RULE MAKING ACTIVITIES

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

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

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

Department of Agriculture and Markets

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Growth and Cultivation of Industrial Hemp

I.D. No. AAM-17-15-00011-P

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

Proposed Action: Addition of Part 159 to Title 1 NYCRR.

Statutory authority: Agriculture and Markets Law, sections 16, 18 and 508

Subject: Growth and cultivation of industrial hemp.

Purpose: To set forth procedures for authorizing and regulating the growth and cultivation of industrial hemp.

Public hearing(s) will be held at: 11:00 a.m., May 20, 2015 at 10B Airline Drive, Albany, New York.

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.agriculture.ny.gov): The proposed rule will, if adopted, add a new Part 159 to 1 NYCRR, "Industrial Hemp Agricultural Pilot Programs". Proposed section 159.1 sets forth definitions for terms used in other sections. Proposed section 159.2 sets forth the procedures that institutions of higher education that wish to grow and cultivate industrial hemp must comply with in order to be authorized to do so by the Commissioner of Agriculture and Markets ("Commissioner"). That section provides, generally, that an application for authorization to grow and cultivate industrial hemp must contain certain information, including specific information about the premises to be used to grow, cultivate, store and dispose of industrial hemp and that the Commissioner may decline to grant authority, or revoke an authorization already granted, if he/she finds that the applicant/authorization holder is not capable of or has not complied with applicable requirements set forth in Part 159.

Proposed section 159.3 contains the requirements with which an educational institution that has been authorized by the Commissioner to grow and cultivate industrial hemp ("authorized holder") must comply. Such requirements include having to periodically provide a report to the Commissioner setting forth findings regarding its experience in growing and cultivating industrial hemp and possible commercial uses therefor; to transport and dispose of industrial hemp in a manner designed to ensure that it is not improperly diverted; and to ensure that samples of industrial hemp are tested in an approved laboratory to determine the level of delta-9 tetrahydrocannabinol therein. Such section also permits an authorization holder to enter into a contract with a subcontractor to grow and cultivate industrial hemp and perform other permissible functions, as long as the contract requires the subcontractors to comply with the provisions of Part 159.

Proposed section 159.4 requires an authorized holder to prepare, maintain, and make available to the Commissioner, for a period of two years, the visual recording of the premises where industrial hemp is, generally, held; as well as records that set forth the name and address of each person involved in the growing or cultivating, harvesting, storing, studying, transporting or disposing of industrial hemp; a description of the premises where industrial hemp is grown or cultivated; the name and volume of cultivars used to grow or cultivate industrial hemp that have been purchased; and the volume of industrial hemp grown or cultivated, harvested, studied, and disposed of.

Proposed section 159.5 requires the authorized holder to inspect the registered premises as often as necessary to ensure compliance with Part 159. It also authorizes the Commissioner, consistent with law, to inspect an authorized holder's premises to determine compliance with the provisions of Part 159.

Proposed section 159.6 contains security requirements that an authorized holder or subcontractor must install on the registered premises to ensure that industrial hemp is properly grown or cultivated, harvested, stored, studied, transported, and disposed of. Among other requirements, an authorized holder must install security cameras and fences, must provide for proper identification for employees, and must employ sufficient security staff.

Text of proposed rule and any required statements and analyses may be obtained from: Chris Logue, Director, Division of Plant Industry, NYS Department of Agriculture and Markets, 10B Airline Drive, Albany, New York 12235, (518) 457-2087, email: Chris.Logue@agriculture.ny.gov

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

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

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

Summary of Regulatory Impact Statement

1. Statutory authority:

Agriculture and Markets Law ("A&ML") sections 16, 18, and article 29.

2. Legislative objectives:

The legislature has authorized the Department of Agriculture and Markets ("Department") to allow a limited number of educational institutions to study the growth and cultivation of industrial hemp. The proposed

rule will set forth requirements that will ensure that industrial hemp is properly grown and cultivated and, thereafter, held, studied, and disposed of in a manner designed to protect the public health, safety and welfare.

3. Needs and benefits:

The proposed rule will add a new Part 159 to 1 NYCRR. The proposed rule is needed so that institutions of higher education that want to grow and cultivate industrial hemp, in order to conduct research to determine whether it can realistically be grown in New York and whether it is a commercially-viable product, may do so. The proposed rule will require each such institution to submit an application to the Commissioner of Agriculture and Markets ("Commissioner") for authorization to grow and cultivate industrial hemp, including information about the premises upon which the hemp will be grown or cultivated, stored, studied, and disposed of. The Commissioner may deny authority if he or she determines that the applicant cannot or will not comply with the requirements of Part 159. An authorized holder must submit periodic reports regarding its research, have samples of industrial hemp analyzed in an approved laboratory, maintain records, and provide proper security. Such requirements are needed to ensure that industrial hemp, which is closely related to marijuana, is not improperly diverted or used. The State's agricultural industry will benefit if the proposed rule is adopted because relevant policy makers will be in a better position to determine whether the industrial hemp can be grown and cultivated in New York and whether it is a commercially-viable product.

4. Costs:

a. Cost to regulated parties:

An educational institution that applies for authorization to grow and cultivate industrial hemp is required to submit a $500.00 application fee. An educational institution that has been granted authorization (an "authorized holder") will, thereafter, incur costs in growing and cultivating a field of industrial hemp – the amount of such costs is dependent upon the acreage of the field where it is grown and the costs of seeds, fertilizer, and crop protectants, as well as the cost of harvesting, storage, and processing.

An authorized holder will also be required to study industrial hemp and prepare periodic reports reflecting its findings. The cost associated with this requirement will depend in large part upon whether the institution will need to hire new staff or can utilize staff presently employed.

An authorized holder will, furthermore, need to provide proper security equipment and security staff. It is estimated that the total initial capital cost to comply with this requirement will be approximately $55,000.00/acre of industrial hemp grown and cultivated and that the annual, recurring cost to so comply will be approximately $25,000.00.

b. Costs to state and local government:

None.

5. Local government mandates:

None.

6. Paperwork:

An authorized holder will be required to periodic reports to the Commissioner and to maintain and update such reports as.

7. Duplication:

Section 7606 of the federal Agricultural Reform, Food and Jobs Act of 2013 (Public Law 113-79) amended Title 7 of the United States Code to add section 5940 thereto to authorize states to enact statutes allowing educational institutions to grow and cultivate industrial hemp. Pursuant to such authorization, the New York State legislature passed, and the Governor signed, a bill that enacted Article 29 of the Agriculture and Markets Law, entitled "Growth of Industrial Hemp" (see Chapter 524 of the Laws of 2014). The federal law referred to above does not set forth any duplicative, overlapping or conflicting requirements that educational institutions that have been authorized by the Commissioner to grow and cultivate industrial hemp must comply with.

8. Alternatives:

No alternatives were considered to requiring authorized holders to prepare and maintain records reflecting the volume of industrial hemp grown and cultivated, the names of the persons having access thereto, and the manner of its disposition. Alternatives were considered to other provisions of the proposed rule and it was decided, after comments made by participants at the Industrial Hemp Work Group meeting, that the proposed rule will permit authorized holders to study methods for advertising, exposing, and publicizing industrial hemp and products containing that substance; to allow the Commissioner to grant authorizations lasting more than one year; to require reports to be submitted quarterly rather than biannually; and to allow for authorized holders to subcontract with other persons to perform required or permitted activities. The Department chose not to amend the proposed rule in response to suggestions that the security provisions set forth therein be made less stringent; industrial hemp is a controlled substance and the Department believes that it should be grown and cultivated, held, studied, and disposed of only under the most secure conditions.

9. Federal standards:

The proposed rule is authorized by Agriculture and Markets Law section 508 which, in turn, is authorized pursuant to 7 USC section 5940.

10. Compliance schedule:

An educational institution that has been authorized to grow and cultivate industrial hemp will be required to comply with all of the provisions of the proposed rule immediately upon being granted authorization.

Regulatory Flexibility Analysis

1. Effect of rule:

This rule amends 1 NYCRR by adding thereto a Part 159, entitled "Industrial Hemp".

It is anticipated that the rule will have only an incidental impact on local governments. Local governments may, for example, decide to increase the number of police patrols in areas where industrial hemp is grown or cultivated by institutions of higher education that have been authorized by the commissioner of agriculture and markets to do so ("authorized institutions"). The rule will have no impact on small businesses, will not impose any compliance requirements upon them, will not require them to obtain any professional services, and will not cause them to incur any compliance costs.

2. Compliance requirements:

The rules do not regulate local governments. Authorized institutions will be required to conduct studies and prepare periodic reports relating to such growth or cultivation. Each such institution will also be required to ensure that cultivars of industrial hemp grown or cultivated by it are tested in a laboratory to determine their chemical composition, and will also be required to ensure that industrial hemp grown or cultivated by it is properly disposed of after having been used or studied. Finally, each such educational institution will be required to ensure that proper security equipment and procedures are installed and instituted to prevent industrial hemp from being improperly diverted.

3. Professional services.

None.

4. Compliance costs:

The rule does not require local governments or small businesses to incur any costs.

(a) Initial capital costs that will be incurred by an authorized institution of higher education: Authorized institutions will be required to have a fence, with at least two gates, that surround the premises where industrial hemp is grown or cultivated, harvested, stored, studied, and disposed of. It is estimated that a suitable chain link fence costs $31.50/ft., that two gates cost $3,200.00 and that, therefore, a suitable fence will cost approximately $29,400.00/acre.

Authorized institutions will also be required to install cameras and to provide appropriate identification for persons authorized to handle, etc. industrial hemp. Approximately six cameras per acre of fenced premises will be required to comply with the relevant requirements of the proposed rule – since each camera is estimated to cost $700.00 - $1,000.00, an authorized institution will need to expend $4,200.00 - $6,000.00 to comply with this requirement. Regarding the other requirements, provision of appropriate identification should cause an authorized educational institution to incur no more than a nominal expense.

(b) Annual cost for continuing compliance with the proposed rule:

An authorized institution will be required to conduct studies and complete reports, and to hire and retain security staff. It is impossible to determine how much an authorized institution will need to spend to study industrial hemp and to prepare a report setting forth its possible commercial uses. The salary to be paid and furnished to a properly trained security staff member will, most likely, be in the range of $19,600 to $37,350 annually.

5. Economic and technological feasibility:

The rule will require approved institutions of higher education to, inter alia, prepare a report(s) regarding its experience in growing or cultivating industrial hemp and the possible commercial uses thereof; to maintain required records, and to ensure that proper security equipment and procedures are installed and instituted to ensure that industrial hemp is not improperly diverted from its premises. Every one of the requirements that an approved institution of higher education must comply with is technologically and economically feasible.

