including those which are small businesses.

Rural Area Flexibility Analysis

Types and Estimated Numbers: There are entities regulated by the New York State Department of Financial Services (formerly the Banking Department) located in all areas of the State, including rural areas. However, this rule simply codifies the methodology currently used by the Department to assess all entities regulated by it. The regulation does not alter that methodology, and thus it does not change the cost of assessments on regulated entities, including regulated entities located in rural areas.

Compliance Requirements: The regulation would not change the current compliance requirements associated with the assessment process.

Costs: While the regulation formalizes the assessment process, it does not change the amounts assessed to regulated entities, including those located in rural areas.

Minimizing Adverse Impacts: The regulation does not increase the total amount assessed to regulated entities by the Department. It simply codifies the methodology which the Superintendent has chosen for determining the just and reasonable proportion of the Department's costs to be charged to and paid by each regulated institution.

Rural Area Participation: This rule simply codifies the methodology which the Department currently uses for determining the just and reasonable proportion of the Department's costs to be charged to and paid by each regulated institution, including regulated institutions located in rural areas. The overall methodology was adopted in 2005 after extensive discussion with regulated entities and industry associations representing groups of regulated institutions, including those located in rural areas. It followed the loss of several major banking institutions that had paid significant portions of the former Banking Department's assessments.

Thereafter, the Department applied assessments against all entities subject to its regulation. In addition, for fiscal 2010, the Department changed this overall methodology slightly with respect to assessments against the mortgage banking industry to include income derived from secondary market income and servicing income. This latter change was challenged by a mortgage banker, and in early May, the Appellate Division determined that the latter change should have been made in conformity with the State Administrative Procedures Act. The challenged part of the methodology had the effect of increasing the proportion of assessments against the mortgage banking industry paid by its larger members, while reducing the assessments paid by smaller participants.

Job Impact Statement

The regulation is not expected to have an adverse effect on employment.

All institutions regulated by the Banking Division (the "Banking Division") of the Department of Financial Services are currently subject to assessment by the Department. The regulation simply formalizes the assessment methodology used by the Banking Division. It makes only one change from the allocation methodology used by the former Banking Department in the previous state fiscal years.

That change affects only one of the industry groups regulated by the Banking Division. It somewhat alters the way in which the Banking Division's costs of regulating mortgage banking industry are allocated among entities within that industry. In any case, the total amount assessed against regulated entities within that industry will remain the same.

NOTICE OF ADOPTION

Excess Line Placements Governing Standards

I.D. No. DFS-29-13-00002-A

Filing No. 825

Filing Date: 2014-09-17

Effective Date: 2014-10-08

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

Action taken: Amendment of Part 27 (Regulation 41) of Title 11 NYCRR.

Statutory authority: Insurance Law, sections 301, 316, 2101, 2104, 2105, 2110, 2116, 2117, 2118, 2121, 2122, 2130, 3103, 5907, 5909, 5911, 9102 and arts. 21 and 59; and Financial Services Law, sections 202 and 302

Subject: Excess Line Placements Governing Standards.

Purpose: To implement chapter 61 of the Laws of 2011, conforming to the federal Nonadmitted and Reinsurance Act of 2010.

Substance of final rule: On July 21, 2010, President Obama signed into law the federal Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank"), which contains the Nonadmitted and Reinsurance Reform Act of 2010 ("NRRRA"). The NRRRA prohibits any state, other than the home state of an insured, from requiring a premium tax payment for excess (or "surplus") line insurance. The NRRRA also subjects the placement of excess line insurance solely to the statutory and regulatory requirements of the insured's home state, and declares that only an insured's home state may require an excess line broker to be licensed to sell, solicit, or negotiate excess line insurance with respect to such insured.

In addition, the NRRRA provides that an excess line broker seeking to procure or place excess line insurance for an exempt commercial purchaser ("ECP") need not satisfy any state requirement to make a due diligence search to determine whether the full amount or type of insurance sought by the ECP may be obtained from admitted insurers if: (1) the broker procuring or placing the excess line insurance has disclosed to the ECP that the insurance may be available from the admitted market, which may provide greater protection with more regulatory oversight; and (2) the ECP has subsequently requested in writing that the broker procure the insurance from or place the insurance with an excess line insurer.

On March 31, 2011, Governor Andrew M. Cuomo signed into law Chapter 61 of the Laws of 2011, Part I of which amended the Insurance Law to conform to the NRRRA.

Insurance Regulation 41 (11 NYCRR Part 27) currently consists of 24 sections and one appendix addressing the regulation of excess line insurance placements.

The title of Section 27.0 is changed to read "Preamble and applicability," and Section 27.0 is amended to discuss the NRRRA and Chapter 61 of the Laws of 2011 and to provide that Part 27 applies only when the insured's home state is New York.

Section 27.1 is amended to delete "eligible," "qualified United States financial institution," and "letter of credit" as defined terms, and to add three new defined terms: "exempt commercial purchaser," "insured's home state," and "United States."

The Department amended Section 27.2(a) to change a reference to "Insurance Department" to read "Department of Financial Services."

Section 27.3(a) is amended to provide an exception for an ECP consistent with Insurance Law Section 2118(b)(3)(F) and to change a reference to "Insurance Department" to read "Department of Financial Services."

Section 27.3(f) is amended to require an excess line broker and the producing broker to maintain files supporting declinations by authorized insurers where declinations are required.

A new Section 27.3(h) is added, which provides that Section 27.3(a), (b), and (c) do not apply to an excess line broker seeking to procure or place insurance in New York for an ECP if the broker discloses to the ECP that the insurance may or may not be available from the authorized market that may provide greater protection with more regulatory oversight, and the ECP has subsequently requested in writing that the licensee procure or place the insurance from an unauthorized insurer.

Section 27.4(b) is amended to delete a reference to "in this State" and Section 27.4(g) is repealed.

Section 27.5(f), (g), and (h) are amended to: (1) with regard to an ECP, require an excess line broker or the producing broker to affirm in part A or part C of the affidavit that the ECP was specifically advised in writing, prior to placement, that insurance may or may not be available from the authorized market, which may provide greater protection with more regulatory oversight; (2) require an excess line broker to affirm that the insured's home state is New York in part A of the affidavit; and (3) clarify that the premium tax is to be allocated in accordance with Section 27.9 of

Insurance Regulation 41 for insurance contracts that have an effective date prior to July 21, 2011.

Section 27.6(b) is amended to make grammatical changes and to change "the Excess Line Association of New York" to "the excess line association."

Section 27.7(a) is amended to remove a reference to an unauthorized insurer that does not meet "eligibility standards for stamping by the excess line association" and to replace it with language that refers to an unauthorized insurer that does not "qualify to write excess line insurance in this State."

Section 27.8 is amended to: (1) require a licensed excess line broker to file electronically an annual premium tax statement, unless the Superintendent of Financial Services (the "Superintendent") grants the broker an exemption pursuant to Section 27.21 of Insurance Regulation 41; (2) acknowledge that payment of the premium tax may be made electronically; and (3) change a reference to "Superintendent of Insurance" to read "Superintendent of Financial Services."

Section 27.9 is amended to clarify how an excess line broker must calculate the taxable portion of the premium for: (1) insurance contracts that have an effective date prior to July 21, 2011; and (2) insurance contracts that have an effective date on or after July 21, 2011 and that cover property or risks located both inside and outside the United States.

Section 27.10(b) is amended to make grammatical changes.

Section 27.11 is amended to prohibit an unauthorized insurer from providing coverage if the coverage is prohibited by law.

Section 27.13 is amended to remove certain information from the list of information that an excess line broker must obtain and review prior to placing insurance with an unauthorized insurer, and to delete the prohibition against an excess line broker placing business with an excess line insurer unless the insurer has filed with the Superintendent a current listing that sets forth certain individual policy details.

Current Section 27.14 is repealed and a new Section 27.14 is added entitled, "Filings by unauthorized insurers; authorization to receive premium," which affirmatively requires an excess line insurer to file electronically with the Superintendent a current listing that sets forth certain individual policy details, and states that "pursuant to Insurance Law section 2121, any unauthorized insurer that delivers in New York to any excess line broker or any insured represented by such broker a contract of insurance pursuant to the application or request of such broker, acting for an insured other than himself or herself, will be deemed to have authorized the broker to receive on its behalf payment of any premium that is due on such contract at the time of its issuance or delivery or payment of any installment of such premium or any additional premium that becomes due or payable thereafter on such contract, provided that the broker receives the payment within 90 days after the due date of the premium or installment thereof or after the date of delivery of a statement by the insurer of the additional premium."

Sections 27.15 and 27.16 are repealed.

Sections 27.17, 27.18, 27.19, 27.20, and 27.21 are renumbered as Sections 27.15, 27.16, 27.17, 27.18, and 27.19.

Newly renumbered Section 27.15(b) (formerly Section 27.17(b)) is amended to make grammatical changes and to change a reference to "Insurance Department" to read "Department of Financial Services."

Newly renumbered Section 27.16(a) (formerly Section 27.18(a)) is amended to change a reference to Section 27.17(b) to read Section 27.15(b).

Newly renumbered Section 27.19(a) (formerly Section 27.21(a)) is amended to change a reference to Section 27.17(e) to read Section 27.15(e).

Section 27.22 is renumbered as Section 27.20.

Current Section 27.23 is repealed and a new Section 27.21 is added entitled, "Exemptions from electronic filing and submission requirements."

Section 27.24 is renumbered as Section 27.22.

The excess line premium tax allocation schedule set forth in appendix four is amended to apply to insurance contracts that have an effective date prior to July 21, 2011.

A new appendix five is added, which sets forth an excess line premium tax allocation schedule to apply to insurance contracts that have an effective date on or after July 21, 2011 and that cover property and risks located both inside and outside the United States.

Final rule as compared with last published rule: Nonsubstantive changes were made in sections 27.11(a), 27.13(b) and 27.21(e).

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: Joana Lucashuk, New York State Department of Financial Services, One State Street, New York, NY 10004, (212) 480-2125, email: Joana.Lucashuk@dfs.ny.gov

Revised Regulatory Impact Statement

The revisions made to the revised proposed rule have no special bearing on the previously published RIS; therefore, changes made to the last published revised rule do not necessitate revision to the previously published RIS.

Revised Regulatory Flexibility Analysis

The revisions made to the revised proposed rule have no special bearing on small businesses and no bearing on local governments; therefore, changes made to the last published revised rule do not necessitate revision to the previously published RFA.

Revised Rural Area Flexibility Analysis

The revisions made to the revised proposed rule have no special bearing on persons located in rural areas; therefore, changes made to the last published revised rule do not necessitate revision to the previously published RAFA.

Revised Job Impact Statement

The revisions made to the revised proposed rule have no bearing on jobs or employment opportunities; therefore, changes made to the last published revised rule do not necessitate revision to the previously published JIS.

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 New York State Department of Financial Services (“Department”) received comments from a national trade association representing the excess line industry, a national insurance trade organization, a property/casualty trade organization, the New York stamping office, and an excess line insurer, in response to the publication of its revised proposed rule in the New York State Register.

Many of the comments received were comments previously submitted to the Department that the Department addressed in the assessment of public comments published in the State Register on July 9, 2014. New comments on specific parts of the revised proposed rule and the Department’s responses thereto are discussed below.

Proposed Amendments to 11 NYCRR 27.13(b) (“Duty to Inquire”) Comment

The New York stamping office stated that the requirement that an excess line broker not place coverage with an unauthorized insurer, unless the insurer’s financial statement or other evidence demonstrates certain criteria, places an excess line broker in an awkward position regarding the statutory due care standard. The New York stamping office asserted that while the amendments to 11 NYCRR 27.13(a) no longer require an excess line broker to review and retain a copy of an alien insurer’s most recent annual financial statement, the amendments to 11 NYCRR 27.13(b) require a broker to know the overall financial condition of the insurer. The New York stamping office asserted that the amendments do not provide excess line brokers with any guidance in this regard.

The New York stamping office further stated that it does not believe that excess line brokers should be required to obtain and retain insurer financial statements, and it proposed allowing excess line brokers to rely on the financial analysis and insurer reviews conducted by the New York stamping office by providing a presumption that the excess line broker has used due care in selecting a financially secure insurer if it places business with an insurer listed by the New York stamping office.

Department’s Response

Insurance Law section 2118(a)(1) requires an excess line broker to use due care in selecting an unauthorized insurer from which to procure policies. 11 NYCRR 27.13(b) prohibits an excess line broker from placing coverage with an unauthorized insurer unless the insurer’s financial statements or other evidence demonstrate that the insurer: (1) is solvent and otherwise substantially complies with solvency requirements for authorized insurers; and (2) has surplus to policyholders sufficient to support its writings, reasonable in relation to its outstanding liabilities, adequate to its financial needs, and meeting a certain minimum level.

Section 27.13(b) allows an excess line broker to rely on an insurer’s financial statements or other evidence. (Emphasis added.) Therefore, an excess line broker does not need to review an insurer’s financial statements if there is other evidence that demonstrates that the insurer is solvent and has sufficient minimum surplus to policyholders. In addition, the Insurance Law requires an excess line broker to use due care when selecting an unauthorized insurer from which to procure policies. The excess line broker may not delegate that statutory duty of care.

Therefore, the Department did not make any changes to the rule.