6. Minimizing adverse impact:

The rule will not have adverse impact upon local governments. Furthermore, the rule does not regulate institutions of higher education in general; rather, only those institutions that choose to seek authorization from the Commissioner of Agriculture and Markets will be regulated by the rule.

7. Small business and local government participation:

On February 24, 2014, a meeting of the Industrial Hemp Work Group was held at the Department's offices. This group consisted of Department representatives; manufacturers of products that contain industrial hemp; representatives of educational institutions involved in the study of industrial hemp; and a state assemblywoman. Prior to the meeting, the

participants were furnished with a copy of the proposed express terms of the rule, At the meeting, several participants suggested amendments to the express terms and, after the meeting was concluded, the Department assessed such comments and made substantial revisions to such express terms.

Rural Area Flexibility Analysis

The proposed rule implements the provisions of Article 29 of the Agriculture and Markets Law, entitled "Industrial Hemp". The proposed rule sets forth procedures for the Commissioner of Agriculture and Markets to authorize institutions of higher education to grow and cultivate industrial hemp and requires authorized institutions to study industrial hemp and issue periodic reports regarding the results of such study, to maintain certain required records, to ensure that samples of industrial hemp are tested in an approved laboratory, and to install and institute proper security equipment and procedures so that industrial hemp is not improperly diverted.

Because this proposal does not impose an adverse impact upon rural areas and because it imposes no reporting, recordkeeping or other compliance requirements on public or private entities in rural areas that have not applied and have not been granted authorization to grow and cultivate industrial hemp, no rural area flexibility has been prepared in connection with the proposed rule, pursuant to SAPA section 202-bb(4)(a).

Job Impact Statement

The proposed rule implements the provisions of Article 29 of the Agriculture and Markets Law, entitled "Industrial Hemp". The proposed rule sets forth procedures for the Commissioner of Agriculture and Markets to authorize institutions of higher education to grow and cultivate industrial hemp and requires authorized institutions to study industrial hemp and issue periodic reports regarding the results of such study, to maintain certain required records, to ensure that samples of industrial hemp are tested in an approved laboratory, and to install and institute proper security equipment and procedures so that industrial hemp is not improperly diverted.

The proposed rule is expected to have no impact, or perhaps a minimally positive impact, on jobs and employment opportunities in authorized institutions and among agricultural workers and security guards.

Education Department

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

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

I.D. No. EDU-17-15-00003-EP

Filing No. 274

Filing Date: 2015-04-14

Effective Date: 2015-04-14

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

Proposed Action: Amendment of section 100.18(f) and (g) of Title 8 NYCRR.

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

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

Specific reasons underlying the finding of necessity: The purpose of the proposed rule making is to implement New York State's submitted Elementary and Secondary Education Act (ESEA) Flexibility Waiver Renewal Request.

At the February 2014 meeting, the Board of Regents directed the State Education Department (SED or "the Department") to submit a request to the United States Department of Education (USDE) to amend the provisions of the approved ESEA Flexibility Waiver Request related to making adequate yearly progress (AYP). The proposed rule-making conforms subdivision 100.18(f) of the Commissioner's Regulations with the submitted ESEA Flexibility Waiver Renewal Request, and addresses the Regents Reform Agenda and New York State's updated accountability system and also clarifies the process by which schools are identified as Local Assistance Plan Schools pursuant to subdivision 100.18(g) of the Commissioner's Regulations. Adoption of the proposed amendment is necessary to ensure a seamless transition to the revised school and school district accountability plan under the Waiver.

Because the Board of Regents meets at scheduled intervals, the July 20-21, 2015 meeting is the earliest the proposed amendment could be presented for adoption, after publication of a Notice of Proposed Rule Making in the State Register and expiration of the 45-day public comment period required under the State Administrative Procedure Act. Furthermore, pursuant to SAPA section 203(1), the earliest effective date of the proposed amendment, if adopted at the July meeting, would be August 5, 2015, the date a Notice of Adoption would be published in the State Register. However, emergency adoption of the proposed amendment is necessary now for the preservation of the general welfare to immediately conform the Commissioner's Regulations to timely implement New York State's approved ESEA Flexibility Waiver, so that school districts may timely meet school/school district accountability requirements for the 2014-2015 school year and beyond, consistent with the approved ESEA Flexibility Waiver and pursuant to statutory requirements.

It is anticipated that the proposed amendment will be presented to the Board of Regents for permanent adoption at its July 20-21, 2015 meeting, which is the first scheduled meeting after expiration of the 45-day public comment period mandated by the State Administrative Procedure Act.

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

Purpose: To conform the Commissioner's Regulations to New York State's ESEA Flexibility Waiver Renewal application with respect to Adequate Yearly Progress (AYP) and Local Assistance Plan (LAP) schools.

Text of emergency/proposed rule: Subdivisions (f) and (g) of section 100.18 of the Regulations of the Commissioner are amended, effective April 14, 2015, as follows:

(f) Adequate yearly progress.

(1) . . .
(2) . . .
(3) . . .
(4) . . .
(5) . . .
(6) . . .
(7) . . .
(8) . . .

(9) Effective with 2013-14 school year results and continuing with the results for each school year thereafter, the "all students" accountability group for a public school, charter school or school district shall be deemed to have made adequate yearly progress on a performance criterion specified in paragraph (1) and (2) of subdivision (j) of this section if all the accountability groups, except the "all students" group, for which a public school, charter school or school district is accountable on that performance criterion made adequate yearly progress.

(g) Differentiated accountability for schools and districts.

Prior to the commencement of the 2012-2013 school year, the commissioner, based on the 2010-2011 school year results, shall designate focus districts, priority schools and focus charter schools. Prior to the commencement of the 2013-2014 school year, based on the 2011-2012 school year results, and each year thereafter based on the subsequent school year results, the commissioner shall designate public schools requiring a local assistance plan.

(1) . . .
(2) . . .
(3) . . .
(4) . . .
(5) . . .
(6) School requiring a local assistance plan.

(i) Beginning with the [2011-2012] *2013-14* school year results and annually thereafter, a school that has not been designated as a priority or focus school shall be designated as a local assistance plan school if the school:

(a) failed to make adequate yearly progress (AYP) for an accountability group for three consecutive years on the same performance criterion in subdivision (j) of this section*; provided that such school shall not be designated as a local assistance plan school if the school has met other measures of progress as determined by the commissioner pursuant to subparagraph (ii) of this paragraph; or*

(b) has gaps in achievement on a performance criterion in subdivision (j) of this section and the school has not shown sufficient progress toward reducing or closing those gaps *or meeting other measures of progress* as determined by the commissioner *pursuant to subparagraph (ii) of this paragraph*, between students who are members and students who are not members of that accountability group; or

(c) the school is located in a district that is not designated as

Focus and the school meets the criteria for identification as a focus school pursuant to subparagraph (5)(ii) of this subdivision*, and such other measures of progress as determined by the Commissioner pursuant to subparagraph (ii) of this paragraph.*

(ii) Notwithstanding the provisions of clauses (a) through (c) of subparagraph (i) of this subdivision, the commissioner may consider other measures of progress in determining whether to identify a school as a local assistance plan school, including but not limited to:

(a) whether a subgroup has made two consecutive years of AYP;

(b) the subgroup's Student Growth Percentile (SGP) is above state average;

(c) the percentile rank of the Performance Index (PI)/graduation rate of a subgroup on an accountability measure as compared to the percentile rank of the PI/graduation rate of the subgroup in other schools in the state;

(d) whether the graduation rate of the subgroup is above state average; and/or

(e) if the subgroup's performance on an accountability measure has changed from year to year.

[(ii)] *(iii)* For transfer high schools for which a district has submitted alternative high school cohort data, the commissioner shall review such data to determine whether the school shall be designated as requiring a local assistance plan.

[(iii)] *(iv)* Districts will be informed of the preliminary status of its schools and will be provided the opportunity to appeal the identification of any preliminarily identified school.

(7) . . .

This notice is intended: to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire July 12, 2015.

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

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

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

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

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

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

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

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

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

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

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

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

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

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

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

2. LEGISLATIVE OBJECTIVES:

The proposed amendment is consistent with the above statutory authority and is necessary to implement Regents policy relating to public school and district accountability and federal requirements relating to New York State's approved Elementary and Secondary Education Act (ESEA) Flexibility Waiver.

3. NEEDS AND BENEFITS:

The proposed amendment is necessary to conform the Commissioner's Regulations to New York State's approved ESEA Flexibility Waiver Renewal Request relating to the methodology for determining Adequate Yearly Progress (AYP) and the identification of Local Assistant Plan (LAP) schools, for school district/school accountability purposes.

In September 2011, President Obama announced an ESEA regulatory flexibility initiative, based upon the Secretary of Education's authority to issue waivers. In October 2011, the Board of Regents directed the Commissioner to submit an ESEA Flexibility Request to the United States Department of Education (USDE). On May 29, 2012, the USDE approved New York State's ESEA Flexibility Waiver Request. In September 2013, the USDE offered states with approved ESEA Flexibility Waivers the opportunity to renew those waivers for the 2014-15 school year.

At its February 2014 meeting, the Board of Regents directed the State Education Department to submit a request to the United States Department of Education (USDE) to amend the provisions of the approved ESEA Flexibility Waiver Request related to determinations of AYP. These changes were approved by the USDE on July 31, 2014. A subsequent review of Commissioner's Regulations has determined that a technical amendment is necessary to conform regulatory language to the approved ESEA Flexibility Waiver Request.

In addition, Department staff convened a workgroup of districts that have or have had schools identified LAP and conducted an online survey of such districts. As a result of this feedback, Department staff is proposing technical changes to the regulations to clarify that the Commissioner will not identify any schools that meet progress criteria established by the Commissioner as LAP Schools.

The proposed amendment will amend subdivision 100.18(f) of Commissioner's Regulations to align it with New York's approved ESEA Flexibility Waiver Renewal Application and 100.18(g) to clarify the methodology for identification of LAP Schools. The proposed amendments will:

- Give schools and districts credit for making Adequate Yearly Progress (AYP) with the "all students group" when all other accountability groups for which a school or district is accountable make AYP on an English language arts or mathematics performance criterion, as specified in New York's approved ESEA waiver; and
- Clarify that the Commissioner may consider additional measures in determining whether to identify a school as a LAP, including, but not limited to the following: whether a subgroup has made AYP; the subgroup's Student Growth Percentile (SGP); the percentile rank of the Performance Index (PI)/graduation rate of a subgroup on an accountability measure as compared to the percentile rank of the PI/graduation rate of the subgroup in other schools in the state; whether the graduation rate of the subgroup is above state average; and if the subgroup's performance on an accountability measure has changed from year to 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 direct costs on the State, local governments, private regulated parties or the State Education Department. It is anticipated that any indirect costs associated with the proposed amendment will be minimal and capable of being absorbed using existing staff and resources.