Proposed Deletion of 11 NYCRR 27.16 (“Exemption from Section 1213”)

Comment

The New York stamping office suggested that in light of the proposed withdrawal of 11 NYCRR 27.16, the Department should amend the rule to state clearly that insurance policies that do not expressly appoint the Superintendent of Financial Services (“Superintendent”) for service of process may be required to post pre-answer security in any litigation arising out of the policy.

Department’s Response

11 NYCRR 27.16 provides that an unauthorized insurer is not subject to Insurance Law 1213 under certain conditions, such as when it stipulates in its insurance policy that the insurer appoints the Superintendent for service of process. Insurance Law section 1213 applies to unauthorized insurers appointing the Superintendent for service of process and depositing funds with a court before filing any pleading in any proceeding against the insurer. Insurance Law section 1213(e) states that section 1213 does not apply to any proceeding against an unauthorized insurer arising out of any insurance contract that designates the Superintendent for service of process. Since section 1213(e) already so states, it is not necessary to repeat the same language in the rule. Therefore, the Department did not make any changes to the rule with respect to this comment.

Department of Health

**EMERGENCY
RULE MAKING**

Standards for Adult Homes and Adult Care Facilities Standards for Enriched Housing

I.D. No. HLT-40-14-00004-E

Filing No. 829

Filing Date: 2014-09-18

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: Amendment of Parts 487 and 488 of Title 18 NYCRR.

Statutory authority: Social Services Law, sections 20, 20(3)(d), 34, 34(3)(f), 131-o, 460, 460-a—460-g, 461 and 461-a—461-h

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” of some of the covered facilities, in order to assure proper coordination with the efforts of the Justice Center Chapter 501 which took effect on June 30, 2013, and the Justice Center becomes operational.

Among the facilities covered by Chapter 501 are adult homes and enriched housing programs having a capacity of eighty or more beds, and in which at least 25% (twenty-five percent) of the residents are persons with serious mental illness as defined by section 1.03(52) of the mental hygiene law, but not including an adult home which is authorized to operate 55% (fifty-five percent) or more of its total licensed capacity of beds as assisted living program beds. Given the effective date of Chapter 501, these implementing regulations must be promulgated on an emergency basis in order to assure the necessary protections for vulnerable persons at such adult homes and enriched housing programs for an additional period likely extending several months. Absent emergency promulgation, such persons would be denied initial coordinated protections for several additional months, creating an unacceptable risk to residents. 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 be implemented subsequently, as required by the State Administrative Procedures Act. The Department is authorized to promulgate these rules pursuant to Sections 20, 34, 131-o, 460, 460-a—460-g, 461, 461-a—461-h of the Social Services Law; and L. 1997, ch.436; and and L. 2012, ch. 501.

Subject: Standards for Adult Homes and Adult Care Facilities Standards for Enriched Housing.

Purpose: Revisions to Parts 487 and 488 in regards to the establishment of the Justice Center for Protection of People with Special Needs.

Substance of emergency rule: The Department proposes to amend 18 NYCRR Parts 487 and 488 to address the creation of the Justice Center for the Protection of Persons with Special Needs (Justice Center) pursuant to Chapter 501 of the Laws of 2012, and to conform the Department's regulations to requirements added or modified as a result of that Chapter Law. Specifically, the amendments:

- add definitions specific to facilities subject to the Justice Center of "abuse," "mistreatment," "neglect," "misappropriation of property," "reasonable cause," "reportable incident," "Justice Center," "significant incident," "custodian," "facility subject to the Justice Center," "psychological abuse," "Department," and "unlawful use or administration of a controlled substance" at sections 487.2 (d)(1)-(13) and 488.2 (c)(1)-13;
- amend sections 487.5 and 488.5 to add occurrences which would constitute a reportable incident to the list of occurrences which residents should not experience, and to require the operator of certain facilities to conspicuously post the telephone number of the Justice Center incident reporting hotline;
- amend sections 487.7 and 488.7 to clarify a facility's obligations regarding what incidents must be investigated, how they must be investigated and who must investigate them;
- amend sections 487.7 and 488.7 to replace outdated references to the State Commission on Quality of Care for the Mentally Disabled with references to the Justice Center;
- amend sections 487.7 and 488.7 to add a requirement addressing when reports must be provided to the Justice Center, and requiring such reports to conform to the requirements of the Justice Center;
- amend sections 487.9 and 488.9 to add a requirement for staff training in the identification of reportable incidents and facility reporting procedures, and to add a requirement for certain facilities regarding the provision of a code of conduct to employees, volunteers, and others providing services at the facility who could be expected to have resident contact;
- amend sections 487.9 and 488.9 to add a requirement that certain facilities consult the Justice Center's staff exclusion list with regard to prospective employees, volunteers, and others, and that when such person is not on the staff exclusion list, that such facilities also consult the State Central Registry, with regard to such persons. The facility must maintain documentation of such consultation. The amendments also address the hiring consequences associated with the outcome of those consultations;
- amend sections 487.9 and 488.9 to specifically include investigation of reportable incidents to the administrative obligations of facilities, and to the duties of a case manager;
- amend sections 487.9 and 488.9 to require the operator of a facility to designate an additional employee to be a designated reporter;
- amend sections 487.10 and 488.10 to add a new requirement that certain facilities provide certain information to the Justice Center, and make certain information public, at the request of the Justice Center, and to allow sharing of information between the Department and the Justice Center;
- add new sections 487.14 and 488.13 to address reporting of certain incidents; and
- add new sections 487.15 and 488.14 to address the investigation of reportable incidents involving facilities subject to 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 16, 2014.

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

Summary of Regulatory Impact Statement

The Department believes that the proposed regulatory amendments enhance the health and safety of those served by adult homes and enriched housing programs.

Adult homes and enriched housing programs subject to the Justice Center will be required to consult the Justice Center's register of substantiated category one cases of abuse or neglect as established pursuant to section 495 of the Social Services Law prior to hiring certain employees, and where the person is not on that list, the facility will also be required to check the Office of Children and Family Services' Statewide Central Registry of Child Abuse and Maltreatment. The facility could not hire a person on the Justice Center's list, but would have the discretion to hire a person who was only on Office of Children and Family Services' list. Reporting and investigation obligations for all facilities would be expanded to cover "reportable incidents" which, are slightly more inclusive than what is covered by current reporting and investigation obligations. The amendments also add specific provisions addressing reporting and investigation procedures, to require the posting the telephone number of the Justice Center's reporting hotline, and to require the case manager to be capable

of reporting and investigating incidents. Those amendments should not require any significant change in current practice or impose anything beyond nominal additional expense to facilities. Requirements imposed on facilities generally are limited to an obligation to train staff in the identification and reporting of reportable incidents. With regard to facilities subject to the Justice Center, that obligation, as well as the others imposed by the regulations, are required by virtue of Chapter 501 of the Laws of 2012. The costs imposed by the amendments are expected to be minimal. In many cases, particularly with regard to the investigation requirements, the amendments generally reflect existing practice, so should neither impose any significant new costs or require any significant change in practice.

Regulatory Flexibility Analysis

Effect on Small Businesses and Local Governments:

This rule imposes some new obligations and administrative costs on regulated parties (adult homes and enriched housing programs). Some of the changes to Sections 487 and 488 apply to all adult home and enriched housing facilities; other only apply to those adult homes and enriched housing facilities which fall under the purview of the Justice Center. None of the requirements imposed by the amendments would impose different, or unique, burdens on small businesses or local governments; the requirements apply equally statewide. The costs and obligations associated with the amendments are fully described in the "Costs to Regulated Parties" section of the Regulatory Impact Statement.

Most of the five-hundred twenty-two (522) certified adult homes in New York State, including the forty-seven (47) which fall under the purview of the Justice Center, are operated by small businesses as defined in Section 102 of the State Administrative Procedure Act. Those entities would be subject to all of the above additional requirements.

Of the six (6) facilities operated by local governments, two (2) are scheduled to close within the next year. Of the four (4) remaining homes, none fall within the scope of the Justice Department required reporting facilities. Accordingly, the only additional cost imposed on those four (4) homes would be those nominal costs associated with obligations applicable to all adult homes and enriched housing facilities, as described in the "Costs to Regulated Parties" and "Paperwork" sections of the Regulatory Impact Statement.

Compliance Requirements:

As the facilities operated by local governments are not among those within the purview of the Justice Center for the Protection of Persons with Special Needs (Justice Center), the only impact upon facilities operated by local governments will be those resulting from obligations applicable to all adult homes and enriched housing facilities, as described in the "Costs to Regulated Parties" and "Paperwork" sections of the Regulatory Impact Statement.

The four (4) affected facilities run by local governments will experience minimal additional regulatory burdens in complying with the amendment's requirements, as functions related to Justice Center activities will not cause a need for additional staff or equipment.

Those facilities which constitute small businesses would be subject to additional requirements, as they include facilities both subject to, and not subject to, the purview of the Justice Center. The scope of the impact upon any given facility depends on whether it falls within the Justice Center's purview. Such obligations and impacts are fully described in the "Costs to Regulated Parties" and "Paperwork" sections of the Regulatory Impact Statement. The amendments are not expected to create a need for any additional staff or equipment for those facilities.

The Department expects that regulated parties will be able to comply with these regulations as of their effective date, upon filing with the Secretary of State.

Professional Services:

No need for additional professional services is anticipated. Existing professional staff are expected to be able to assume any increase in workload resulting from the additional requirements.

Compliance Costs:

This rule imposes limited new administrative costs on regulated parties (adult homes and enriched housing programs), as described in the "Costs to Regulated Parties" and "Paperwork" sections of the Regulatory Impact Statement. The changes to Sections 487 and 488 add additional administrative responsibilities for those adult home and enriched housing facilities within the Justice Center's jurisdiction. None of the requirements imposed by the amendments would impose different, or unique, burdens on small businesses or local governments; the requirements apply equally statewide.

Economic and Technological Feasibility:

The proposed regulation would present no economic or technological difficulties to any small businesses and local governments affected by this amendment. The infrastructure for contacting the Justice Center, and establishing an Incident Review Committee, are already in place.

Minimizing Adverse Impact:

Department efforts to consider minimizing the impact of the amend-

ments, and its consideration of alternatives to the amendments, are discussed in the "Alternatives" section of the Regulatory Impact Statement.

These amendments will not have an adverse impact on the ability of small businesses or local governments to comply with Department requirements, as full compliance would require minimal enhancements to present hiring and follow-up practices.

Consideration was given to including a cure period to afford adult home and enriched housing programs 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 for violations could expose this already vulnerable population to greater risk to their health and safety.

Small Business and Local Government Participation:

The Department will notify all New York State certified ACFs by a Dear Administrator Letter (DAL) informing them of this Justice Center expansion of the protection of vulnerable people. Regulated parties that are small businesses and local governments are expected to be prepared to participate in required Justice Center activities on the effective date of this amendment because the staff and infrastructure needed for performance of these are already in place.

Rural Area Flexibility Analysis

Types and Estimated Number of Rural Areas:

This rule applies uniformly throughout the state, including rural areas. Of the forty-seven (47) current facilities that will fall under the purview of the Justice Center for the Protection of People with Special Needs (Justice Center), six (6) are located in rural counties, as follows: Allegany County, Cayuga County, Greene County, Genesee County, Monroe County and Rensselaer County. Of the 522 adult homes and enriched housing programs statewide, including those not under the purview of the Justice Center, 160 are in rural areas.

Reporting and Recordkeeping and Other Compliance Requirements:

Reporting and Recordkeeping:

Reporting, recordkeeping and other compliance requirements are addressed in the "Costs to Regulated Parties" and "Paperwork" sections of the Regulatory Impact Statement. None of the requirements imposed by the amendments would impose different, or unique, burdens on rural areas; the requirements apply equally statewide.

Other Compliance Requirements:

Compliance requirements are discussed in the "Costs to Regulated Parties" and "Paperwork" sections of the Regulatory Impact Statement. None of the requirements imposed by the amendments would impose different, or unique, burdens on rural areas; the requirements apply equally statewide.

Professional Services:

There are no additional professional services required to comply with the proposed amendments.

Compliance Costs:

Cost to Regulated Parties:

Compliance requirements and associated costs are discussed in the "Costs to Regulated Parties" and "Paperwork" sections of the Regulatory Impact Statement. None of the requirements imposed by the amendments would impose different, or unique, burdens on rural areas; the requirements apply equally statewide.

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:

Department efforts to consider minimizing the impact of the amendments, and its consideration of alternatives to the amendments, are discussed in the "Alternatives" section of the Regulatory Impact Statement.

Rural Area Participation:

Of the forty-seven (47) current facilities that will fall under the purview of the Justice Center, six (6) are located in rural counties, as follows: Allegany County, Cayuga County, Greene County, Genesee County, Monroe County and Rensselaer County. The Department will notify all New York State-certified adult care facilities (ACFs) by a Dear Administrator Letter (DAL) informing them of this expansion of requirements to protect people with special needs. Regulated parties in rural areas are expected to be able to participate in requirements of the Justice Center on the effective date of this amendment.

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 employ-

ment opportunities, because it does not result in an increase or decrease in current staffing level requirements. Tasks associated with reporting new incidents types, reporting to the Justice Center for the Protection of People with Special Needs (Justice Center), as opposed to the Commission on the Quality of Care and Advocacy for People with Disabilities, making public certain information as directed by the Justice Center and assisting with the investigation of new reportable incidents are expected to be completed by existing facility staff. Similarly, the need for a medical examination of the patient in the course of investigating reportable incidents is similarly not appreciably different from the current practice of obtaining such examination under such circumstances. Accordingly, the amendments should not have any appreciable effect on employment as compared to current requirements.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Inpatient Rate for Language Assistance Services

I.D. No. HLT-40-14-00016-P

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

Proposed Action: Addition of section 86-1.45 to Title 10 NYCRR.

Statutory authority: Public Health Law, section 2807-c(35)

Subject: Inpatient Rate for Language Assistance Services.

Purpose: To establish hospital inpatient payment rate to reimburse hospitals for the costs of providing language interpretation services.

Text of proposed rule: Subpart 86-1 of title 10 NYCRR is amended by adding a new section 86-1.45 to read as follows:

86-1.45 - Reimbursement for language assistance services in hospital inpatient settings. For hospital inpatient services, in addition to the inpatient rates of payment computed in accordance with this Subpart, a separately billable rate of payment shall be available for providing language assistance services, if applicable, in accordance with the following:

(a) A discrete rate of payment for language interpretation services provided to patients with limited English proficiency (LEP) and communication services provided for patients who are deaf and hard of hearing will be established as follows:

(1) Payment will be established on a per unit basis with the unit of payment determined based on the number of minutes of language assistance service provided.

(2) A maximum of two billable units of language assistance services will be allowable per patient per day with the billable units defined as follows:

i) 1st billable unit – for encounters providing up to and including the first 22 minutes of language assistance service.

ii) 2nd billable unit – for encounters providing additional minutes (23+) beyond the initial 22 minutes of language assistance services during the given patient day.

(b) The rate of payment will be established at \$11.00 per unit of language assistance service provided, with a maximum allowable payment per inpatient day of care of \$22.00.

(c) To be reimbursable, the language assistance service must be provided by an independent third party, a dedicated hospital employee or a third party vendor (e.g., telephonic interpretation service) whose sole function is to provide interpretation services for individuals with LEP and communication services for people who are deaf and hard of hearing.

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.

Regulatory Impact Statement

Statutory Authority:

The statutory authority for this regulation is contained in Section 2807-c(35)(b) of the Public Health Law (PHL) which authorizes the Commissioner to promulgate regulations, including emergency regulations, with regard to Medicaid reimbursement rates for general hospital inpatient services. Such inpatient rate regulations are set forth in Subpart 86-1 of Title 10 (Health) of the Official Compilation of Codes, Rules, and Regulations of the State of New York (NYCRR).

Legislative Objectives:

To implement rebasing of hospital inpatient rates and effective for rate periods on and after December 1, 2009, the Legislature authorized the Commissioner to promulgate regulations to establish methodologies for the computation of general hospital inpatient rates based on more current base year costs. Rebasing was intended to establish payment rates that reflect current hospital operations and provide fair compensation to providers for the costs they presently incur. Effective since September 2006, Patients' Rights regulations enacted under Section 405.7(a)(7) of Title 10 (Health) NYCRR have required hospitals statewide to develop a Language Assistance Program (LAP) at their facility to ensure meaningful access to the hospital's services and reasonable accommodation to all patients who require language assistance. The Medicaid Redesign Team (MRT) Health Disparities Workgroup recommended that Medicaid rates of payment be adjusted to reimburse for such LAP services as LAP service costs are not reflected in current inpatient payment rates. The proposed amendment allows the Commissioner to reimburse providers for the LAP service costs they incur in hospital inpatient care settings.

Accordingly, Subpart 86-1 of Title 10 (Health) NYCRR will be amended by adding a new section 86-1.45 to establish a discrete hospital inpatient rate and payment methodology to reimburse for the costs of providing language interpretation services to patients with limited English proficiency (LEP) and communication services for patients who are deaf and hard of hearing.

Needs and Benefits:

New York State (NYS) has a culturally and linguistically diverse population and assuring appropriate medical language communication when such individuals seek medical care is essential to maintaining access to care, lowering health care costs, and promoting better health care outcomes for all NYS residents. Hospitals must be able to effectively interpret complex medical information to LEP patients and those who have hearing related disabilities that affect their communication. The proposed regulation implements a Medicaid Redesign Team (MRT) Health Disparities Workgroup recommendation to adjust Medicaid rates of payment to reimburse for the costs of such LAP services. The additional reimbursement provided by this new payment rate is intended to compensate hospitals for the costs of providing language assistance services and provide additional resources to help enhance their LAP services, thus promoting improved quality of care while reducing health care costs overall. The regulation provides consistency for hospital inpatient care settings with ongoing implementation of language assistance service reimbursement in outpatient settings. Such outpatient reimbursement will be included as part of the overall Ambulatory Patient Group (APG) payment, as applicable, via APG claim documentation of the HCPCS Level III code assigned for medical language interpretation. Federal reforms implemented under the Affordable Care Act will likely impact hospitals by increasing the number of such LEP and hearing disabled populations seeking medical care, making it essential for hospitals to be able to adapt to the changing demographics of their patients.

COSTS:

Costs to Private Regulated Parties:

There will be no additional costs to private regulated parties. The regulation establishes a payment rate to compensate providers for costs related to providing language interpretation services to patients with LEP and communication services to patients who are deaf and hard of hearing.

Costs to State Government:

The enacted state budget for SFY 2013-14 included an appropriation specific to cover the anticipated 12 month total incremental cost to the Medicaid Program for providing reimbursement for language assistance services. However, as the payments will not commence until the new regulation takes effect (upon filing) the actual expenditures in the current SFY are anticipated to be significantly less than the appropriated amount. There are no other anticipated incidental increases in State expenditures anticipated as a result of this regulation.

Costs of Local Government:

Local districts' share of Medicaid costs is statutorily capped; therefore, there will be no additional costs to local governments as a result of this proposed regulation.

Costs to the Department of Health:

There will be no additional administrative costs to the Department of Health as a result of this proposed regulation.

Local Government Mandates:

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

Paperwork:

There is no additional paperwork required of providers as a result of this proposed regulation.

Duplication:

This regulation does not duplicate any existing federal, state or local government regulation.

Alternatives:

No significant alternatives are available. The MRT Health Disparities Workgroup collaborated with the various hospital and industry stakeholders to develop recommendations to advise the Department of Health on ways to reduce health disparities through improved language access. The enhanced reimbursement available to hospitals as a result of this proposed regulation will help them ensure that appropriate language and communication services are readily available to meet the needs of the diverse patient populations they serve.

Federal Standards:

The proposed regulation does not exceed any minimum standards of the federal government for the same or similar subject areas.

Compliance Schedule:

The proposed regulation establishes a new hospital inpatient payment rate. There is no period of time necessary for regulated parties to achieve compliance with the regulation.

Regulatory Flexibility Analysis

A Regulatory Flexibility Analysis for Small Businesses and Local Governments is not required pursuant to Section 202-b(3)(a) of the State Administrative Procedures Act. It is apparent from the nature of the proposed rule that it does not impose any adverse economic impact on small businesses or local governments, and will not impose any reporting, recordkeeping, or other compliance requirements on small businesses or local governments. The proposed rule establishes a new hospital inpatient payment rate to reimburse hospitals for the costs of providing language interpretation services to patients with limited English proficiency and communication services for patients who are deaf and hard of hearing. In collaboration with various hospital and industry stakeholders, the State's Medicaid Redesign Team (MRT) Health Disparities Workgroup developed recommendations to advise the Department of Health on ways to reduce health disparities through improved language access. This language assistance payment rate regulation is based on the final recommendations submitted by the MRT Health Disparities Workgroup to help improve access to care throughout the state. The regulation provides hospitals with additional reimbursement specific to the provision of language assistance services of up to \$22 per inpatient day. This additional reimbursement will help ensure that appropriate language and communication services are readily available to meet the needs of the diverse patient populations they serve.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis is not required pursuant to Section 202-bb(4)(a) of the State Administrative Procedure Act. It is apparent from the nature of the proposed rule that it does not impose any adverse economic impact on rural areas, and will not impose any reporting, recordkeeping, or other compliance requirements on public or private entities in rural areas. The proposed rule establishes a new hospital inpatient payment rate to reimburse hospitals for the costs of providing language interpretation services to patients with limited English proficiency and communication services for patients who are deaf and hard of hearing. In collaboration with various hospital and industry stakeholders, the State's Medicaid Redesign Team (MRT) Health Disparities Workgroup developed recommendations to advise the Department of Health on ways to reduce health disparities through improved language access. This language assistance payment rate regulation is based on the final recommendations submitted by the MRT Health Disparities Workgroup to help improve access to care throughout the state. The regulation provides hospitals with additional reimbursement specific to the provision of language assistance services of up to \$22 per inpatient day. This additional reimbursement will help ensure that appropriate language and communication services are readily available to meet the needs of the diverse patient populations they serve.

Job Impact Statement

A Job Impact Statement is not required pursuant to Section 201-a(2)(a) of the State Administrative Procedure Act. It is apparent from the nature and purpose of the proposed rule that it will not have a substantial adverse impact on jobs or employment opportunities. The proposed regulation establishes a hospital inpatient rate and payment methodology to reimburse hospitals for the costs of providing language interpretation services to patients with limited English proficiency and communication services for patients who are deaf and hard of hearing. The proposed regulation has no adverse implications for job opportunities. Rather, the additional revenue generated by hospitals as a result of the new payment rate may provide them with the financial resources they need to add Language Assistance Program staff, thus enhancing their ability to provide for language and communication assistance services.

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

Nursing Home (NH) Transfer and Discharge Rights

I.D. No. HLT-40-14-00017-P

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

Proposed Action: Amendment of section 415.3 of Title 10 NYCRR.

Statutory authority: Public Health Law, sections 2801, 2801-a and 2803(2)

Subject: Nursing Home (NH) Transfer and Discharge Rights.

Purpose: To clarify requirements governing NH transfers and discharges so that facilities will uniformly comply with Federal regulations.

Substance of proposed rule (Full text is posted at the following State website: www.health.ny.gov): The amendments to section 415.3 of Title 10 (Health) NYCRR are required to clarify the requirements for transfer and discharge of residents from nursing homes as mandated by federal law. The amendments more clearly define what constitutes a transfer or discharge, specify the elements that must be included in a notice of transfer or discharge to the resident and the deadlines for service of notice, and clarify the rights of a resident at a hearing should one be requested. These amendments do not change existing requirements; they simply ensure that the Department's regulations clearly reflect the existing federal requirements.

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.

Regulatory Impact Statement

Statutory Authority:

The statutory authority for this rule is Public Health Law, Sections 2801, 2801-a and 2803(2), which require the Public Health and Health Planning Council to promulgate regulations, subject to the Commissioner's approval, governing the standards and procedures followed by nursing homes. Those standards and procedures must, at a minimum, meet federal standards.

Legislative Objectives:

To clarify, in accordance with a Stipulation of Settlement in *Gautam, et. al. v. Novello, et. al.*, SDNY 03 Civ. 2473(THK), the requirements that must be met by nursing homes in connection with the transfer or discharge of residents. The state's regulations governing transfer and discharge must meet, at a minimum, federal standards.

Needs and Benefits:

Since July 2005, transfer and discharge of nursing home residents has been in accordance with an interim policy that clarifies state requirements in a way that ensures compliance with federal requirements. Amending 10 NYCRR 415.3 in accordance with the interim policy will permanently clarify the requirements that must be met by nursing homes prior to transferring and discharging patients and will ensure that all required policies and procedures are clearly included in the Department's regulations.

Costs:

Costs to Regulated Parties for the Implementation of and Continuing Compliance with the Rule:

Nursing homes are already required to comply with federal regulations prior to transferring and discharging residents. These regulations do not expand upon already existing requirements.

Costs to the Agency, the State and Local Governments for the Implementation and Continuation of the Rule:

The amendments to 10 NYCRR 415.3 will not increase any costs currently borne by the Department or state and local governments. The amendments clarify existing requirements that all facilities are required to follow.

The information, including the source(s) of such information and the methodology upon which the cost analysis is based:

Cost analysis is based on the substance of the regulations and the interim policy clarifying those regulations. There has been no change in the requirements that must be met by all affected entities.

Local Government Mandates:

Local governments that operate nursing homes are already complying with the requirements clarified by these amendments.

Paperwork:

The paperwork required by these amendments has not changed.

Duplication:

These amendments do not duplicate existing regulations or requirements.

Alternatives:

None. The amendments simply clarify state requirements by ensuring the Department's regulations clearly incorporate existing federal mandates.

Federal Standards:

Federal requirements, upon which these amendments are based, are located at 42 CFR Parts 431 and 483. These amendments do not expand upon these requirements.

Compliance Schedule:

Affected entities are already required to comply with the proposed amendments.

Regulatory Flexibility Analysis

Effect of Rule:

Local governments will not be affected by this rule except to the extent that they operate a nursing home. There are 34 counties that operate nursing homes. The Department does not have information regarding the number of small business nursing homes in NYS readily available. As the amendments do not add to or change existing requirements, and are mandated by federal law, small businesses and local governments will not be affected.