5. LOCAL GOVERNMENT MANDATES:

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

6. PAPERWORK:

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

7. DUPLICATION:

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

8. ALTERNATIVES:

There were no significant alternatives and none were considered. The proposed amendment relates to public school and school district accountability and is necessary to conform the Commissioner's Regulations to New York State's approved ESEA Waiver Renewal Request relating to the methodology for determining AYP and the identification of LAP schools, for purposes of school district/school accountability. The State and LEAs are required to comply with the ESEA as a condition to their receipt of federal funds under Title I of the ESEA Act of 1965, as amended.

9. FEDERAL STANDARDS:

The proposed amendment is necessary to conform the Commissioner's Regulations to New York State's approved ESEA Waiver Renewal Request relating to the methodology for determining AYP and the identification of LAP schools, for purposes of school district/school accountability. The State and LEAs are required to comply with the ESEA as a condition to their receipt of federal funds under Title I of the ESEA Act of 1965, as amended.

10. COMPLIANCE SCHEDULE:

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

Regulatory Flexibility Analysis

Small Businesses:

The proposed amendment relates to public school and school district accountability and is necessary to conform the Commissioner's Regulations to New York State's approved Elementary and Secondary Education Act (ESEA) Waiver Renewal Request relating to the methodology for determining Adequate Yearly Progress (AYP) and the identification of Local Assistance Plan (LAP) schools, for purposes of school district/school accountability. The State and local educational agencies (LEAs) are required to comply with the ESEA as a condition to their receipt of federal funds under Title I of the ESEA Act of 1965, as amended.

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

Local governments:

1. EFFECT OF RULE:

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

2. COMPLIANCE REQUIREMENTS:

The proposed amendment is necessary to conform the Commissioner's Regulations to New York State's approved ESEA Flexibility Waiver Renewal Request relating to the methodology for determining Adequate Yearly Progress (AYP) and the identification of Local Assistant Plan (LAP) schools, for school district/school accountability purposes.

In September 2011, President Obama announced an ESEA regulatory flexibility initiative, based upon the Secretary of Education's authority to issue waivers. In October 2011, the Board of Regents directed the Commissioner to submit an ESEA Flexibility Request to the United States Department of Education (USDE). On May 29, 2012, the USDE approved New York State's ESEA Flexibility Waiver Request. In September 2013, the USDE offered states with approved ESEA Flexibility Waivers the opportunity to renew those waivers for the 2014-15 school year.

At its February 2014 meeting, the Board of Regents directed the State Education Department to submit a request to the United States Department of Education (USDE) to amend the provisions of the approved ESEA Flexibility Waiver Request related to determinations of AYP. These changes were approved by the USDE on July 31, 2014. A subsequent review of the Commissioner's Regulations has determined that a technical amendment is necessary to conform regulatory language to the approved ESEA Flexibility Waiver Request.

In addition, Department staff convened a workgroup of districts that have or have had schools identified LAP and conducted an online survey of such districts. As a result of this feedback, Department staff is proposing technical changes to the regulations to clarify that the Commissioner will not identify any schools that meet progress criteria established by the Commissioner as LAP Schools.

The proposed amendment will amend subdivision 100.18(f) of Commissioner's Regulations to align it with New York's approved ESEA Flexibility Waiver Renewal Application and 100.18(g) to clarify the methodology for identification of LAP Schools. The proposed amendments will:

- Give schools and districts credit for making Adequate Yearly Progress (AYP) with the "all students group" when all other accountability groups for which a school or district is accountable make AYP on an English language arts or mathematics performance criterion, as specified in New York's approved ESEA waiver; and
- Clarify that the Commissioner may consider additional measures in determining whether to identify a school as a LAP, including, but not limited to the following: whether a subgroup has made AYP; the subgroup's Student Growth Percentile (SGP); the percentile rank of the Performance Index (PI)/graduation rate of a subgroup on an accountability measure as compared to the percentile rank of the PI/graduation rate of the subgroup in other schools in the state; whether the graduation rate of the subgroup is above state average; and if the subgroup's performance on an accountability measure has changed from year to year.

3. PROFESSIONAL SERVICES:

The proposed amendment imposes no additional professional services requirements.

4. COMPLIANCE COSTS:

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

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

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

6. MINIMIZING ADVERSE IMPACT:

The proposed amendment relates to public school and school district accountability and is necessary to conform the Commissioner's Regulations to New York State's approved Elementary and Secondary Education Act (ESEA) Waiver Renewal Request relating to the methodology for determining Adequate Yearly Progress (AYP) and the identification of Local Assistance Plan (LAP) schools, for purposes of school district/school accountability. The State and local educational agencies (LEAs) are required to comply with the ESEA as a condition to their receipt of federal funds under Title I of the ESEA Act of 1965, as amended. The proposed amendment has been carefully drafted to meet specific federal and State requirements, and does not impose any additional compliance requirements or costs beyond those inherent in such federal and State requirements.

7. LOCAL GOVERNMENT PARTICIPATION:

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

8. INITIAL REVIEW OF RULE:

Pursuant to State Administrative Procedure Act section 207(1)(b), the State Education Department proposes that the initial review of this rule shall occur in the fifth calendar year after the year in which the rule is adopted, instead of in the third calendar year. The justification for a five year review period is that the proposed amendment is necessary to conform the Commissioner's Regulations to New York State's approved ESEA Waiver Renewal Request relating to the methodology for determining Adequate Yearly Progress (AYP) and the identification of Local Assistance Plan (LAP) schools, for purposes of school district/school accountability. Accordingly, there is no need for a shorter review period. The Department invites public comment on the proposed five year review period for this rule. Comments should be sent to the agency contact listed in item 16. of the Notice of Emergency Adoption and Proposed Rule Making published herewith, and must be received within 45 days of the State Register publication date of the Notice.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

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

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

The proposed amendment is necessary to conform the Commissioner's Regulations to New York State's approved ESEA Flexibility Waiver Renewal Request relating to the methodology for determining Adequate Yearly Progress (AYP) and the identification of Local Assistant Plan (LAP) schools, for school district/school accountability purposes.

In September 2011, President Obama announced an ESEA regulatory flexibility initiative, based upon the Secretary of Education's authority to issue waivers. In October 2011, the Board of Regents directed the Commissioner to submit an ESEA Flexibility Request to the United States

Department of Education (USDE). On May 29, 2012, the USDE approved New York State's ESEA Flexibility Waiver Request. In September 2013, the USDE offered states with approved ESEA Flexibility Waivers the opportunity to renew those waivers for the 2014-15 school year.

At its February 2014 meeting, the Board of Regents directed the State Education Department to submit a request to the United States Department of Education (USDE) to amend the provisions of the approved ESEA Flexibility Waiver Request related to determinations of AYP. These changes were approved by the USDE on July 31, 2014. A subsequent review of the Commissioner's Regulations has determined that a technical amendment is necessary to conform regulatory language to the approved ESEA Flexibility Waiver Request.

In addition, Department staff convened a workgroup of districts that have or have had schools identified LAP and conducted an online survey of such districts. As a result of this feedback, Department staff is proposing technical changes to the regulations to clarify that the Commissioner will not identify any schools that meet progress criteria established by the Commissioner as LAP Schools.

The proposed amendment will amend subdivision 100.18(f) of Commissioner's Regulations to align it with New York's approved ESEA Flexibility Waiver Renewal Application and 100.18(g) to clarify the methodology for identification of LAP Schools. The proposed amendments will:

- Give schools and districts credit for making Adequate Yearly Progress (AYP) with the "all students group" when all other accountability groups for which a school or district is accountable make AYP on an English language arts or mathematics performance criterion, as specified in New York's approved ESEA waiver; and
- Clarify that the Commissioner may consider additional measures in determining whether to identify a school as a LAP, including, but not limited to the following: whether a subgroup has made AYP; the subgroup's Student Growth Percentile (SGP); the percentile rank of the Performance Index (PI)/graduation rate of a subgroup on an accountability measure as compared to the percentile rank of the PI/graduation rate of the subgroup in other schools in the state; whether the graduation rate of the subgroup is above state average; and if the subgroup's performance on an accountability measure has changed from year to year.

The proposed amendment imposes no additional professional service requirements.

3. COMPLIANCE COSTS:

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

4. MINIMIZING ADVERSE IMPACT:

The proposed amendment relates to public school and school district accountability and is necessary to conform the Commissioner's Regulations to New York State's approved Elementary and Secondary Education Act (ESEA) Waiver Renewal Request relating to the methodology for determining Adequate Yearly Progress (AYP) and the identification of Local Assistance Plan (LAP) schools, for purposes of school district/school accountability. The State and local educational agencies (LEAs) are required to comply with the ESEA as a condition to their receipt of federal funds under Title I of the ESEA Act of 1965, as amended.

The proposed amendment has been carefully drafted to meet specific federal and State requirements and does not impose any additional compliance requirements or costs beyond those inherent in such federal and State requirements. Since these requirements apply to all local educational agencies in the State that receive ESEA funds, it is not possible to adopt different standards for school districts and charter schools in rural areas.

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:

Pursuant to State Administrative Procedure Act section 207(1)(b), the State Education Department proposes that the initial review of this rule shall occur in the fifth calendar year after the year in which the rule is adopted, instead of in the third calendar year. The justification for a five year review period is that the proposed amendment is necessary to conform the Commissioner's Regulations to New York State's approved ESEA Waiver Renewal Request relating to the methodology for determining Adequate Yearly Progress (AYP) and the identification of Local Assistance Plan (LAP) schools, for purposes of school district/school accountability. Accordingly, there is no need for a shorter review period. The Department invites public comment on the proposed five year review period for this rule. Comments should be sent to the agency contact listed in item 16. of the Notice of Emergency Adoption and Proposed Rule Making published herewith, and must be received within 45 days of the State Register publication date of the Notice.

Job Impact Statement

The proposed amendment relates to public school and school district accountability and is necessary to conform the Commissioner's Regulations to New York State's approved Elementary and Secondary Education Act (ESEA) Waiver Renewal Request relating to the methodology for determining Adequate Yearly Progress (AYP) and the identification of Local Assistance Plan (LAP) schools, for purposes of school district/school accountability. The State and local educational agencies (LEAs) are required to comply with the ESEA as a condition to their receipt of federal funds under Title I of the ESEA Act of 1965, as amended.