Compliance Requirements:

There are no new reporting and record keeping requirements. The regulations simply clarify state requirements by ensuring the Department's regulations clearly incorporate existing federal mandates.

Professional Services:

No additional professional staff is expected to be needed as a result of the regulations.

Compliance Costs:

There are no new or additional costs associated with these proposed rules.

Economic and Technological Feasibility:

These regulations simply clarify existing requirements. They do not require any new technology and should not affect the routine cost of doing business.

Minimizing Adverse Impact:

The Department has no flexibility with respect to these regulations as all requirements are mandated by federal law. Nonetheless, the rule will have no adverse economic impact on small businesses or local governments since it simply clarifies state requirements by ensuring the Department's regulations clearly incorporate existing federal mandates.

Small Business and Local Government Participation:

The Department will meet the requirements of SAPA § 202-b(6) in part by publishing a notice of proposed rulemaking in the State Register with a comment period. Input was not requested with respect to these amendments since they reflect federal mandates. The proposed rules are not expected to have a deleterious effect on small businesses and local governments, since these requirements are already in effect. Accordingly, opposition is not expected.

Rural Area Flexibility Analysis

Types and Estimated Numbers of Rural Areas:

Rural areas are defined as counties with a population less than 200,000 and, for counties with a population greater than 200,000, includes towns with population densities of 150 persons or less per square mile. The proposed amendment will apply statewide, including the 43 rural counties with less than 200,000 inhabitants, and the 10 urban counties with a population density of 150 per square mile or less.

Reporting, Recordkeeping and Other Compliance Requirements and Professional Services:

There are no new or additional requirements as a result of this rule. The regulations simply clarify state requirements by ensuring the Department's regulations clearly incorporate existing federal mandates.

Costs:

There are no capital costs associated with these rules. There are no additional operational costs as providers are currently required to have policies and procedures in place to implement existing transfer and discharge requirements. Any administrative costs associated with transfer or discharge are mandated by federal law.

Minimizing Adverse Impact:

The Department has no flexibility with respect to these regulations as all requirements are mandated by federal law. Nonetheless, the rule will have no adverse economic impact on rural area providers since it simply clarifies state requirements by ensuring the Department's regulations clearly incorporate existing federal mandates.

Rural Area Participation:

The Department will meet the requirements of SAPA Section 202-bb(7), in part, by publishing a notice of proposed rulemaking in the State

Register with a comment period. The Department did not solicit input regarding these amendments since they reflect federal mandates. The proposed rules are not expected to have a deleterious effect on rural areas, since these requirements are already in effect. Accordingly, opposition is not expected.

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.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Managed Care Organizations

I.D. No. HLT-40-14-00018-P

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

Proposed Action: Amendment of section 98-1.11 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 4403(2)

Subject: Managed Care Organizations.

Purpose: To lower the contingent reserve requirement applied to the Medicaid Managed Care, Family Health Plus and HIV SNP Programs.

Text of proposed rule: Section 98-1.2 is amended to add the following definition:

HARP (Health and Recovery Plan) – A line of business operated by a Managed Care Organization (MCO) to administer the full continuum of mental health, substance use disorder, and physical health services covered under the Medicaid State Plan as well as the enhanced Home and Community Based Services benefits (1915(i)) for adults with serious mental illness (SMI) and/or Substance Use Disorders (SUDs) who meet eligibility requirements.

Subparagraph (ii) of paragraph (1) of subdivision (e) of section 98-1.11 is amended to read as follows:

(ii) Notwithstanding the provisions of subparagraph (i) above, the contingent reserve applicable to net premium income generated from the Medicaid managed care, Family Health Plus, HIV SNP, and Health and Recovery Plans (HARPs) programs shall be:

- (a) 7.25 percent of net premium income for 2011;
- (b) 7.25 percent of net premium income for 2012;
- (c) [8.25] 7.25 percent of net premium income for 2013;
- (d) [9.25] 7.25 percent of net premium income for 2014;
- (e) [10.25] 7.25 percent of net premium income for 2015;
- (f) [11.25] 8.25 percent of net premium income for 2016;
- (g) [12.25] 9.25 percent of net premium income for 2017;
- (h) [12.5] 10.25 percent of net premium income for 2018;
- (i) 11.25 percent of net premium income for 2019
- (j) 12.5 percent of net premium income for 2020;
- (k) 12.5 percent of net premium income for calendar years after 2020.

The provisions of this subparagraph shall not apply to HMOs and PHSPs beginning operations in 2011 or after.

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

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

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

Regulatory Impact Statement

Statutory Authority:

Public Health Law section 4403(2) states the Commissioner may adopt and amend rules and regulations pursuant to the state administrative procedures act to effectuate the purposes and provisions of Article 44, which governs the certification and operational requirements of Managed Care Organizations (MCOs).

Legislative Objectives:

10 NYCRR 98 was extensively amended in 2005 to further implement the provisions of Article 44 of the Public Health Law. The proposed amendment to § 98-1.11(e) allows implementation of certain provisions of the state fiscal year (SFY) 2012-2013 and 2013-2014 budgets and continues the Medicaid Redesign Team Proposal #6 (2% reduction in Medicaid premium rates) by temporarily reducing the contingent reserve requirements applied to premium revenues from the Medicaid Managed Care (MMC), Family Health Plus (FHP) and HIV Special Needs Plan (SNP) programs.

Needs and Benefits:

The approved SFY 2011-2012 and SFY 2012-2013 NYS Budgets incorporated a proposal from the Medicaid Redesign Team that reduced the premium rates of MMC, FHP and HIV SNP managed care plans by 2%. This was accomplished by lowering the rate component for surplus/reserves from 3% to 1% effective April 1, 2011.

The actuarial firm employed by the Department of Health (DOH), Mercer Consulting, must certify the actuarial soundness of the premium rates to Centers for Medicare and Medicaid Services (CMS). Mercer determined that reducing the rate component for surplus/reserves by 2% would result in rates that were not actuarially sound, as such rates would be insufficient to support the contingent reserve requirement specified in § 98-1.11(e)(1). As a result, Mercer recommended that the contingent reserve requirement for Medicaid product lines be reduced from 10.5% to 7.25% of premium revenue. This change was implemented in revised regulations promulgated on an emergency basis effective July 7, 2011 and adopted permanently on February 15, 2012. The 2% reduction of the premium rates resulted in savings to the Medicaid program of approximately \$188 million (federal and state shares combined) in SFY 2011-2012 and \$310 million in SFY 2012-2013.

The new revision to 98-1.11(e) maintains the 7.25% contingent reserve requirement through calendar year 2015. This will permit DOH to maintain the 2% reduction in the premium rates and allow Mercer to certify the actuarial soundness of the premium rates to CMS.

Costs:

The amended regulation imposes no compliance costs on state or local governments. There will be no additional costs incurred by the Health Department or by the MCOs.

Local Government Mandates:

The regulation imposes no new programs, services, duties or responsibilities on any county, city, town, village, school district, fire district or other special district.

Paperwork:

Paperwork associated with filings to DOH or Department of Financial Services should be minimal and would be no more substantial than the current regulation.

Duplication:

These regulations do not duplicate, overlap, or conflict with existing State and federal regulations.

Alternatives:

There were minimal alternative standards considered. Revisions to § 98-1.11(e) are needed to implement provisions of SFY 2012-2013 and SFY 2013-2014 budgets.

Federal Standards:

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

Compliance Schedule:

Managed care organizations should be able to comply with the proposed regulations when they become effective.

Regulatory Flexibility Analysis

Effect of Rule:

Companies affected by the proposed regulation include all Managed Care Organizations (MCOs) certified under Article 44 of the Public Health Law. Inasmuch as most of these companies are not independently owned and operated and employ more than 100 individuals, they do not fall within the definition of "small business" found in section 102(8) of the State Administrative Procedure Act. No local governments will be affected.

Compliance Requirements:

The amended regulation would not impose additional reporting, recordkeeping or other requirements on small businesses or local governments since the provisions contained therein apply only to MCOs authorized to do business in New York State and regulated by the NYS Health and Insurance Departments.

Professional Services:

There are no professional services that will need to be provided by small businesses or local government as a result of the amended regulation.

Compliance Costs:

The amended regulation would not impose any new reporting, recordkeeping or other requirements on small businesses or local governments.

Economic and Technological Feasibility:

There are no compliance requirements for small businesses or local governments.

Minimizing Adverse Impacts:

The amendment will have no adverse impact on small businesses or local governments since the provisions contained therein apply only to regulated MCOs authorized to do business in New York State.

Small Business and Local Government Participation:

As the amendments have no impact on small businesses or local governments, no input was sought from these entities.

Rural Area Flexibility Analysis

Types and Estimated Number of Rural Areas:

Companies affected by the proposed regulation include all Managed

Care Organizations (MCOs) certified under Article 44 of the Public Health Law. The companies affected by this regulation do business in certain "rural areas" as defined under section 102(1) of the State Administrative Procedure Act, although none do so exclusively or have a significant portion of their business in rural areas. Some of the home offices of these companies may lie within rural areas. Further, companies may establish new office facilities and/or relocate in the future depending on their requirements and needs.

Reporting, Recordkeeping and Other Compliance Requirements:

None of the compliance requirements are significantly different from requirements presently contained in Part 98 and none pertain exclusively to rural areas. The amendments should not impose any significant additional paperwork, recordkeeping or compliance requirements upon any regulated party.

Costs:

The amended regulation imposes no additional compliance costs on MCOs or state and local governments.

Minimizing Adverse Impact:

The proposed regulation applies to all MCOs certified under Article 44 to do business in New York State, including rural areas. It does not impose any adverse impacts unique to rural areas.

Rural Area Participation:

In developing the amended regulation, the Health Department conducted outreach to regulated managed care organizations authorized to do business throughout New York State, including those located or domiciled in rural areas.

Job Impact Statement

Nature of Impact:

The Health Department finds that these amendments will have no adverse impact on jobs and employment opportunities.

Categories and Numbers Affected:

Not Applicable.

Regions of Adverse Impact:

No region in New York should experience an adverse impact on jobs and employment opportunities.

Minimizing Adverse Impact:

The Health Department finds that these amendments will have no adverse impact on jobs and employment opportunities.

Office of Mental Health

NOTICE OF ADOPTION

Medical Assistance Payment for Outpatient Programs and COPS

I.D. No. OMH-30-14-00018-A

Filing No. 834

Filing Date: 2014-09-22

Effective Date: 2014-10-08

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

Action taken: Amendment of Part 588; and repeal of Part 592 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 7.09, 31.04 and 43.02

Subject: Medical Assistance Payment for Outpatient Programs and COPS.

Purpose: Amend Part 588 by increasing Medicaid fees paid to OMH-licensed day treatment programs for children and repeal outdated rule.

Text or summary was published in the July 30, 2014 issue of the Register, I.D. No. OMH-30-14-00018-EP.

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

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

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 agency received no public comment.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Clinic Treatment Programs

I.D. No. OMH-40-14-00007-P

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

Proposed Action: This is a consensus rule making to amend Part 599 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 7.09, 31.04, 43.01, 43.02; and Social Services Law, sections 364, 364-a and 364-j

Subject: Clinic Treatment Programs.

Purpose: Adjust billing units associated with reimbursement of clinic service; allow flexibility in delivery of complex care management.

Text of proposed rule: 1. Subdivision (l) of section 599.4 of Title 14 NYCRR is amended to read as follows:

(l) Complex care management means an ancillary service to psychotherapy, *psychotropic medication treatment*, or crisis intervention services. It is provided by a clinician in person or by telephone, with or without the client. It is a clinical level service which is required as a follow up to psychotherapy, *psychotropic medication treatment*, or crisis intervention service for the purpose of preventing a change in community status or as a response to complex conditions.

2. Subdivision (c) of section 599.14 of Title 14 NYCRR is amended to read as follows:

(c) Medicaid claims may be submitted for no more than three services per day for any individual, not including crisis *intervention or complex care management* services. For the purposes of this subdivision, psychotropic medication treatment, injectable psychotropic medication administration, [and] injectable psychotropic medication administration with monitoring and education, *and complex care management* services may be counted as either health services or psychiatric services. No more than one health physical may be claimed in one year. Medicaid claims may be submitted for no more than one off-site service per child, per day, excluding crisis *intervention* services.

3. Paragraph (9) of subdivision (d) of Section 599.14 of Title 14 NYCRR is amended to read as follows:

(9) [Complex] *Effective October 1, 2014, complex care management* must be provided within [five working] *fourteen calendar* days following a face-to-face psychotherapy, *psychotropic medication treatment*, or crisis *intervention* service. [Only one] *A maximum of four units of at least five consecutive minutes of complex care [procedure shall] management may be billed following each face-to-face psychotherapy, psychotropic medication treatment, or crisis intervention service. [To bill medical assistance, this service requires at least 15 minutes of continuous time, not including standard reporting writing or brief follow-up calls.] Each full five-minute unit may be provided on separate days within the 14-calendar day limit, with a maximum of four full five-minute units associated with each eligible clinic visit. The time spent documenting the provision of complex care management or in other documentation activities shall not be included in the calculation of time for the purposes of billing of complex care management.*

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

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

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

Consensus Rule Making Determination

This proposal is filed as a Consensus rule on the grounds that it is non-controversial and makes minor technical corrections. No person is likely to object to this proposed rule since it merely adjusts the billing units associated with the reimbursement of a clinic service and allows flexibility in the delivery of complex care management.

14 NYCRR Part 599 sets forth standards for the certification, operation and reimbursement of clinic treatment programs serving adults and children. It has been four years since the Office of Mental Health (OMH) adopted 14 NYCRR Part 599 to establish a new, redesigned clinic structure. Since that time, based on provider feedback, OMH has amended the clinic regulations on several occasions. These technical changes are a continuation of this process.

Under existing regulations, complex care management is a clinical level service that must be provided for at least 15 continuous minutes and within five working days following a face-to-face psychotherapy or crisis service.

OMH received feedback from providers stating that the five-day time frame for performance of complex care management is insufficient and that the requirement that this service be performed for 15 continuous minutes is untenable. Providers need flexibility to complete tasks (e.g., phone calls) that cannot necessarily be completed in 15 continuous minutes or within five days. To address these issues and provide regulatory relief, this proposal will allow for 14 calendar days for this service to be provided subsequent to a face-to-face psychotherapy, psychotropic medication treatment, or crisis intervention service. This amendment adds psychotropic medication management as a service that is eligible for complex care management. In addition, the APG billing weights have been adjusted to allow for a maximum of four units (five minutes each) instead of one 15-minute unit per day for performance of complex care management. Each full five-minute unit may be provided on separate days within the 14-day limit, with a maximum of four full five-minute units associated with each eligible clinic visit. These regulatory amendments will be retroactive to October 1, 2014.

Statutory Authority: Sections 7.09 and 31.04 of the Mental Hygiene Law grant the Commissioner of Mental Health the power and responsibility to adopt regulations that are necessary and proper to implement matters under his or her jurisdiction, to set standards of quality and adequacy of facilities, equipment, personnel, services, records and programs for the rendition of services for adults diagnosed with mental illness or children diagnosed with emotional disturbance, pursuant to an operating certificate. Section 364-j of the Social Services Law requires the establishment of managed care programs throughout the State and provides for the provision of special care services to enrollees in Medicaid managed care programs who require such services. Sections 364 and 364-a of the Social Services Law give the Office of Mental Health responsibility for establishing and maintaining standards for medical care and services in facilities under its jurisdiction, in accordance with cooperative arrangements with the Department of Health. Section 43.01 of the Mental Hygiene Law gives the Commissioner the authority to set rates for outpatient services at facilities operated by the Office of Mental Health. Section 43.02 of the Mental Hygiene Law provides that payments under the medical assistance program for outpatient services at facilities licensed by the Office of Mental Health shall be at rates certified by the Commissioner of Mental Health and approved by the Director of the Budget.

Job Impact Statement

The amendments to 14 NYCRR Part 599 serve to adjust the billing units associated with the reimbursement of a clinic service and allow for flexibility in the delivery of complex care management. The amendments are intended to provide regulatory relief to clinic providers. As it is evident from the subject matter that there will be no adverse impact on jobs and employment opportunities as a result of these amendments, a Job Impact Statement is not submitted with this notice.

Public Service Commission

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

To Consider Granting Authorization for Buy Energy Direct to Resume Marketing to Residential Customers

I.D. No. PSC-40-14-00008-P

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

Proposed Action: The Commission is considering a petition filed by Buy Energy Direct, LLC, which seeks authorization to resume marketing to residential customers, including telephone marketing.

Statutory authority: Public Service Law, section 5(1)(b)

Subject: To consider granting authorization for Buy Energy Direct to resume marketing to residential customers.

Purpose: To consider granting authorization for Buy Energy Direct to resume marketing to residential customers.

Substance of proposed rule: On October 11, 2013, the Public Service Commission (Commission) issued an Order in Case 13-M-0331 ordering Buy Energy Direct, LLC (Buy Energy) to use its enhanced marketing practices for marketing to non-residential customers and prohibiting Buy Energy from marketing to residential customers without further Commission action. The Commission is now considering whether to adopt, modify,

or reject in whole or in part, the proposal set forth by Buy Energy in a petition dated September 12, 2014, seeking approval to resume marketing to residential customers.

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.

(13-M-0331SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Whether to Permit the Use of the Itron Open Way Centron Meter with Hardware 3.1 for AMR and AMI Functionality

I.D. No. PSC-40-14-00009-P

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

Proposed Action: The Public Service Commission is considering whether to approve, deny or modify, in whole or in part, a petition filed by Itron Incorporated for approval to use the Itron Open Way Centron Meter with Hardware 3.1 for AMR and AMI functionality.

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

Subject: Whether to permit the use of the Itron Open Way Centron Meter with Hardware 3.1 for AMR and AMI functionality.

Purpose: Pursuant to 16 NYCRR Parts 93, is necessary to permit the use of the Itron Open Way Centron Meter with Hardware 3.1.

Substance of proposed rule: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by Itron Incorporated to use the Itron Open Way Centron commercial meter with Hardware 3.1. According to Itron, the Open Way Centron Meter will support two communication options; Automatic Meter Reading – AMR and Automatic Metering Infrastructure – AMI technology. The Itron Open Way Centron Bridge meter will operate under an Automatic Meter Reading – AMR one way data transmission format. When a utility migrates to Automatic Metering Infrastructure – AMI a soft switch can be activated for Open Way Centron AMI functionality to provide two way data acquisition. The Commission will decide whether to grant, deny or modify, in whole or in part, Itron'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, 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-0414SP1)

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

Notice of Intent to Submeter Electricity

I.D. No. PSC-40-14-00010-P

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

Proposed Action: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the Notice of Intent to Submeter electricity filed by Kimball Brooklands Corporation for the premises located at 1000 Palmer Road, Bronxville, New York.

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: Notice of Intent to Submeter electricity.

Purpose: To consider the request of Kimball Brooklands Corporation to submeter electricity at 1000 Palmer Road, Bronxville, New York.

Substance of proposed rule: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the Notice of Intent to Submeter electricity filed by Kimball Brooklands Corporation for the premises located at 1000 Palmer Road, Bronxville, New York, located in the territory of Consolidated Edison Company, Inc., and to take other actions necessary to address the petition.

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

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

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

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

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

(14-E-0096SP1)

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

Late Payment Charge

I.D. No. PSC-40-14-00011-P

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

Proposed Action: The Commission is considering a proposal filed by Orange and Rockland Utilities, Inc. to make a change to the rates, charges, rules and regulations contained in its Schedule for Electric Service P.S.C. No. 3.

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

Subject: Late Payment Charge.

Purpose: To modify section 7.6 — Late Payment Charge to designate a specific time for when a late payment charge is due.

Substance of proposed rule: The Public Service Commission is considering whether to approve, modify or reject, in whole or in part, a tariff filing by Orange and Rockland Utilities, Inc. (O&R) to modify its tariff for electric service. Specifically, O&R proposes to modify General Information Section 7.6 — Late Payment Charge, to designate a specific time for when the late payment charge is due. O&R proposes to revise its tariff and bill message to state that a late payment charge will begin to be assessed if payment is not received on or before 3:00 pm local time of the past due date indicated on the bill. The amendments have an effective date of December 15, 2014. The Commission may also consider other related matters.

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

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

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

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

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

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

(14-E-0418SP1)

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

Capacity Related Costs

I.D. No. PSC-40-14-00012-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, reject or modify, in whole or in part, a proposal by Orange and Rockland Utilities Inc., to make revisions to the rates, charges, rules and regulations contained in PSC No. 3 — Electricity.

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

Subject: Capacity related costs.

Purpose: To modify General Information Section No. 15 — Market Supply Charge for capacity related cost.

Substance of proposed rule: The Public Service Commission is considering whether to approve, modify or reject, in whole or in part, a tariff filing by Orange and Rockland Utilities, Inc. (O&R). The filing requests approval to modify its General Information Section No. 15 — Market Supply Charge for capacity related costs to P.S.C. No. 3 — Electricity. O&R proposes to revise its description of the Market Supply Charge for capacity related costs due to the New York Independent System Operator's (NYISO) new capacity zone, G-J Locality. As a result of the NYISO change, O&R will be required to procure a percentage of its capacity requirement from suppliers electrically located with the G-J Locality. O&R proposes to make tariff revisions to reflect its required capacity purchases prior to the start of each summer and winter capability period due to the establishment of the new NYISO Capacity Zone. The amendments have an effective date of December 14, 2014. The Commission may also consider other related matters.

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

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

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

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

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

(14-E-0420SP1)

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

Regulation of a Proposed Natural Gas Pipeline and Related Facilities Located in the Town of Ticonderoga, NY

I.D. No. PSC-40-14-00013-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

Vermont Gas Systems, Inc., requesting an order that its ownership and operation of a natural gas pipeline and related facilities in the Town of Ticonderoga, Essex County, be subject to lightened regulation.

Statutory authority: Public Service Law, sections 2(11), 5(1)(b), 64-69, 69-a, 70, 105-114, 114-a, 115, 117, 118, 119-b, and 119-c

Subject: Regulation of a proposed natural gas pipeline and related facilities located in the Town of Ticonderoga, NY.

Purpose: To consider regulation of a proposed natural gas pipeline and related facilities located in the Town of Ticonderoga, NY.

Substance of proposed rule: The Public Service Commission is considering a petition filed by Vermont Gas Systems, Inc. (VGS, petitioner) on September 16, 2014 requesting that its ownership and operation of a proposed natural gas pipeline and related facilities be subject to lightened regulation. The proposed pipeline will extend approximately 1,830 feet from the Vermont border to International Paper Company's property in Ticonderoga, New York. A proposed metering and regulation station will be constructed on the property of International Paper Company, from which two distribution lines will run to International Paper Company's facilities. International Paper Company would be VGS's only customer in New York. The petitioner is also requesting the issuance of licenses (consisting of a Certificate of Public Convenience and Necessity pursuant to Public Service Law § 68 and, in Case 14-T-0406, a Certificate of Environmental Compatibility and Public Need, pursuant to Public Service Law Article VII) to construct, operate and own the proposed pipeline and related facilities. The Commission may adopt, reject or modify, in whole or in part, the relief proposed and may resolve related matters.

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

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

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

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

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

(14-G-0416SP1)

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

Waiver of 16 NYCRR Sections 894.1 Through 894.4(b)(2)

I.D. No. PSC-40-14-00014-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, modify, or reject a petition from the Town of Goshen, Orange County, to waive 16 NYCRR sections 894.1 through 894.4 pertaining to the franchising process.

Statutory authority: Public Service Law, section 216(1)

Subject: Waiver of 16 NYCRR Sections 894.1 through 894.4(b)(2).

Purpose: To allow the Town of Goshen, NY, to waive certain preliminary franchising procedures to expedite the franchising process.

Substance of proposed rule: The Public Service Commission is considering whether to approve, modify, or reject the Petition of the Town of Goshen, Orange County, to waive the requirements of 16 NYCRR sections 894.1 through 894.4 to expedite the franchising process.

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-V-0367SP1)

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

Late Payment Charge

I.D. No. PSC-40-14-00015-P

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

Proposed Action: The Commission is considering a proposal filed by Orange and Rockland Utilities, Inc. to make a change to the rates, charges, rules and regulations contained in its Schedule for Gas Service P.S.C. No. 4.

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

Subject: Late Payment Charge.

Purpose: To modify Section 6.6 — Late Payment Charge to designate a specific time for when a late payment charge is due.

Substance of proposed rule: The Public Service Commission is considering whether to approve, modify or reject, in whole or in part, a tariff filing by Orange and Rockland Utilities, Inc. (O&R) to modify its tariff for gas service. Specifically, O&R proposes to modify General Information Section 6.6 — Late Payment Charge, to designate a specific time for when the late payment charge is due. O&R proposes to revise its tariff and bill message to state that a late payment charge will begin to be assessed if payment is not received on or before 3:00 pm local time of the past due date indicated on the bill. The amendments have an effective date of December 15, 2014. The Commission may also consider other related matters.

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

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

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

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

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

(14-G-0419SP1)

Department of State

**PROPOSED RULE MAKING
HEARING(S) SCHEDULED**

Minimum Standards for Code Enforcement Training

I.D. No. DOS-40-14-00020-P

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

Proposed Action: Repeal of Parts 434, 435 and 1208; and addition of new Part 1208 to Title 19 NYCRR.

Statutory authority: Executive Law, sections 376-a and 381

Subject: Minimum standards for code enforcement training.

Purpose: To establish minimum training standards so as to increase the level of competency and reliability of code enforcement personnel.

Public hearing(s) will be held at: 10:00 a.m., November 25, 2014 at Department of State, 99 Washington Ave., Rm. 505, Albany, NY.

Interpreter Service: Interpreter services will be made available to hearing impaired persons, at no charge, upon written request submitted within reasonable time prior to the scheduled public hearing. The written request must be addressed to the agency representative designated in the paragraph below.

Accessibility: All public hearings have been scheduled at places reasonably accessible to persons with a mobility impairment.