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

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

Student Enrollment

I.D. No. EDU-52-14-00014-ERP
Filing No. 273
Filing Date: 2015-04-14
Effective Date: 2015-04-14

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

Action Taken: Amendment of section 100.2(y) of Title 8 NYCRR.

Statutory authority: Education Law, sections 207(not subdivided), 305(1), (2), (20), 3202(1), 3205(1), 3713(1) and (2)

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

Specific reasons underlying the finding of necessity: The proposed amendment is designed to: (1) address reports that districts are denying enrollment of unaccompanied minors and undocumented youths if they are unable to produce documents sufficiently demonstrating age, guardianship, and/or residency in a district; and (2) provide clear requirements for school districts regarding enrollment of students, particularly as it pertains to procedures for unaccompanied minors and other undocumented youths.

Many school districts across the State have experienced an influx of unaccompanied minors and other undocumented youths. It has been reported that some school districts are refusing to enroll unaccompanied minors and undocumented youths if they, or their families or guardians, are unable to produce documents sufficiently demonstrating guardianship and/or residency in a district. These enrollment policies, as well as highly restrictive requirements for proof of residency, may impede or prevent many unaccompanied minors and undocumented youths from enrolling or attempting to enroll in school districts throughout the State. The proposed amendment is necessary to ensure that all children are enrolled in school, regardless of immigration status, pursuant to New York State and Federal law and to ensure that all school districts understand and comply with their obligation to enroll all resident students regardless of their immigration status.

The proposed amendment was adopted by emergency action at the December 15-16, 2014 Regents meeting, effective December 16, 2014. A Notice of Emergency Adoption and Proposed Rule Making was published in the State Register on December 31, 2014. The proposed amendment was readopted as an emergency action at the February 2015 Regents meeting to ensure that the rule remains continuously in effect until it can be presented for adoption and take effect as a permanent rule.

The proposed rule has been revised in response to public comment as set forth in the Revised Regulatory Impact Statement submitted herewith. Emergency action to adopt the proposed rule is necessary now for the preservation of the general welfare to immediately repeal the February emergency rule and adopt the revised proposed rule for purposes of clarifying requirements for school districts regarding the enrollment of students, particularly as it pertains to procedures for unaccompanied minors and other undocumented youth, and thereby ensure compliance with federal and State laws regarding access to a free public education system.

It is anticipated that the revised rule will be presented to the Board of Regents for adoption as a permanent rule at the June 15-16, 2015 Regents meeting, which is the first scheduled meeting after expiration of the 30-day public comment period mandated by the State Administrative Procedure Act section 202(4-a) for revised proposed rulemakings.

Subject: Student enrollment.

Purpose: Clarify requirements on student enrollment, particularly as to procedures for unaccompanied minors and other undocumented youth.

Substance of emergency/revised rule: Since publication of a Notice of Emergency Adoption and Proposed Rule Making in the State Register on December 31, 2014, the proposed rule has been substantially revised as set forth in the Revised Regulatory Impact Statement submitted herewith.

The following is a summary of the revised proposed rule.

Paragraph (1) of section 100.2(y) sets forth the purposes of the regulation to establish requirements for determinations by a board of education or its designee of student residency and age, for purposes of eligibility to attend the public schools in the school district without the payment of tuition pursuant to Education Law section 3202, in order to ensure that all eligible students are admitted to such schools without undue delay; provided that nothing in this subdivision shall be construed to change or shift the burden of proof of the parent(s), the person(s) in parental relation or the child, as appropriate, to establish residency through physical presence as an inhabitant of the school district and intent to reside in the district.

Paragraph (2) of section 100.2(y) provides that each school district shall make publicly available its enrollment forms, procedures, instructions and requirements for determinations of student residency and age in accordance with this subdivision. Such publicly available information shall include a non-exhaustive list of the forms of documentation that may be submitted to the district by parents, persons in parental relation or children, as appropriate, in accordance with the provisions of this subdivision. Such list shall include but not be limited to all examples of documentation listed in this subdivision. No later than January 31, 2015, such information shall be included in the school district's existing enrollment/registration materials and shall be provided to all parents, persons in parental relation or children, as appropriate, who request enrollment in the district, and shall be posted on the district's website, if one exists. As soon as practicable but no later than July 1, 2015, the school district shall update such information and the district's existing enrollment/registration materials as necessary to come into compliance with the provisions of this subdivision; and provide such updated information and materials to all parents, persons in parental relation or children, as appropriate, who request enrollment in the district; and post such updated information and materials on the district's website, if one exists.

Paragraph (3) of section 100.2(y) provides that when a child's parent(s), the person(s) in parental relation to the child or the child, as appropriate, requests enrollment of the child in the school district, such child shall be enrolled and shall begin attendance on the next school day, or as soon as practicable, provided that nothing herein shall require the district to enroll such child if a determination of non-residency is made, in accordance with this subdivision, on the date of such request for enrollment. As soon as practicable but no later than three business days after such initial enrollment, the parent(s), the person(s) in parental relation to the child or the child, as appropriate, shall submit documentation and/or information in support of the child's residency in the district and the board of education or its designee shall review all such documentation and/or information and make a residency determination in accordance with subparagraphs (i) and (ii) of paragraph (3); provided that if such documentation and/or information is submitted on the third business day after initial enrollment, the board of education or its designee in its discretion may make the residency determination no later than the fourth business day after initial enrollment. Subparagraph (i) of paragraph (3) sets forth requirements for documentation regarding enrollment and/or residency, including non-exclusive lists of documentation to establish that a child resides with the parents or persons in parental relation and to establish physical presence in the school district, and a non-exclusive list of documentation to establish. The subparagraph also provides that a school district shall not request as a condition of enrollment, a social security number or card or any information that would tend to reveal the immigration status of a child, or the child's parent or person in parental relation.

Subparagraph (ii) of paragraph (3) sets forth requirements for documentation of age, including a non-exclusive list of documents that may be considered.

Subparagraph (ii) of paragraph (3) provides that school districts are required to comply with Public Health Law § 2164(7) and all other applicable provisions of the Public Health Law and its implementing regulations, including orders issued by a state or local health department pursuant to such laws or regulations, that impact a student's admission to or attendance in school. Nothing in section 100.2(y) shall be construed to:

(1) require the immediate attendance of an enrolled student lawfully excluded from school temporarily pursuant to Education Law § 906 because of a communicable or infectious disease that imposes a significant risk of infection of others, or an enrolled student whose parent(s) or person(s) in parental relation have not submitted proof of immunization within the periods prescribed in Public Health Law § 2164(7)(a);

(2) require the immediate attendance of an enrolled student who is suspended from instruction for disciplinary reasons pursuant to Education Law § 3214;

(3) interfere with the recordkeeping and reporting requirements imposed on school districts participating in the federal Student and Exchange Visitor Program (SEVP) in grades 9-12 pursuant to applicable federal laws and regulations concerning nonimmigrant alien students who identify themselves as having or seeking nonimmigrant student visa status (F-1 or M-1), and nothing herein shall be construed to conflict with such requirements or to relieve such nonimmigrant alien students who have or seek an F-1 or M-1 visa from fulfilling their obligations under federal law and regulations related to enrolling in grades 9-12 in SEVP schools.

Paragraph (4) of section 100.2(y) provides that at any time during the school year and notwithstanding any prior determination to the contrary at the time of the child's initial enrollment or re-entry into the public schools of the district, the board of education or its designee may determine, in accordance with paragraph (6) of section 100.2(y), that a child is not a district resident entitled to attend the schools of the district.

Paragraph (5) of section 100.2(y) provides that determinations regarding whether a child is entitled to attend a district's schools as a homeless child or youth must be made in accordance with subdivision (x) of this section.

Paragraph (6) of section 100.2(y) is amended to provide that when the board of education or its designee determines that a child is not entitled to attend the schools of such district because such child is not a resident of such district, such board or its designee shall, within two business days, provide written notice of its determination to the child's parent, to the person in parental relation to the child, or to the child, as appropriate. Such written notice shall state:

(1) that the child is not entitled to attend the public schools of the district;

(2) the specific basis for the determination that the child is not a resident of the school district, including but not limited to a description of the documentary or other evidence upon which such determination is based;

(3) the date as of which the child will be excluded from the schools of the district; and

(4) that the determination of the board may be appealed to the Commissioner of Education, in accordance with Education Law, section 310, within 30 days of the date of the determination, and that the instructions, forms and procedures for taking such an appeal, including translated versions of such instructions, forms and procedures, may be obtained from the Office of Counsel at www.counsel.nysed.gov, or by mail addressed to the Office of Counsel, New York State Education Department, State Education Building, Albany, NY 12234 or by calling the Appeals Coordinator at (518) 474-8927.

This notice is intended to serve as both a notice of emergency adoption and a notice of revised rule making. The notice of proposed rule making was published in the *State Register* on December 31, 2014, I.D. No. EDU-52-14-00014-EP. The emergency rule will expire June 12, 2015.

Emergency rule compared with proposed rule: Substantial revisions were made in section 100.2(y)(1), (2), (3) and (4).

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@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@nysed.gov

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

Revised Regulatory Impact Statement

Since publication of a Notice of Emergency Adoption and Proposed Rule Making in the State Register on December 31, 2015, the substantial revisions were made to the proposed amendment as follows.

The previous paragraph (1) of section 100.2(y) has been renumbered to (2), and a new paragraph (1) has been added to expressly state the purpose of section 100.2(y) to set forth requirements for determinations by a board of education of student residency and age, for purposes of eligibility to attend the public schools in the school district without the payment of tuition pursuant to Education Law section 3202, in order to ensure that all eligible students are admitted to such schools without undue delay; and to provide that nothing in section 100.2(y) shall be construed to change or shift the burden of proof of the parent(s), the person(s) in parental relation or the child, as appropriate, to establish residency through physical presence as an inhabitant of the school district and intent to reside in the district.

Renumbered paragraph (2) has been revised to clarify that, as soon as practicable but no later than July 1, 2015, school districts shall update their publicly available information on enrollment and residency proce-

dures and enrollment/registration materials as necessary to come into compliance with section 100.2(y), as revised; and provide such updated information and materials to all parents, persons in parental relation or children, as appropriate, who request enrollment in the district; and post such updated information and materials on the district's website, if one exists.