Substance of proposed rule (Full text is posted at the following State website: www.dos.ny.gov/DCEA/noticadopt.html): Section 376-a of the Executive Law authorizes the Secretary of State to promulgate rules and regulations relating to training of personnel charged with enforcement of the Uniform Code and/or the Energy Code, including, but not limited to, rules and regulations relating to code enforcement training programs for such code enforcement personnel; the minimum courses of study, attendance requirements, and equipment and facilities required for such code enforcement training programs; the qualifications for instructors for such code enforcement training programs; requirements of minimum basic training which code enforcement personnel must complete in order to be eligible for continued employment or permanent appointment and the time within which such basic training must be completed; and requirements for in-service training programs and advanced in-service training programs for code enforcement personnel. The rule will further the legislative objective of ensuring that administration and enforcement of the Uniform Fire Prevention and Building Code (“Uniform Code”) be conducted in a manner that satisfies the minimum standards established by the rules and regulations promulgated by the Secretary of State pursuant to Executive Law section 381 and section 376-a.

This rule will repeal 19 NYCRR Part 434, 19 NYCRR Part 435 and 19 NYCRR Part 1208. A new Part 1208 will be added to Title 19 of the Official Compilation of Codes, Rules, and Regulations of the State of New York to establish requirements for the training of code enforcement personnel that conform to the directives of Executive Law § 376-a.

Section 1208-1.1 of Part 1208 provides an introduction to the regulation and identifies its purpose as the promulgation of requirements relating to the training of code enforcement personnel who work for local governments, counties or State agencies that administer and enforce the Uniform Code and/or the State Energy Conservation Construction Code (“Energy Code”), and provides for a certification of such code enforcement personnel, the individual courses included as part of the training, and the instructors who teach such courses. Section 1208-1.2 sets forth definitions for certain terms used in the text of the regulation.

Section 1208-2.1 establishes the minimum training requirements for building safety inspectors and code enforcement officials who perform enforcement activities. In addition, the section provides that local governments, counties or State agencies that employ building safety inspectors or code enforcement officials may impose more stringent training requirements for such staff.

Section 1208-2.2 identifies the duties relating to code enforcement training of local governments, counties and State Agencies responsible for administration and enforcement of the Uniform Code and/or the Energy Code. The section requires certification of building safety inspectors and code enforcement officials designated by local governments, counties or State agencies for administration and enforcement of all or a portion of the Uniform Code and Energy Code.

Section 1208-3.1 establishes the specific requirements for certification as a building safety inspector and code enforcement official. To maintain such certification, such person must satisfy the required in-service training established in the regulation. Additionally, this section addresses the requirements for a change in the level of certification of building safety inspector and code enforcement official.

Section 1208-3.2 establishes the requirements for the basic training programs required for certification as a building safety inspector and code enforcement official. The section specifies the required training hours, the topics that need to be addressed, and the time within which each basic training program must be completed. Additionally, the section specifies the allowance and requirements for filing for a waiver for one or more of the basic training courses.

Section 1208-3.3 establishes the requirements for in-service training. To maintain certification, a certified building safety inspector or a certified code enforcement official must satisfy the applicable in-service training requirements set forth in this section. A certified building safety inspector must successfully complete a minimum of 6 hours of in-service training during each calendar year. A certified code enforcement official must successfully complete a minimum of 24 hours of in-service training each calendar year. This section specifies the topic areas and minimum hours that need to be included in the annual in-service training for both building safety inspectors and code enforcement officials. Additionally, a specified number of training hours can be met through online learning and professional development electives. This section addresses the specific

course requirements, adequate documentation, and reporting requirements associated with these alternative learning options.

Section 1208-3.4 establishes the requirements for advanced in-service training. The Secretary may from time to time require a certified building safety inspector or a certified code enforcement official to receive advanced in-service training relating to amendments, revisions, or additions to the Uniform Code and/or the Energy Code; other changes in law; development in construction technologies or techniques; or other matters which, in the opinion of the Secretary, warrant specific training. Additionally, this section provides that each hour of advanced in-service training successfully completed by a certified building safety inspector or a certified code enforcement official shall count toward satisfaction of his or her in-service training requirement for the calendar year in which such advanced in-service training is received.

Section 1208-3.5 establishes when the status of certification of a building safety inspector or a code enforcement official may be designated as inactive or be revoked. The Secretary shall designate certification of a certified building safety inspector or a certified code enforcement official as inactive, if such person fails to satisfy the applicable in-service training requirement during any calendar year or if such person fails to satisfy any applicable advanced in-service training requirement within the time specified by the Secretary. This section establishes that an adjustment and/or conditions to the inactive status, may be made by the Secretary, provided that the certified building safety inspector or certified code enforcement official documents good cause and circumstances make it impossible for the certified building safety inspector or certified code enforcement official to comply with the in-service training requirement or advanced in-service training requirement in a timely manner. Additionally, this section establishes the procedures and requirements for returning to “active” status after a certification has been designated as inactive or been revoked.

Section 1208-4.1 establishes the requirements for the certification of training courses. This section establishes minimum requirements, procedures, documentation and applications required for certifying training courses by the Department. Additionally, the section provides for revocation of certifications, specifying the reasons and procedures for a revocation by the Secretary.

Section 1208-4.2 establishes the requirements for the certification of standard instructors. This section establishes minimum requirements, procedures, documentation and applications required for certifying standard instructors by the Department. Additionally, the section provides for revocation of a certification, specifying the reasons and procedures for any such revocation.

Section 1208-4.3 establishes the requirements for the certification of adjunct instructors. This section establishes minimum requirements, procedures and documentation required for certifying adjunct instructors by the Department. Additionally, the section provides for revocation of a certification, specifying the reasons and procedures for any such revocation.

Section 1208-5.1 establishes requirements for any application made under this Part for approval, certification, waiver, exemption or extension. Such applications shall be in writing and include information and documentation establishing that the applicant satisfies the required criteria.

Section 1208-5.2 provides that the Department shall maintain a list of certified building safety inspectors and certified code enforcement officials, and may post such list on the Department’s website. Additionally, this section provides that the Department may omit from such website list any certified building safety inspector or certified code enforcement official who has failed to complete required in-service or advanced in-service training or whose certification has been designated inactive or been revoked.

Section 1208-5.3 establishes the effective date of the regulation as January 1, 2015. Additionally, this section states that this Part shall supersede any and all inconsistent provisions of 19 NYCRR Part 426.

Section 1208-5.4 establishes transitional provisions for persons holding a certification issued pursuant to former 19 NYCRR Part 434 for code enforcement official, code compliance technician, standard instructor or adjunct instructor.

A copy of the rule text is posted on the Department of State’s website and is available by clicking the “draft text” link or the “full text of Draft Rule” link on the following web page: <http://www.dos.ny.gov/DCEA/noticadopt.html>.

Text of proposed rule and any required statements and analyses may be obtained from: Mark Blanke, Department of State, Division of Building Standards and Codes, One Commerce Plaza, 99 Washington Ave., Albany, NY 12231-001, (518) 474-4073, email: Mark.Blanke@dos.ny.gov

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

Public comment will be received until: Five days after the last scheduled public hearing.

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

Section 381 of the Executive Law authorizes the Secretary of State to

promulgate rules and regulations prescribing minimum standards for administration and enforcement of the Uniform Fire Prevention and Building Code (the Uniform Code) and the State Energy Conservation Construction Code (the Energy Code). This Part includes that portion of the rules and regulations promulgated pursuant to Section 381 of the Executive Law that relates to the qualifications of code enforcement personnel who work for local governments, counties or State agencies that administer and enforce the Uniform Code and/or Energy Code and provides for such staff to be certified pursuant to the statute.

Section 376-a of the Executive Law authorizes the Secretary of State to promulgate rules and regulations relating to training of personnel charged with enforcement of the Uniform Code and/or the Energy Code, including, but not limited to, rules and regulations relating to code enforcement training programs for such code enforcement personnel; the minimum courses of study, attendance requirements, and equipment and facilities required for such code enforcement training programs; the qualifications for instructors for such code enforcement training programs; requirements of minimum basic training which code enforcement personnel must complete in order to be eligible for continued employment or permanent appointment and the time within which such basic training must be completed; and requirements for in-service training programs and advanced in-service training programs for code enforcement personnel. The proposed rule addresses the various components of code enforcement training identified in Executive Law section 376-a.

2. LEGISLATIVE OBJECTIVES:

This rule will further the legislative objective of ensuring that administration and enforcement of the Uniform Code be conducted in a manner that satisfies the minimum standards established by the rules and regulations promulgated by the Secretary of State pursuant to Executive Law section 381 and section 376-a. Parts 434 and 435 of Title 19 of the Official Compilation of Codes, Rules, and Regulations of the State of New York ("Part 434" and "Part 435") currently provide standards for training applicable to code enforcement personnel in the State of New York. Part 1208 of Title 19 of the Official Compilation of Codes, Rules, and Regulations of the State of New York ("Part 1208") establishes that code enforcement personnel who are charged with enforcement of the Uniform Code are required to comply with the standards established by Part 434. However, Parts 434, 435 and 1208 do not include all of the features which are now directed to be included by the Executive Law. This rule would repeal Part 434, Part 435 and Part 1208 and would add a new 19 NYCRR Part 1208 to make the features of the DOS code education program substantially improved, and ensure that the administration and enforcement of the Uniform Code and the education of code enforcement personnel will be conducted in a manner that satisfies the directives of Executive Law sections 381 and 376-a.

3. NEEDS AND BENEFITS:

The purpose of the proposed rule is to establish uniform minimum training standards designed to increase the level of competency and reliability of code enforcement personnel, to improve and expand the professional training available to such personnel, to encourage the active participation of local governments in the code enforcement training standards process, and to develop training criteria that will enhance each local government's ability to protect the lives and property of its citizens from improper construction, fire and other related hazards.

Due to reorganization of the Department of State, the State Fire Administrator now resides within the Division of Homeland and Security; therefore changes to Department of State regulations are necessary. The statutory responsibility for promulgating and maintaining code enforcement personnel training now resides with the Secretary of State. Revised regulations need to incorporate these changes. A proposed new rule was developed that would best serve the interests of the code enforcement community. In drafting the proposed rule, the Department of State established a Code Enforcement Training Work Group. This work group consisted of representatives from: New York State Building Officials Conference, New York State Association of Fire Chiefs, New York State Association of Fire Districts, New York State Fire Marshals and Inspectors Association, Firemen's Association of the State of New York, Municipal Code Enforcement and Municipal Fire Departments. The group considered the existing provisions, as well as, recommending provisions that best serve their represented and regulated parties.

The current regulations (Part 434 and Part 1208) do not include all of the features which should be included in a code enforcement personnel training program and have some inconsistencies. This rule would repeal Parts 434 and 1208 and adopt a new Part 1208 to make the features of the DOS code education program substantially improved to ensure that administration and enforcement of the Uniform Code and education of code enforcement personnel will be conducted in a manner that satisfies the minimum standards for administration and enforcement of the Uniform Code by local governments, counties, and State agencies established by the Secretary of State pursuant to Executive Law section 381.

The proposed rule corrects existing inconsistencies, provides further clarification on existing requirements and includes expanded training requirements on the Energy Code. The proposed rule will establish basic training programs for code enforcement personnel; establish annual in-service training requirements and advanced in-service training requirements for code enforcement personnel; provide for certification of code enforcement personnel who complete the basic training program; require code enforcement personnel to maintain their certification by satisfying the annual in-service training requirements and any advanced in-service training requirements; provide for revocation and inactive status of code enforcement personnel certifications; and provide approval and certification of training courses, standard instructors and adjunct instructors.

The proposed rule will introduce the concept of two levels of code enforcement personnel certification. Building safety inspector certification will be equivalent to the code compliance technician certification under 19 NYCRR Part 426. Code enforcement official certification will be equivalent to code enforcement official certification under 19 NYCRR Part 434. The proposed rule will establish different basic training programs and different in-service training and advanced in-service training requirements for each level of certification.

The proposed rule provides for advancement in technologies in regards to online training. Existing regulation limits the amount of in-service hours that a code enforcement official can obtain online to 6 hours annually. The proposed rule allows code enforcement personnel to obtain all of the required annual in-service training online. This not only provides flexibility in obtaining annual in-service training for the regulated parties, but also offers the savings of travel expenses associated with traditional instructor led classes.

Among the benefits expected from the adoption of the proposed rulemaking are the added flexibility for a code enforcement personnel to obtain in-service training, considerations in advancement in technologies and additional training opportunities.

4. COSTS:

(a) Costs to Regulated Parties.

Basic and advanced in-service training are currently provided at no cost to regulated parties by the Department of State. In-service training is normally provided on a limited basis by the Department of State at no cost. Regulated parties that are unable to attend these classes have several other options for obtaining their annual in-service training. Many manufacturers and other organizations offer training at no cost. These courses are offered on a limited basis and are limited in the number of hours available. Additional training is offered through local, state and national trade organizations which include monthly meetings and annual conferences. The cost associated with the training varies, but can cost anywhere from \$10 per credit hour up to \$15 per credit hour. Additionally, the proposed rule allows regulated parties to obtain the 24 hours of annual in-service training through online learning. The current regulations limit online learning to 6 hours annually. The proposed rule will allow regulated parties the flexibility to obtain training without the need for travel expense.

(b) Costs to the Department of State and the State of New York.

Neither the Department of State nor the State of New York will incur any cost in implementing this rule.

(c) Costs to local governments.

In general, though not mandated, local governments have historically absorbed the cost of training for their appointed code enforcement personnel. The new options included in this rule could decrease the cost to local governments.

5. PAPERWORK:

This rule will not impose any new reporting requirements.

6. LOCAL GOVERNMENT MANDATES:

This rule will not impose any new program, service, duty or responsibility upon any county, city, town, village, school district, fire district or other special district.

7. DUPLICATION:

The rule does not duplicate any existing Federal or State requirement.

8. ALTERNATIVES:

The alternative of making no change to Part 434 and Part 1208 was considered. However, due to reorganization of the Department of State, the State Fire Administrator now resides within the Division of Homeland and Security and therefore changes to the existing regulations are necessary. The changes included in the proposed rule include recommendations by a special work group established by the Department of State ("Code Enforcement Training Work Group"), as well as accommodations for the existing business practices of the Department of State. In drafting the proposed rule the Department of State incorporated concepts from both the current regulations and the recommendations from the work group.

9. FEDERAL STANDARDS:

There are no standards of the Federal Government which address the subject matter of the rule.

10. COMPLIANCE SCHEDULE:

It is anticipated that regulated persons will be able to achieve compliance with this rule immediately.

Regulatory Flexibility Analysis

1. EFFECT OF RULE:

This rule making will repeal existing regulations which established minimum standards for the training of local government, county and State agency staff who perform activities associated with administration and enforcement of the Uniform Fire Prevention and Building Code ("Uniform Code") and the State Energy Conservation Construction Code ("Energy Code"). A new 19 NYCRR Part 1208 will be adopted to establish minimum standards for the training of code enforcement officials in New York State including course work to be completed as part of such training and the qualifications of the instructors teaching such courses. No small businesses will be regulated or affected by the adoption of this rule. Local governments charged with the responsibility of administering and enforcing the Uniform Code and the Energy Code will be required to employ code enforcement personnel who are in compliance with the standards established by the rule.

2. COMPLIANCE REQUIREMENTS:

No reporting or recordkeeping requirements are imposed upon small businesses or local governments by the rule. Local governments subject to the rule will be required to employ appointed code enforcement officials who comply with the rule. This rule making will not change local government's responsibility for administering and enforcing the Uniform Code. There will be no change in requirements for local governments concerning reporting, recordkeeping, and other compliance requirements, or professional services.

3. PROFESSIONAL SERVICES:

The rule establishes minimum standards and training requirements for code enforcement officials in New York State. No professional services will be required to comply with the rule.

4. COMPLIANCE COSTS:

As small businesses are not subject to the rule, they will not incur any compliance costs. Basic and advanced in-service training required under this rule are provided at no cost by the Department of State. In-service training is normally provided at no cost on a limited basis by the Department of State. Code enforcement officials who are unable to attend these classes have several other options for obtaining their annual in-service training. Many manufacturers and other organizations offer training at no cost on a limited basis. Additional training is offered through local, state and national trade organizations including monthly meetings and annual conferences. The average cost associated with such training varies, but generally varies between \$10 per credit hour to \$15 per credit hour. In general, though not mandated, local governments have historically absorbed the cost of training for their appointed code enforcement official. New options for obtaining code enforcement training included in this rule could potentially decrease the cost to local governments.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

As small businesses are not regulated by the rule, the economic and technological feasibility of their compliance with the rule is not a factor. This rule imposes no substantial capital expenditures. No new technology need be developed for compliance with this rule. Consequently, it is economically and technologically feasible for local governments to comply with the rule.

6. MINIMIZING ADVERSE IMPACT:

As small businesses are not subject to provisions of this rule, it will have no adverse economic impact on small businesses. The economic impact of this rule on local governments will be no greater than the economic impact of the rule on other regulated parties. Such economic impact will be limited to any costs for training courses for code enforcement officials which the particular local government may choose to absorb and time away from the job while a code enforcement official attends training. Consequently, the rule cannot be designed to further minimize any economic impact on local governments and the approaches for minimizing adverse economic impact suggested in SAPA § 202-b(1) were not considered as such alternatives would not be appropriate.

7. SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION:

The Department of State (DOS) provided interested parties throughout the State with an early opportunity to participate in the development of this proposed rule by posting a notice on the Department's website, and publishing a notice in Building New York, an electronic news bulletin covering topics related to the Uniform Code and the construction industry, which is prepared by DOS and currently distributed to over 10,000 subscribers, including local governments, design professionals and others involved in all aspects of the construction industry in all areas of the State.

The Department of State has posted the full text of this rule on the Department's website.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBERS OF RURAL AREAS:

This rule making will repeal 19 NYCRR Part 434, 19 NYCRR Part

435, and 19 NYCRR Part 1208 and adopt a new Part 1208 to set forth minimum standards for the training of code enforcement officials in New York State. This rule will apply to local governments that enforce the Uniform Code and Energy Code in all rural areas across the State.

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

Code enforcement officials will need to comply with these regulations in order to qualify to enforce the Uniform and Energy Code within a municipality. This rule will not impose any new reporting, recordkeeping or other compliance requirements.

No professional services will be needed in rural areas in order to comply with this rule.

3. COSTS:

Compliance with this rule will not require any initial capital costs. Basic and advanced in-service training required under this rule are provided at no cost to regulated parties by the Department of State. In-service training is normally provided at no cost on a limited basis by the Department of State. Code enforcement officials who are unable to attend these classes have several other options for obtaining annual in-service training. Many manufacturers and other organizations offer training at no cost on a limited basis. Additional training is offered through local, state and national trade organizations including monthly meetings and annual conferences. The average cost associated with the training varies, but generally costs between \$10 per credit hour and \$15 per credit hour. This rule provides more flexibility in how a regulated party may obtain in-service training. Providing expanded options could potentially decrease costs for regulated parties.

4. MINIMIZING ADVERSE IMPACT:

The economic impact of this rule in rural areas will be no greater than the economic impact of this rule in non rural areas, and the ability of individuals or public or private entities located in rural areas to comply with the requirements of this rule should be no different than the ability to comply in non-rural areas. Therefore, the approaches suggested by SAPA § 202-bb(2) to minimize adverse impacts in rural areas were considered but not utilized in the development of this rule.

5. RURAL AREA PARTICIPATION:

The Department of State provided interested parties throughout the State with an early opportunity to participate in the development of this proposed rule by posting a notice on the Department's website, and publishing a notice in Building New York, an electronic news bulletin covering topics related to the Uniform Code and the construction industry which is prepared by the Department of State and which is currently distributed to over 10,000 subscribers, including local governments, design professionals and others involved in all aspects of the construction industry in all areas of the State, including rural areas.

The Department of State has posted the full text of this rule on the Department's website.

Job Impact Statement

The Department of State has concluded, after reviewing the nature and purpose of the rule, that it will not have a substantial adverse impact on jobs and employment opportunities.

A new 19 NYCRR Part 1208 will establish improved minimum standards for training applicable to code enforcement personnel in the State of New York.

Code enforcement officials who enforce the Uniform Fire Prevention and Building Code and the State Energy Conservation Construction Code for a municipality will be required to comply with this regulation. However, regulated parties currently are, or should be, subject to substantially similar obligations under current regulations.

Based on the foregoing, it is anticipated that this rule will have no significant adverse impact on jobs or employment opportunities in the building industry, or in any related businesses or industry.

Department of Taxation and Finance

EMERGENCY RULE MAKING

City of Yonkers Withholding Tables and Other Methods

I.D. No. TAF-28-14-00002-E

Filing No. 830

Filing Date: 2014-09-18

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: Repeal of Appendix 10-A; addition of new Appendix 10-A; and amendment of section 251.1 of Title 20 NYCRR.

Statutory authority: Tax Law, sections 171, subdivision First, 671(a)(1), 697(a), 1321, 1329(a) and 1332(a); Code of the City of Yonkers, sections 15-105, 15-108(a) and 15-111; and City of Yonkers Local Law No. 11-2014

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

Specific reasons underlying the finding of necessity: Amendments to the Code of the City of Yonkers enacted by Local Law No. 11-2014 on June 19, 2014, under the authority of Tax Law section 1321, increased the rate of the city income tax surcharge from 15 percent of net state income tax to 16 ³/₄ percent of that amount, effective January 1, 2014. The increase necessitates adjustments to the withholding tables and other methods in Appendix 10-A of 20 NYCRR, and amendments to section 251.1 of 20 NYCRR. Sections 1309, 671(a), and other comparable sections of the Tax Law require that employers withhold from employee wages amounts that are substantially equivalent to the tax reasonably estimated to be due for the taxable year. To that end, the withholding rates for the remainder of tax year 2014 reflect the full amount of tax liability for tax year 2014. This rule is being adopted on an emergency basis in order to assure that the new withholding tables and other methods can apply beginning on August 1, 2014, and that the information can be disseminated to employers as soon as possible to allow them sufficient time to make the requisite changes to their payroll systems. Expedient implementation of the new withholding tables on August 1, 2014 will allow taxpayers to pay the increased income tax surcharge in as many increments as possible. Additionally, the City of Yonkers has advised that it is necessary that the withholding tables be effective August 1 for its Budget to be in compliance and for the City's fiscal health. Because the earliest date that the Notice of Adoption can be published is October 8, 2014, and the emergency adoption will expire on September 24, 2014, this emergency re-adoption is necessary to continue the rule until the permanent re-adoption becomes effective.

Subject: City of Yonkers withholding tables and other methods.

Purpose: To provide current City of Yonkers withholding tables and other methods.

Substance of emergency rule: Sections 671(a)(1) and section 1329(a) of the Tax Law and section 15-105 of the Code of the City of Yonkers require that employers withhold from employee wages amounts that are substantially equivalent to the amount of City of Yonkers income tax surcharge reasonably estimated to be due for the taxable year. The provisions authorize the Commissioner of Taxation and Finance to provide for withholding of these taxes through regulations promulgated by the Commissioner.

This rule repeals Appendix 10-A of Title 20 NYCRR and adds a new Appendix 10-A to provide new City of Yonkers withholding tables and other methods. The new tables and other methods reflect amendments to the Code of the City of Yonkers enacted by Local Law No. 11-2014 pursuant to Tax Law section 1321 that increased the rate of the city income tax surcharge from 15 percent of net state income tax to 16 ³/₄ percent of that amount, effective January 1, 2014. This rule also reflects the increase in the City of Yonkers supplemental withholding tax rate to be applied to supplemental wage payments. The rule applies to wages and other compensation subject to withholding paid on or after August 1, 2014. Accordingly, withholding rates reflect the full amount of liability for 2014 applied to a 5-month period.

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. TAF-28-14-00002-EP, Issue of July 16, 2014. The emergency rule will expire November 16, 2014.

Text of rule and any required statements and analyses may be obtained from: Kathleen D. O'Connell, Department of Taxation and Finance, Office of Counsel, Building 9, W.A. Harriman Campus, Albany, NY 12227, (518) 530-4153, email: tax.regulations@tax.ny.gov

Regulatory Impact Statement

1. Statutory authority: Tax Law, section 171, subdivision First, generally authorizes the Commissioner of Taxation and Finance to promulgate regulations; section 671(a)(1) provides that the method of determining the amounts of New York State personal income tax to be withheld will be prescribed by regulations promulgated by the Commissioner; section 697(a) provides the authority for the Commissioner to make such rules and regulations as are necessary to enforce the personal income tax; section 1329(a) of the Tax Law and section 15-105 of the Code of the City of Yonkers provide that the City of Yonkers income tax surcharge shall be withheld in the same manner and form as that required for State income tax; section 1332(a) of the Tax Law and section 15-108(a) of the Code of the City of Yonkers provide that the income tax surcharge shall be administered and collected by the Commissioner in the same manner as the tax imposed by Article 22 of the Tax Law. Section 1321 of the Tax

Law authorizes the City of Yonkers to adopt and amend local laws imposing a city income tax surcharge to be administered, collected and distributed by the Commissioner. Local Law No. 11-2014 amended section 15-111 of the Code of the City of Yonkers to increase the city income tax surcharge from 15 to 16 ³/₄ percent of net state income tax.

2. Legislative objectives: New Appendix 10-A of Title 20 NYCRR contains the revised City of Yonkers withholding tables and other methods applicable to wages and other compensation paid on or after August 1, 2014. The amendments reflect the increase in the City of Yonkers income tax surcharge from 15 to 16 ³/₄ percent of net state income tax, pursuant to amendments to section 15-111 of the code of the City of Yonkers made by Local Law No. 11-2014 of the City of Yonkers, which was enacted under the authority of Section 1321 of the Tax Law. The rule also reflects this increase in the City of Yonkers supplemental withholding rate to be applied to supplemental wage payments.

3. Needs and benefits: This rule sets forth City of Yonkers withholding tables and other methods, applicable to wages and other compensation paid on or after August 1, 2014, reflecting the increase in the City of Yonkers income tax surcharge from 15 percent of net state income tax to 16 ³/₄ percent of that amount. This rule benefits taxpayers by providing City of Yonkers withholding rates that reflect the current income tax rates. If this rule is not promulgated, the use of the existing withholding tables would cause some under-withholding for some taxpayers and impede the City of Yonkers' revenue.