The previous paragraph (2) has been renumbered to paragraph (3) and revised to clarify that nothing in section 100.2(y) shall require the school district to enroll a child if a determination of non-residency is made, in accordance with section 100.2(y), on the date of such request for enrollment. The paragraph has been further revised to clarify the procedures and timeline for the district to make its residency determination. As soon as practicable but no later than three business days after such initial enrollment, the parent(s), the person(s) in parental relation to the child or the child, as appropriate, shall submit documentation and/or information in support of the child's residency in the district and the board of education or its designee shall review all such documentation and/or information and make a residency determination in accordance with section 100.2(y)(3)(i) and (ii); provided that if such documentation and/or information is submitted on the third business day after initial enrollment, the district in its discretion may make the residency determination no later than the fourth business day after initial enrollment.

Clause (b) of section 100.2(y)(3)(i) has been revised to clarify the documentation and/or information that a school district may require the parent(s) or person(s) in parental relation to submit as evidence of the physical presence of the parent(s) or person(s) in parental relation and the child in the school district.

Clause (c) of section 100.2(y)(3)(i) has been revised to provide that for purposes of proof of parental relationship or proof that the child resides with the parent(s) or person(s) in parental relation, the district may accept an affidavit of the parent(s) or person(s) in parental relation indicating either: (1) that they are the parent(s) with whom the child lawfully resides; or (2) that they are the person(s) in parental relation to the child, over whom they have total and permanent custody and control, and describing how they obtained total and permanent custody and control, whether through guardianship or otherwise.

The previous paragraph (3) has been deleted because the revisions made to renumbered paragraph (3), as described above, have made the provisions in the previous paragraph (3) redundant and unnecessary.

Paragraph (4) of section 100.2(y) has been revised to clarify that at any time during the school year the board of education or its designee may determine in accordance with section 100.2(y)(6) that a child is not a district resident entitled to attend the schools of the district, notwithstanding any prior determination to the contrary at the time of the child's initial enrollment or re-entry into the public schools of the district.

The proposed amendment has been generally revised to make certain technical changes relating to terminology and organizational structure within the proposed amendment.

The above revisions require that the Local Government Mandates and Paperwork sections in the previously published Regulatory Impact Statement be revised to read as follows.

LOCAL GOVERNMENT MANDATES:

Each school district shall make publicly available its enrollment forms, procedures, instructions and requirements for determinations of student residency and age, including a non-exhaustive list of the forms of documentation that may be submitted to the district, as specified in the regulation. By no later than January 31, 2015, such information shall be included in the district's existing enrollment/registration materials and be provided to all parents/persons in parental relation or children, as appropriate, who request enrollment in the district, and be posted on the district's website, if one exists. As soon as practicable but no later than July 1, 2015, school districts shall update their publicly available information on enrollment and residency procedures and enrollment/registration materials as necessary to come into compliance with section 100.2(y), as revised; and provide such updated information and materials to all parents, persons in parental relation or children, as appropriate, who request enrollment in the district; and post such updated information and materials on the district's website, if one exists.

When a child's parent(s)/person(s) in parental relation or the child, as appropriate, requests enrollment of the child in the school district, such child shall be enrolled and begin attendance on the next school day, or as soon as practicable, provided that nothing in section 100.2(y) shall require the school district to enroll such child if a determination of non-residency is made, in accordance with this subdivision, on the date of such request for enrollment. As soon as practicable but no later than three business days after initial enrollment, the parent(s), the person(s) in parental relation to the child or the child, as appropriate, shall submit documentation and/or information in support of the child's residency in the district and the board of education or its designee shall review all documentation and/or information and make a residency determination in accordance with the regulation. At any time during the school year, the board of education or its designee may determine, in accordance with the regulation, that a child is not a district resident entitled to attend the schools of the district. Determinations regarding whether a child is entitled to attend a district's schools as a homeless child or youth must be made in accordance with section 100.2(x) of the Commissioner's Regulations.

School districts are required to comply with Public Health Law § 2164(7) and all other applicable provisions of the Public Health Law and its implementing regulations, including orders issued by a state or local health department pursuant to such laws or regulations, that impact a student's admission to or attendance in school.

PAPERWORK:

The regulation provides that the district may require parents/persons in parental relation or the child, as appropriate, to submit documentation/information as evidence of their physical presence in the school district, as specified in the regulation, including:

(1) a copy of a residential lease or proof of ownership of a house or condominium, such as a deed or mortgage statement;

(2) a statement by a third-party landlord, owner or tenant from whom the parent(s) or person(s) in parental relation leases or with whom they share property within the district, which may be either sworn or unsworn;

(3) such other statement by a third party relating to the parent(s)' or person(s) in parental relation's physical presence in the district; and/or

(4) other forms of documentation and/or information establishing physical presence in the district, which may include but not be limited to those listed in section 100.2(y)(3)(i)(d).

A district may not require submission of a judicial custody order or an order of guardianship as a condition of enrollment.

Revised Regulatory Flexibility Analysis

Since publication of a Notice of Emergency Adoption and Proposed Rule Making in the State Register on December 31, 2014, the proposed rule has been substantially revised as set forth in the Revised Regulatory Impact Statement submitted herewith.

The revisions require that the Compliance Requirements section in the previously published Regulatory Flexibility Analysis be revised to read as follows.

2. COMPLIANCE REQUIREMENTS:

The proposed amendment merely codifies applicable federal and State laws, as well as existing SED guidance to school districts, in order to ensure that unaccompanied minors and undocumented youths are provided their constitutional right to a free public education. The proposed amendment will not impose any additional compliance requirements beyond those inherent in such applicable laws.

Each school district shall make publicly available its enrollment forms, procedures, instructions and requirements for determinations of student residency and age, including a non-exhaustive list of the forms of documentation that may be submitted to the district, as specified in the regulation. By no later than January 31, 2015, such information shall be included in the district's existing enrollment/registration materials and be provided to all parents/persons in parental relation or children, as appropriate, who request enrollment in the district, and be posted on the district's website, if one exists.

When a child's parent(s)/person(s) in parental relation or the child, as appropriate, requests enrollment of the child in the school district, such child shall be enrolled and begin attendance on the next school day, or as soon as practicable, provided that nothing in section 100.2(y) shall require the school district to enroll such child if a determination of non-residency is made, in accordance with this subdivision, on the date of such request for enrollment. As soon as practicable but no later than three business days after initial enrollment, the parent(s), the person(s) in parental relation to the child or the child, as appropriate, shall submit documentation and/or information in support of the child's residency in the district and the board of education or its designee shall review all documentation and/or information and make a residency determination in accordance with the regulation. At any time during the school year, the board of education or its designee may determine, in accordance with the regulation, that a child is not a district resident entitled to attend the schools of the district. Determinations regarding whether a child is entitled to attend a district's schools as a homeless child or youth must be made in accordance with section 100.2(x) of the Commissioner's Regulations.

School districts are required to comply with Public Health Law § 2164(7) and all other applicable provisions of the Public Health Law and its implementing regulations, including orders issued by a state or local health department pursuant to such laws or regulations, that impact a student's admission to or attendance in school.

The regulation provides that the district may require parents/persons in parental relation or the child, as appropriate, to submit documentation/information as evidence of their physical presence in the school district, as specified in the regulation, including:

(1) a copy of a residential lease or proof of ownership of a house or condominium, such as a deed or mortgage statement;

(2) a statement by a third-party landlord, owner or tenant from whom the parent(s) or person(s) in parental relation leases or with whom they share property within the district, which may be either sworn or unsworn;

(3) such other statement by a third party relating to the parent(s)' or person(s) in parental relation's physical presence in the district; and/or

(4) other forms of documentation and/or information establishing physical presence in the district, which may include but not be limited to those listed in section 100.2(y)(3)(i)(d).

A district may not require submission of a judicial custody order or an order of guardianship as a condition of enrollment.

Revised Rural Area Flexibility Analysis

Since publication of a Notice of Emergency Adoption and Proposed Rule Making in the State Register on December 31, 2014, the proposed rule has been substantially revised as set forth in the Revised Regulatory Impact Statement submitted herewith.

The revision requires that the Reporting, Recordkeeping and Other Compliance Requirements; and Professional Services section in the previously published Rural Area Flexibility Analysis be revised to read as follows.

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

The proposed amendment merely codifies applicable federal and State laws, as well as existing SED guidance to school districts, in order to ensure that unaccompanied minors and undocumented youths are provided their constitutional right to a free public education. The proposed amendment will not impose any additional compliance requirements beyond those inherent in such applicable laws.

Each school district shall make publicly available its enrollment forms, procedures, instructions and requirements for determinations of student residency and age, including a non-exhaustive list of the forms of documentation that may be submitted to the district, as specified in the regulation. By no later than January 31, 2015, such information shall be included in the district's existing enrollment/registration materials and be provided to all parents/persons in parental relation or children, as appropriate, who request enrollment in the district, and be posted on the district's website, if one exists.

When a child's parent(s)/person(s) in parental relation or the child, as appropriate, requests enrollment of the child in the school district, such child shall be enrolled and begin attendance on the next school day, or as soon as practicable, provided that nothing in section 100.2(y) shall require the school district to enroll such child if a determination of non-residency is made, in accordance with this subdivision, on the date of such request for enrollment. As soon as practicable but no later than three business days after initial enrollment, the parent(s), the person(s) in parental relation to the child or the child, as appropriate, shall submit documentation and/or information in support of the child's residency in the district and the board of education or its designee shall review all documentation and/or information and make a residency determination in accordance with the regulation. At any time during the school year, the board of education or its designee may determine, in accordance with the regulation, that a child is not a district resident entitled to attend the schools of the district. Determinations regarding whether a child is entitled to attend a district's schools as a homeless child or youth must be made in accordance with section 100.2(x) of the Commissioner's Regulations.

School districts are required to comply with Public Health Law § 2164(7) and all other applicable provisions of the Public Health Law and its implementing regulations, including orders issued by a state or local health department pursuant to such laws or regulations, that impact a student's admission to or attendance in school.

The regulation provides that the district may require parents/persons in parental relation or the child, as appropriate, to submit documentation/information as evidence of their physical presence in the school district, as specified in the regulation, including:

(1) a copy of a residential lease or proof of ownership of a house or condominium, such as a deed or mortgage statement;

(2) a statement by a third-party landlord, owner or tenant from whom the parent(s) or person(s) in parental relation leases or with whom they share property within the district, which may be either sworn or unsworn;

(3) such other statement by a third party relating to the parent(s)' or person(s) in parental relation's physical presence in the district; and/or

(4) other forms of documentation and/or information establishing physical presence in the district, which may include but not be limited to those listed in section 100.2(y)(3)(i)(d).

A district may not require submission of a judicial custody order or an order of guardianship as a condition of enrollment.

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

Revised Job Impact Statement

Since publication of a Notice of Emergency Adoption and Proposed Rule Making in the State Register on December 31, 2014, the proposed rule has been substantially revised as set forth in the Revised Regulatory Impact Statement submitted herewith.

The proposed amendment, as revised, relates to student enrollment, and will codify applicable federal and State laws, as well as existing State Education Department guidance to school districts, in order to ensure that unaccompanied minors and undocumented youths are provided their constitutional right to a free public education. The proposed revised amendment does not impose any adverse economic impact, reporting, record keeping or any other compliance requirements on small businesses. Because it is evident from the nature of the proposed revised amendment that it does not affect small businesses, no further measures were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses is not required and one has not been prepared.

Assessment of Public Comment

Since publication of Notice of Emergency Adoption and Proposed Rule Making in State Register on December 31, 2015, the State Education Department (SED) received comments summarized as follows:

1. COMMENT:

Strong support expressed for requiring enrollment information/instructions be made publicly available and on existing district websites, for requiring immediate enrollment and admission to attendance of students upon request, and for clarifying that school districts may not require certain materials to establish residency, age or guardianship.

DEPARTMENT RESPONSE:

No response necessary as comment is supportive.

2. COMMENT:

Amendment inconsistent with Education Law § 3202(1), which requires residency be established through physical presence and intent to remain in the district. Appears to allow persons to establish residency based merely on physical presence, as established through one of the forms of proof listed in the amendment, including unsworn third-party statements.

DEPARTMENT RESPONSE:

Comment misinterprets amendment, which is not intended to change requirement that residency be established by both physical presence and intent to remain. Amendment revised to clarify purpose of 100.2(y), and expressly provide nothing shall be construed to change or shift the burden of proof of the parent/person in parental relation or the child, as appropriate, to establish residency through physical presence as an inhabitant and intent to reside in the district. Language added clarifying documents listed are meant to be non-exclusive.

Nothing precludes districts from considering unsworn statements vis-à-vis sworn statements when weighing evidence regarding residency determination.

3. COMMENT:

Amendment is overbroad and exceeds scope of purpose. Ensuring unaccompanied minors/undocumented youth are provided constitutional right to a free public education can be achieved with more education about existing federal and State laws.

DEPARTMENT RESPONSE:

Amendment is not overbroad and does not exceed its purpose. It is not limited to unaccompanied minors/other undocumented youths, but instead is meant to ensure all students eligible to attend schools under Education Law § 3202 are admitted without undue delay. Amendment strikes appropriate balance between ensuring eligible students are admitted without undue delay by requiring immediate enrollment upon request, and minimizing negative effects of enrolling ineligible students by providing a three to four day period to resolve residency determinations. Amendment is necessary to codify applicable federal/State laws, and existing SED guidance, to ensure unaccompanied minors/undocumented youths are provided constitutional right to free public education.

4. COMMENT:

Amendment creates additional costs for districts, authorizes unlawful gift of public funds, and is contrary to best educational interest of students, because it requires immediate admission of all students, including non-resident students, upon request, and then a determination as to whether a child is district resident.

DEPARTMENT RESPONSE:

Three-business day period is meant to be maximum period within which district must make residency determination, and doesn't preclude district from making earlier determination if practicable. Amendment revised to clarify the timelines for residency determinations. While SED acknowledges there may be instances where non-resident children are enrolled for a short time and then removed, any resulting costs/negative effects are minimized by above clarifications and public interest in ensuring that children who are eligible to attend the public schools in the district under Education Law § 3202 are admitted without undue delay, outweighs such associated costs/negative effects.

5. COMMENT:

Amendment not required by federal law, regulation or administrative guidance.

DEPARTMENT RESPONSE:

SED disagrees and believes amendment is necessary to codify applicable federal/State laws, as well as existing SED guidance, to ensure unaccompanied minors/undocumented youths are provided constitutional right to free public education.

6. COMMENT:

Require districts to translate any documents submitted by parents/ persons in parental relation to establish physical presence in district and any enrollment-related documents made publicly available, and provide educational services to any child pending receipt, translation, and analysis of such records.

Revise 100.2(y)(1) to add: ''Such information shall be made available in the six most common non-English languages spoken by individuals with limited-English proficiency in the school district. Language assistance shall be made available in languages other than the six most common languages spoken by individuals with limited-English proficiency."

DEPARTMENT RESPONSE:

Districts must comply with existing federal/State civil rights laws concerning language access for English Language Learners and limited English proficient parents/ persons in parental relation. Imposing additional unfunded, translation mandates on districts is unduly burdensome.

7. COMMENT:

Give districts 15 business days minimum, instead of three, to provide sufficient time for districts to conduct review and parents to collect/submit documents.

DEPARTMENT RESPONSE:

Amendment strikes appropriate balance between ensuring eligible students are admitted without undue delay by requiring immediate enrollment upon request, and minimizing negative effects on districts of enrolling ineligible students by providing a three to four day period to resolve residency determinations. Nothing precludes submission of additional information on child's residency as such becomes available. In addition, § 100.2(y)(4) specifies "[a]t any time during the school year, the board of education or its designee may determine... that a child is not a district resident entitled to attend the schools of the district."

8. COMMENT:

Permitting districts to require affidavits that individuals are the parent with whom the child lawfully resides or that they are the person in parental relation to the child, places an undue and unnecessary burden on them. Revise to provide that proof of parental relationship/proof of residency may be satisfied by submitting an affidavit indicating the child lawfully resides with that parent or that they are the person(s) in parental relation to the child, and that districts may also accept other proof. Revise to clarify unaccompanied/homeless youth are not required to submit proof of parental relation or that person in parental relation has custody/control.

DEPARTMENT RESPONSE:

Amendment is revised to provide for proof of parental relationship/ proof child resides with parents, district may accept affidavit indicating: (1) they are parent(s) with whom child lawfully resides; or (2) they are person(s) in parental relation with total and permanent custody/control, and how they obtained total and permanent custody/control. Provision that "[a] district may also accept other proof..." has been retained. Because of above revision, unnecessary to address suggested revision concerning unaccompanied/homeless youths.

9. COMMENT:

Provide more options for supporting documents used to establish residency in district.

DEPARTMENT RESPONSE:

Supporting documents to establish residency include, but not limited to, documents specifically identified in §§ 100.2(y)(2)(i)(b) and 100.2(y)(2)(i)(d). Therefore, parents may submit documents such as those identified, and district must make a determination as to such documents' sufficiency to establish residency. If necessary, SED may consider issuing guidance.

10. COMMENT:

Where undocumented/unaccompanied youth won't have access to documents in § 100.2(y)(2)(ii), an affidavit of age, provided by an individual present at time of child's birth/baptism/other such religious ceremonies, should be considered as proof of age. Urge SED to work with State Legislature to amend Education Law § 3218 to allow use of such affidavits. Recommend regulations allow for submission of uncertified copy of the child's birth certificate as sufficient proof of age.

DEPARTMENT RESPONSE:

Education Law § 3218 governs what forms of evidence may be used to determine age, and any amendments must be enacted by State Legislature. SED will consider recommendation to work with State Legislature to amend Education Law § 3218.

11. COMMENT:

To ensure maximum amount of time under Public Health Law (PHL) § 2164(7) to gather proof of immunization, revise rule to specify districts may provide families with up to 30 days to secure necessary records.

Revise § 100.2(y)(2)(iii) to add: "In certain cases, immunization records from other countries may be unavailable immediately. In such situations, students should be allowed to attend school while the school ascertains the child's immunization status and the person in parental relation to the child arranges for immunizations, if necessary."

DEPARTMENT RESPONSE:

SED is not agency with regulatory authority over implementation of PHL § 2164(7). However, § 100.2(y)(2)(iii) clarifies districts required to comply with PHL § 2164(7), which includes provision that student may be allowed to attend for up to 30 days where such student is transferring from out-of-state or another country and can show a good faith effort to get the necessary certification or other evidence of immunization. The language in section 100.2(y)(2)(iii) is sufficient for its purposes and further specification/elaboration should be left to guidance.

12. COMMENT:

How can a district determine parental rights if there is no requirement for a birth certificate? Not all proof of age includes both parent names.

DEPARTMENT RESPONSE:

Amendment comports with Education Law § 3218, which provides that if a birth certificate is not available, then a passport showing the date of birth, or other documentary evidence or other recorded evidence in existence two years or more (except an affidavit of age) may be presented as evidence of age. Amendment provides non-exclusive list of what may be considered as "other documentary evidence or other recorded evidence."

13. COMMENT:

Does a student stay in school during an appeal of a negative residency determination?

DEPARTMENT RESPONSE:

Pursuant to 8 NYCRR § 276.1, a person bringing an appeal under Education Law § 310 may apply for a stay which, if granted, will allow the student to remain in school during pendency of the appeal.

14. COMMENT:

Does three-day residency determination rule apply to summer registrations?

DEPARTMENT RESPONSE:

Amendment provides child shall be enrolled upon request and "shall begin attendance on the next school day, or as soon as practicable." If child would be eligible to attend summer school if a resident of district, then child must be enrolled upon request and begin attendance on next school day that summer school is in session or as soon as practicable. District must make residency determination as soon as practicable but no later than three business days (or four business days if documentation/ information on residency is submitted on the third business day). If the child ineligible to attend summer school, but eligible to attend regular session, then child must be enrolled upon request and district must make residency determination in accordance with above (i.e. as soon as practicable, but no later than three/four days etc.). However, child would be required to be admitted pending a residency determination within the three/four day period only on those school days, if any, that fall within regular session.

15. COMMENT:

Does McKinney-Vento form need to be included in registration packet?

DEPARTMENT RESPONSE:

Districts that receive federal funding as part of the State's Consolidated Application must administer the McKinney-Vento Residency/Enrollment Questionnaire, and Questionnaire must be included in district's registration packet. Questionnaire should be placed in the registration packet as the first page, to eliminate enrollment delays.

16. COMMENT:

Can Home Language Questionnaire (HLQ) be provided at time of enrollment so district can immediately identify need for assessment and, if so, which school student needs to be assigned based upon the need and resources? If HLQ cannot be provided there may be delay for student in terms of assessment.

DEPARTMENT RESPONSE:

HLQ, in its current form, should be administered as soon after point of enrollment as possible. SED may consider issuing guidance.

17. COMMENT:

Can districts ask question on enrollment form on "migrant status", and include resource information as part of enrollment packet to get families in touch with appropriate resources?