4. Costs: (a) Costs to regulated parties for the implementation and continuing compliance with this rule: Since (i) the Tax Law and the Code of the City of Yonkers already mandate withholding in amounts that are substantially equivalent to the amount of City of Yonkers income tax surcharge on residents reasonably estimated to be due for the taxable year, and (ii) this rule merely conforms Appendix 10-A of Title 20 NYCRR to the rates of the City of Yonkers income tax surcharge on residents, any compliance costs to employers associated with implementing the revised withholding tables and other methods are due to such statutes, and not to this rule.

(b) Costs to this agency, the State and local governments for the implementation and continuation of this rule: Since the need to revise the City of Yonkers income tax surcharge on residents withholding tables and other methods arises due to the statutory change in the rate of the City of Yonkers income tax surcharge, there are no costs to this agency or the State and local governments that are due to the promulgation of this rule.

(c) Information and methodology: This analysis is based on a review of the statutory requirements and on discussions among personnel from the Department's Taxpayer Guidance Division, Office of Counsel, Office of Tax Policy Analysis Bureau of Tax and Fiscal Studies, Office of Budget and Management Analysis, and Management Analysis and Project Services Bureau.

5. Local government mandates: Local governments, as employers, would be required to implement the new withholding tables and other methods in the same manner and at the same time as any other employer.

6. Paperwork: This rule will not require any new forms or information. The reporting requirements for employers are not changed by this rule. Employers will be notified of the changed tables and other methods and directed to the Department's Web site for the new tables and other methods.

7. Duplication: This rule does not duplicate any other requirements.

8. Alternatives: Since sections 671(a) and 1329(a) of the Tax Law and section 15-105 of the Code of the City of Yonkers require that City of Yonkers withholding tables and other methods be promulgated, there are no viable alternatives to providing such tables and other methods.

9. Federal standards: This rule does not exceed any minimum standards of the federal government for the same or similar subject area.

10. Compliance schedule: Affected employers will be receiving the required information in sufficient time to implement the revised City of Yonkers withholding tables and other methods for wages and other compensation paid on or after August 1, 2014.

Regulatory Flexibility Analysis

1. Effect of rule: Small businesses, within the meaning of the State Administrative Procedure Act, that are currently subject to the City of Yonkers withholding requirements will continue to be subject to these requirements. This rule should, therefore, have little or no effect on small businesses other than the requirement of conforming to the new withholding tables and other methods. All small businesses that are employers or are otherwise subject to the City of Yonkers withholding requirements must comply with the provisions of this rule.

2. Compliance requirements: This rule requires small businesses and local governments that are already subject to the City of Yonkers withholding requirements to continue to deduct and withhold amounts from employees using the revised City of Yonkers withholding tables and other methods. The promulgation of this rule will not require small business or local governments to submit any new information, forms, or paperwork.

3. Professional services: Many small businesses currently utilize bookkeepers, accountants and professional payroll services in order to comply with existing withholding requirements. This rule will not encourage or discourage the use of such services.

4. Compliance costs: Small businesses and local governments are already subject to the City of Yonkers withholding requirements. Therefore, small businesses and local governments are accustomed to withholding revisions, including minor programming changes for federal, state, City of New York, and City of Yonkers purposes. As such, these changes should place no additional burdens on small businesses and local governments. See, also, section 4(a) of the Regulatory Impact Statement for this rule.

5. Economic and technological feasibility: This rule does not impose any economic or technological compliance burdens on small businesses or local governments.

6. Minimizing adverse impact: Section 671(a)(1) of the Tax Law requires that New York State withholding tables and other methods be promulgated. Section 1329(a) of the Tax Law requires that the City of Yonkers withholding of tax on wages shall be administered and collected by the Commissioner of Taxation and Finance in the same manner as the tax imposed by Article 22 of the Tax Law. There are no provisions in the Tax Law that exclude small businesses and local governments from the withholding requirements. The regulation provides some relief to small businesses and local government with respect to the methods allowed to comply with the withholding requirements by continuing to provide employers with more than one method of computing the amount to withhold from their employees. Look-up tables are provided for employers who prepare their payrolls manually, and an exact calculation method is provided for employers with computer-based systems.

7. Small business and local government participation: The following organizations were given an opportunity to participate in the rule's development: the Association of Towns of New York State; the Office of Coastal, Local Government, and Community Sustainability of the New York State Department of State; the Division for Small Business of Empire State Development; the National Federation of Independent Businesses; the New York State Association of Counties; the New York Conference of Mayors and Municipal Officials; the Small Business Committee of the New York State Business Council; the Retail Council of New York State; and the New York Association of Convenience Stores; the Tax Section of the New York State Bar Association; the Association of the Bar of the City of New York; the New York State Society of Enrolled Agents; the New York State Society of CPAs; and the Taxation Committee of the Business Council of New York State. In addition, the City of Yonkers was consulted.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas: Every employer that is currently subject to the City of Yonkers withholding requirements will continue to be subject to such requirements and will be required to comply with the provisions of this rule. The effect on employers in rural areas is limited because the changes relate to the City of Yonkers income tax surcharge on residents withholding requirements. There are 44 counties throughout this State that are rural areas (having a population of less than 200,000) and 9 more counties having towns that are rural areas (with population densities of 150 or fewer people per square mile).

2. Reporting, recordkeeping and other compliance requirements; and professional services: This rule requires employers that are already subject to the City of Yonkers withholding requirements to continue to deduct and withhold amounts from employees using the revised withholding tables and other methods. The promulgation of this rule will not require employers to submit any new information, forms, or other paperwork.

Further, many employers currently utilize bookkeepers, accountants, and professional payroll services in order to comply with existing withholding requirements. This rule will not encourage or discourage the use of any such services.

3. Costs: Employers are already subject to the New York State, New York City and City of Yonkers withholding requirements. Therefore, employers are accustomed to withholding revisions, including minor programming changes for federal, state, City of New York, and City of Yonkers purposes. As such, these City of Yonkers changes should place no additional burdens on employers located in rural areas. See also section 4(a) of the Regulatory Impact Statement for this rule.

4. Minimizing adverse impact: Section 671(a)(1) of the Tax Law requires that New York State withholding tables and other methods be promulgated. Section 1329(a) of the Tax Law requires that the City of Yonkers withholding of tax on wages shall be administered and collected by the Commissioner of Taxation and Finance in the same manner as the tax imposed by Article 22 of the Tax Law. The effect on employers in rural areas is limited because the changes relate to the City of Yonkers income tax surcharge on residents withholding requirements.

5. Rural area participation: The following organizations are being given an opportunity to participate in the rule's development: the Association of

Towns of New York State; the Office of Coastal, Local Government, and Community Sustainability of New York State Department of State; the Division for Small Business of Empire State Development; the National Federation of Independent Businesses; the New York State Association of Counties; the New York Conference of Mayors and Municipal Officials; the Small Business Committee of the Business Council of New York State; the Retail Council of New York State; the New York Association of Convenience Stores; the Tax Section of the New York State Bar Association; the Association of the Bar of the City of New York; the New York State Society of Enrolled Agents; the New York State Society of CPAs; and the Taxation Committee of the Business Council of New York State. In addition, the City of Yonkers was consulted.

Job Impact Statement

A Job Impact Exemption is not being submitted with this rule because it is evident from the subject matter of the rule that it could have no impact on jobs and employment opportunities. The purpose of the rule is to provide City of Yonkers withholding tables and other methods, applicable for compensation paid on or after August 1, 2014, which reflect the revision of the tax tables in keeping with the increase in the income tax surcharge from 15 to 16 ³/₄ percent of net state income tax pursuant to City of Yonkers Local Law No. 11-2014, enacted under the authority of section 1321 of the Tax Law. The rule also reflects the increase in the City of Yonkers supplemental withholding rates applied to supplemental wage payments.

Assessment of Public Comment

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

NOTICE OF ADOPTION

City of Yonkers Withholding Tables and Other Methods

I.D. No. TAF-28-14-00002-A

Filing No. 831

Filing Date: 2014-09-18

Effective Date: 2014-10-08

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

Action taken: Repeal of Appendix 10-A; addition of new Appendix 10-A; and amendment of section 251.1 of Title 20 NYCRR.

Statutory authority: Tax Law, sections 171, subdivision First, 671(a)(1), 697(a), 1321, 1329(a) and 1332(a); Code of the City of Yonkers, sections 15-105, 15-108(a) and 15-111; and City of Yonkers Local Law No. 11-2014

Subject: City of Yonkers withholding tables and other methods.

Purpose: To provide current City of Yonkers withholding tables and other methods.

Text or summary was published in the July 16, 2014 issue of the Register, I.D. No. TAF-28-14-00002-EP.

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

Text of rule and any required statements and analyses may be obtained from: Kathleen D. O'Connell, Department of Taxation and Finance, Office of Counsel, Building 9, W.A. Harriman Campus, Albany, NY 12227, (518) 530-4153, email: tax.regulations@tax.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 Transportation

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Consolidated Local Street and Highway Improvement Program (CHIPS)

I.D. No. TRN-40-14-00005-P

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

Proposed Action: This is a consensus rulemaking to amend sections 34.1 and 34.2 of Title 17 NYCRR.

Statutory authority: Highway Law, section 10-c; and L. 2011, ch. 60, part A

Subject: Consolidated Local Street and Highway Improvement Program (CHIPS).

Purpose: To correct minor inaccuracies and to reduce certification requirements for municipalities in regard to CHIPS grant allocations.

Text of proposed rule: 17 NYCRR Section 34.1 is amended to read as follows:

Section 34.1 Introduction.

The Consolidated Local Street and Highway Improvement Program (CHIPS) was legislated in [1982] 1981 to provide state aid for the construction, operation, and/or maintenance of highways, bridges, and highway-railroad crossings that are not on the state highway system. Between 1982 and 1991, all CHIPS funds were distributed to localities in a lump sum on a quarterly allocation basis. In 1991, as a result of statutory changes, the CHIPS Program was divided into two components: a quarterly operation and maintenance (O&M) component, funded from the state's general fund, and a quarterly capital component, funded from New York State Thruway Authority bond proceeds. *Effective April 1, 2014, CHIPS is being funded in the first instance by a budget appropriation and all CHIPS capital reimbursements are now issued by the Office of the State Comptroller.*

CHIPS O&M funding has not been included since the SFY 01-02 state budget. The Legislature converted these funds into additional CHIPS capital funds that have been appropriated since SFY 02-03. Section 10-c of the Highway Law and Thruway Authority bond documents require that municipalities provide several certifications to the Department of Transportation (NYSDOT) that are described [herein] in section 34.2 of this part.

The Office of the State Comptroller audits municipal records and accounts. Such audits may include examination of the data generated and used in CHIPS calculations.

17 NYCRR Section 34.2 is amended to read as follows:

Section 34.2 CHIPS certification.

(a) Annual certification for the CHIPS O&M component *is only required if O&M funding is appropriated by the Legislature.* [-] Unless an exemption [therefore] is granted by the Commissioner for any municipality that receives more than \$5,000 but less than \$7,000 in any local fiscal year, each municipality that receives \$5,000 or more annually in CHIPS O&M funding must annually certify on a NYSDOT-provided form that its fiscal year expenditures of non-state funds raised by the municipality for the operation and maintenance (exclusive of capital construction) of its highways, bridges, and/or highway-railroad crossings was not reduced below the level of the average of the previous two fiscal years' expenditures. The annual certificate is due to the NYSDOT[']s regional office that serves the municipality by the first day of the third month following the end of a municipality's fiscal year.

(b) Capital certification to accompany each request for the CHIPS capital component. [-] *Each capital project reimbursement request must be accompanied by a certification by the municipality, on a NYSDOT-provided form, that the amount requested is for moneys expended by the municipality during a specified reimbursement period solely for eligible work. Eligible work consists of construction, reconstruction, or improvement of local highways, bridges, [and/or] highway-railroad crossings, and/or other local facilities per NYSDOT CHIPS Capital Guidelines, including right-of-way acquisition, preliminary engineering, and construction supervision and inspection, where the service life of the project is [at least 10 years.] in accordance with the stipulation on the CHIPS Capital Reimbursement Request Form for the project.*

Text of proposed rule and any required statements and analyses may be obtained from: Diane Kenneally, New York State Department of Transportation (NYSDOT), 50 Wolf Road, Albany, NY 12232, (518) 457-4059, email: diane.kenneally@dot.ny.gov

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

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

Consensus Rule Making Determination

The New York State Department of Transportation has determined that no person is likely to object to the amendment of 17 NYCRR Part 34 as herein proposed, as its sole purpose is to correct inaccuracies in the regulation as currently written, and to update the provisions of the regulation in regard to reduction of grant recipient certification requirements.

Job Impact Statement

17 NYCRR 34.1 is being amended to correct the year in which the Consolidated Local Street and Highway Improvement Program (CHIPS)

was added to the Highway Law, to reflect the exclusion of CHIPS Operation & Maintenance (O&M) funding from the SFY 02-03 state budget onward, and to reflect that, effective April 1, 2014, CHIPS is being funded in the first instance by a budget appropriation and all CHIPS capital reimbursements are now issued by the Office of the State Comptroller.

17 NYCRR 34.2 is being amended to provide for the O&M certification requirement only if O&M funding is appropriated by the Legislature, and to accurately reflect the current CHIPS reimbursement request form certification provisions.

There is no foreseeable impact on jobs and employment opportunities, as is evident from the subject matter and content of the rule amendments.