Revise § 100.2(y)(2)(i)(a)(2) to state: "any oral or written information regarding or which would tend to reveal the immigration status of the child, the child's parent(s) or the person(s) in parental relation, including but not limited to copies of or information concerning visas, permanent residence cards, or other documentation indicating immigration status of the child or any family members..'' to clarify that the regulation prohibits

verbal questions about immigration status when interviewing families for purposes of enrollment, as well as questions on forms.

DEPARTMENT RESPONSE:

To extent that asking about "migrant status" on enrollment forms may tend to reveal immigration status, districts may not ask such questions. However, districts may ask other questions pertinent to provision of resources for migrant families. SED believes language in § 100.2(y)(2)(i)(a)(2) is sufficient for its purposes and further specification or elaboration is best addressed, if necessary, in guidance.

NOTICE OF ADOPTION

Use of Department Facilities in the Cultural Education Center

I.D. No. EDU-04-15-00007-A

Filing No. 272

Filing Date: 2015-04-14

Effective Date: 2015-04-29

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

Action taken: Amendment of section 230.2 of Title 8 NYCRR.

Statutory authority: Education Law, sections 101(not subdivided), 207(not subdivided), 305(1), (2), (6) and (20)

Subject: Use of Department Facilities in the Cultural Education Center.

Purpose: To prescribe standards for the use of Cultural Education Center facilities.

Text or summary was published in the January 28, 2015 issue of the Register, I.D. No. EDU-04-15-00007-P.

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

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

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2018, which is no later than the 3rd year after the year in which this rule is being adopted.

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Requirements for Teacher Certification

I.D. No. EDU-05-15-00008-A

Filing No. 271

Filing Date: 2015-04-14

Effective Date: 2015-04-29

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

Action taken: Amendment of sections 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)

Subject: Requirements for teacher certification.

Purpose: To provide teacher candidates with additional flexibility to use the safety net for the teacher performance assessment (edTPA).

Text or summary was published in the February 4, 2015 issue of the Register, I.D. No. EDU-05-15-00008-P.

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

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

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2018, 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.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Licensure of Physician Assistants and Registration of Specialist Assistants

I.D. No. EDU-17-15-00002-P

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

Proposed Action: Amendment of sections 60.8 and 60.11 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207(not subdivided), 6501(not subdivided), 6504(not subdivided), 6507(2)(a), 6540, 6541, 6544(not subdivided), 6546, 6547, 6548 and 6549-b(not subdivided); L. 2012, ch. 48

Subject: Licensure of Physician Assistants and Registration of Specialist Assistants.

Purpose: To conform Commissioner's Regulations to Chapter 48 of 2012 and remove obsolete provisions relating to physician assistants.

Text of proposed rule: 1. Section 60.8 of the Regulations of the Commissioner of Education is amended, effective August 5, 2015, to read as follows:

§ 60.8 [Registration] *Licensure* of physician assistants [or specialist assistants].

(a) General requirements. An applicant for [registration] *licensure* as a physician assistant [or specialist assistant] shall submit the required application form to the department and shall have met the requirements of section 6541of the Education Law.

(b) Professional study.

(1) An applicant who has completed a program for the training of physician assistants [or specialist assistants], which has been approved by the department, shall be eligible for [registration] *licensure*.

(2) An applicant who has completed a program for the training of physician assistants [or specialist assistants] outside New York State shall be eligible for [registration] *licensure* if the applicant meets the requirements of section 6541 of the Education Law and the program is determined by the department to be substantially equivalent to programs registered in New York State.

(3) Equivalent education and training. In lieu of all or part of a registered program for the training of physician assistants [or specialist assistants], the commissioner may accept evidence of an extensive health oriented education and of appropriate experience and training. The commissioner may require such an applicant to pass an examination acceptable to the department as set forth in subdivision (c) of this section and to make up any deficiencies in education or experience prior to [registration] *licensure*.

(c) An applicant for [registration] *licensure* as a physician assistant shall provide evidence of having obtained a passing score on an examination acceptable to the department. [The examination requirement shall apply to all applicants for initial registration whose applications are received on or after January 1, 1991 and shall also apply to any applicant whose acceptable educational program was completed after January 1, 1991 regardless of the applicant's date of application.] The department shall accept passing grades on an examination that adequately assesses entry level skills for the profession of physician assistant and does not unreasonably restrict access to the profession.

(d) Permits limited as to eligibility, practice and duration, shall be issued by the department to eligible applicants as follows:

(1) A person who fulfills all requirements for [registration] *licensure* as a physician assistant except that relating to the examination shall be eligible for a limited permit.

(2) A permittee shall be authorized to practice as a physician assistant only under the direct supervision of a licensed physician.

(3) A limited permit shall expire one year from the date of issuance or upon notice to the permittee by the department that the application for [registration] *licensure* has been denied. A limited permit shall be extended upon application for one additional year in accordance with the requirements of section [6548(3)] *6546(3)* of the Education Law. If the permittee is awaiting the results of a licensing examination at the time such limited permit expires, such permit shall continue to be valid until ten days after notification to the permittee of the result of such examination.

[(e) Registration designations. Registration as a specialist assistant shall be for a particular field of practice as defined by the Commissioner of Health pursuant to section 3701 of the Public Health Law.]

2. Section 60.11 of the Regulations of the Commissioner of Education is added, effective August 5, 2015, to read as follows:

§ 60.11 Registration of specialist assistants.

(a) General requirements. An applicant for registration as a special assistant shall submit the required application form to the department and shall have met the requirements of section 6548 of the Education Law.

(b) Professional study.

(1) An applicant who has completed a program for the training of specialist assistants, which has been approved by the department, shall be eligible for registration.

(2) An applicant who has completed a program for the training of specialist assistants outside New York State shall be eligible for registration if the applicant meets the requirements of section 6548 of the Education Law and the program is determined by the department to be substantially equivalent to programs registered in New York State.

(3) Equivalent education and training. In lieu of all or part of a registered program for the training of specialist assistants, the commissioner may accept evidence of an extensive health oriented education and of appropriate experience and training. The commissioner may require such an applicant to make up any deficiencies in education or experience prior to registration.

(c) Registration designations. Registration as a specialist assistant shall be for a particular field of practice as defined by the Commissioner of Health pursuant to section 3711 of the Public Health Law.

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@nysed.gov

Data, views or arguments may be submitted to: Office of the Professions, Office of the Deputy Commissioner, State Education Department, State Education Building 2M, 89 Washington Ave., Albany, NY 12234, (518) 486-1765, email: opdepcom@nysed.gov

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

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

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

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

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

Section 6540 of the Education Law defines the terms relating to the practice of physician assistants.

Section 6541 of the Education Law establishes the requirements for licensure as a physician assistant.

Section 6544 of the Education Law authorizes the Commissioner of Education to promulgate regulations necessary to carry-out the purposes of Article 131-B of the Education Law, which defines and regulates the profession of physician assistants.

Section 6546 of the Education Law establishes the requirements for limited permits for physician assistants.

Section 6547 of the Education Law defines the terms relating to the practice of specialist assistants.

Section 6548 of the Education Law establishes the requirements for registration as a specialist assistant.

Section 6549-b of the Education Law authorizes the Commissioner of Education to promulgate regulations necessary to carry-out the purposes of Article 131-C of the Education Law, which defines and regulates the profession of specialist assistants.

2. LEGISLATIVE OBJECTIVES:

Chapter 48 of the Laws of 2012 amended the Education Law to make technical corrections in references to physician assistants; to change physician assistants' authorization to practice from "registered" to "licensed"; and to move references to, and the authorization of, specialist assistants from Article 131-B of the Education Law to a new Article 131-C of the Education Law.

The purpose of the proposed amendment to section 60.8 of the Regulations of the Commissioner of Education and the proposed addition of section 60.11 to the Regulations of the Commissioner of Education is to conform the regulations to Chapter 48, which became effective January 1, 2013, by separating the licensure requirements for physician assistants from the registration requirements for specialist assistants.

The proposed amendment to section 60.8 removes all references to specialist assistants and replaces all references to "registration" of physician assistants with the term "licensure" to conform to Chapter 48. All references to physician assistants have been retained. The proposed amendment would also remove certain regulatory provisions relating to physician assistant licensure in subdivision (c) of section 60.8, as those provisions no longer have any application.

The proposed addition of section 60.11 contains all the references to specialist assistants that are presently contained in section 60.8 and conforms to Chapter 48.

3. NEEDS AND BENEFITS:

The proposed amendment is necessary to conform the Regulations of the Commissioner of Education to Chapter 48 of the Laws of 2012.

Physician assistants (''PAs'') are licensed health care professionals, who provide medical care under the supervision of a physician. PAs provide a wide range of care within the area of practice of the supervising physician. PAs are educated in the medical model designed to complement physician training, and as part of their responsibilities, PAs conduct physical exams, diagnose and treat illnesses, order and interpret tests, counsel on preventive health care, and assist in surgery. Prior to the enactment of Chapter 48, the authorizing statute did not state that PAs were "licensed," which resulted in New York PAs facing various inappropriate limitations on their ability to practice. For instance, New York PAs were unable to participate in out-of-state humanitarian relief efforts because these relief efforts only accepted "licensed" health care professionals. The proposed amendment should eliminate this barrier to the ability of New York physician assistants to participate in out-of-state humanitarian relief efforts.

New York is the only state in the nation that registers specialist assistants (SAs). For registration as an SA, a high school diploma is required. SAs provide medical care under the supervision of a physician in one of the four following specialty areas: orthopedics, acupuncture, radiology and urology.

Since the licensing requirements and scopes of practice of PAs and SAs are significantly different, the proposed amendment of section 60.8 and the proposed addition of 60.11 implement Chapter 48 by clarifying and distinguishing their respective licensure and registration requirements and scopes of practice.

4. COSTS:

(a) Costs to State government: There will be no additional costs to state government.

(b) Costs to local government: There will be no costs to local government.

(c) Cost to private regulated parties: The proposed amendment will not impose any new requirements on regulated entities. Requirements for licensure and registration of physician assistants and specialist assistants remain the same. Therefore, there will be no additional costs to private regulated parties.

(d) Cost to the regulatory agency: There will be no additional costs to the regulatory agency.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment does not impose any program, service, duty or responsibility upon local governments.

6. PAPERWORK:

The proposed amendment does not impose any additional reporting, recordkeeping, or other paperwork requirements beyond those already required for physician assistants and specialist assistants.

7. DUPLICATION:

The proposed amendment does not duplicate other existing state or Federal requirements, and is necessary to implement Chapter 48 of the Laws of 2012.

8. ALTERNATIVES:

The proposed amendment is necessary to conform the Regulations of the Commissioner of Education to Chapter 48 of the Laws of 2012. There are no viable, significant alternatives to the proposed amendment and none were considered.

9. FEDERAL STANDARDS:

Since there are no Federal standards applicable to the licensure of physician assistants and registration of specialist assistants, the proposed amendment does not exceed any minimum federal standards for the same or similar subject areas.

10. COMPLIANCE SCHEDULE:

The proposed amendment is necessary to conform the Regulations of the Commissioner of Education to Chapter 48 of the Laws of 2012. It is anticipated that the proposed amendment will become effective on August 5, 2015. It is anticipated that those affected by the proposed amendment will be able to comply by the effective date.

Regulatory Flexibility Analysis

The purpose of the proposed amendment of section 60.8 of and the proposed addition of section 60.11 to the Regulations of the Commissioner of Education is to conform the regulations to Chapter 48 of the Laws of 2012, which, effective January 1, 2013, amended the Education Law to make technical corrections in references to physician assistants; to

change physician assistants' authorization to practice from "registered" to "licensed"; and to remove references to, and the authorization of, specialist assistants from Article 131-B of the Education Law and add them to a new Article 131-C of the Education Law.

Physician assistants (''PAs'') are licensed health care professionals, who provide medical care under the supervision of a physician. PAs provide a wide range of care within the area of practice of the supervising physician. PAs are educated in the medical model designed to complement physician training, and as part of their responsibilities, PAs conduct physical exams, diagnose and treat illnesses, order and interpret tests, counsel on preventive health care, and assist in surgery. Prior to the enactment of Chapter 48, the authorizing statute did not state that PAs were "licensed" which resulted in New York PAs facing various inappropriate limitations on their ability to practice. For instance, New York PAs were unable to participate in out-of-state humanitarian relief efforts because these relief efforts only accepted "licensed" health care professionals. The proposed amendment should eliminate this barrier to the ability of New York physician assistants to participate in out-of-state humanitarian relief efforts.

New York is the only state in the nation that registers specialist assistants (SAs). For registration as an SA, a high school diploma is required. SAs provide medical care under the supervision of a physician in one of the four following specialty areas: orthopedics, acupuncture, radiology and urology.

Since the licensing requirements and scopes of practice of PAs and SAs are significantly different, the proposed amendment of section 60.8 and the proposed addition of section 60.11 implement Chapter 48 by clarifying and distinguishing their respective licensure and registration requirements and scopes of practice.

The proposed amendment to section 60.8 removes all references to specialist assistants and replaces all references to "registration" of physician assistants with the term "licensure" and changes the statutory references to conform to Chapter 48. All references to physician assistants have been retained. The proposed amendment would also remove certain regulatory provisions relating to physician assistant licensure in subdivision (c) of section 60.8, as those provisions no longer have any application.

The proposed addition of section 60.11 contains all the references to specialist assistants that are presently contained in section 60.8 and conforms to Chapter 48.

The proposed amendment will not impose any reporting, recordkeeping, or other compliance requirements or costs, or impose an adverse economic impact, on small businesses or local governments. Because it is evident from the nature of the proposed amendment that it will not affect small businesses or local governments, no affirmative steps were needed to ascertain this fact and none were taken. Accordingly, a regulatory flexibility analysis is not required and one has not been prepared.

Rural Area Flexibility Analysis

The purpose of the proposed amendment of section 60.8 and the proposed addition of section 60.11 to the Regulations of the Commissioner of Education is to conform the regulations to Chapter 48 of the Laws of 2012, which, effective January 1, 2013, amended the Education Law to make technical corrections in references to physician assistants; to change physician assistants' authorization to practice from "registered" to "licensed"; and to remove references to, and the authorization of, specialist assistants from Article 131-B of the Education Law and add them to a new Article 131-C of the Education Law.

Physician assistants (''PAs'') are licensed health care professionals, who provide medical care under the supervision of a physician. PAs provide a wide range of care within the area of practice of the supervising physician. PAs are educated in the medical model designed to complement physician training, and as part of their responsibilities, PAs conduct physical exams, diagnose and treat illnesses, order and interpret tests, counsel on preventive health care, and assist in surgery. Prior to the enactment of Chapter 48, the authorizing statute did not state that PAs were "licensed" which resulted in New York PAs facing various inappropriate limitations on their ability to practice. For instance, New York PAs were unable to participate in out-of-state humanitarian relief efforts because these relief efforts only accepted "licensed" health care professionals. The proposed amendment should eliminate this barrier to the ability of New York physician assistants to participate in out-of-state humanitarian relief efforts.

New York is the only state in the nation that registers specialist assistants (SAs). For registration as an SA, a high school diploma is required. SAs provide medical care under the supervision of a physician in one of the four following specialty areas: orthopedics, acupuncture, radiology and urology.

Since the licensing requirements and scopes of practice of PAs and SAs are significantly different, the proposed amendment of section 60.8 and the proposed addition of section 60.11 implement Chapter 48 by clarifying and distinguishing their respective licensure and registration requirements and scopes of practice.

The proposed amendment to section 60.8 removes all references to specialist assistants and replaces all references to "registration" of physician assistants with the term "licensure" to conform to Chapter 48. All references to physician assistants have been retained. The proposed amendment would also remove certain regulatory provisions relating to physician assistant licensure in subdivision (c) of section 60.8, as those provisions no longer have any application.

The proposed addition of section 60.11 contains all the references to specialist assistants that are presently contained in section 60.8 and conforms to Chapter 48.

The proposed amendment merely revises the regulations to conform to Chapter 48, which clarified and separated the Education Law statutes governing the licensure and practice of physician assistants and the registration and practice of specialist assistants. Accordingly, no further steps were needed to ascertain the impact of the proposed amendment on entities in rural areas and none were taken.

Job Impact Statement

The purpose of the proposed amendment of section 60.8 of and the proposed addition of section 60.11 to the Regulations of the Commissioner of Education is to conform the regulations to Chapter 48 of the Laws of 2012, which, effective January 1, 2013, amended the Education Law to make technical corrections in references to physician assistants; to change physician assistants' authorization to practice from "registered" to "licensed"; and to remove references to, and the authorization of, specialist assistants from Article 131-B of the Education Law and add them to a new Article 131-C of the Education Law.

Physician assistants (''PAs'') are licensed health care professionals, who provide medical care under the supervision of a physician. PAs provide a wide range of care within the area of practice of the supervising physician. PAs are educated in the medical model designed to complement physician training, and as part of their responsibilities, PAs conduct physical exams, diagnose and treat illnesses, order and interpret tests, counsel on preventive health care, and assist in surgery. Prior to the enactment of Chapter 48, the authorizing statute did not state that PAs were "licensed" which resulted in New York PAs facing various inappropriate limitations on their ability to practice. For instance, New York PAs were unable to participate in out-of-state humanitarian relief efforts because these relief efforts only accepted "licensed" health care professionals. The proposed amendment should eliminate this barrier to the ability of New York physician assistants to participate in out-of-state humanitarian relief efforts.

New York is the only state in the nation that registers specialist assistants (SAs). For registration as an SA, a high school diploma is required. SAs provide medical care under the supervision of a physician in one of the four following specialty areas: orthopedics, acupuncture, radiology and urology.

Since the licensing requirements and scopes of practice of PAs and SAs are significantly different, the proposed amendment of section 60.8 and the proposed addition of section 60.11 implement Chapter 48 by clarifying and distinguishing their respective licensure and registration requirements and scopes of practice.

The proposed amendment to section 60.8 removes all references to specialist assistants and replaces all references to "registration" of physician assistants with the term "licensure" to conform to Chapter 48. All references to physician assistants have been retained. The proposed amendment would also remove certain regulatory provisions relating to physician assistant licensure in subdivision (c) of section 60.8, as those provisions no longer have any application.

The proposed addition of section 60.11 contains all the references to specialist assistants that are presently contained in section 60.8 and conforms to Chapter 48.

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

New York State Gaming Commission

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Implementation of Rules Pertaining to Gaming Facility Request for Application and Gaming Facility License Application

I.D. No. SGC-17-15-00001-EP
Filing No. 269
Filing Date: 2015-04-14
Effective Date: 2015-04-14

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

Proposed Action: Addition of Part 5300 to Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 104(19), 1305(20) and 1307(2)

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

Specific reasons underlying the finding of necessity: The Gaming Commission ("Commission") has determined that immediate adoption of these rules is necessary for the preservation of the general welfare. On March 31, 2014, the Gaming Facility Location Board, which the Commission established pursuant to section 109-a of the Racing, Pari-Mutuel Wagering and Breeding Law, issued a Request for Applications ("RFA") for applicants seeking a license to develop and operate a gaming facility in New York State pursuant to the Upstate New York Gaming Economic Development Act of 2013, as amended by Chapter 175 of the Laws of 2013 (the "Act"). The Act authorizes four upstate destination gaming resorts to enhance economic development in upstate New York, completed applications are due to the Gaming Facility Location Board by June 30, 2014. The immediate re-adoption of these rules is necessary to prescribe the form of the RFA and the information required to be submitted in response to the RFA. Standard rule making procedures would prevent the Commission from commencing the fulfillment of its statutory duties.

Subject: Implementation of rules pertaining to gaming facility request for application and gaming facility license application.

Purpose: To facilitate a fair and transparent process for applying for a license to operate a gaming facility.

Substance of emergency/proposed rule (Full text is posted at the following State website:http://www.gaming.ny.gov/): This addition of Part 5300 of Subtitle T of Title 9 NYCRR will add new Sections 5300.1 through 5300.5 to allow the New York State Gaming Commission ("Commission") to prescribe the form of the application for a gaming facility license.

The new Part of the Gaming Commission regulations describes the form of application for applicants seeking a gaming facility license and the information the applicant must provide. Section 5300.1 sets forth the form of the application including disclosure of identifying information, finance and capital structure of the proposed gaming facility, economic and market analysis, proposed land and design of facility space, assessment of local support and plans to address regional tourism, problem gambling, workforce development and resource management. Section 5300.2 describes the scope of background information the applicant and related parties must provide in three disclosure forms, the Gaming Facility License Application Form, the Multi-Jurisdictional Personal History Disclosure Form and the Multi-Jurisdictional Personal History Disclosure Supplemental Form. Section 5300.3 describes the process by which all applicants for a gaming facility license shall submit fingerprints as part of a background investigation. Section 5300.4 describes the applicant's duty to update its application as necessary, following submission of the application. Section 5300.5 describes the application fee and procedure for refunding a portion of such fee in certain circumstances.

This notice is intended: to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire June 12, 2015.

Text of rule and any required statements and analyses may be obtained from: Kristen Buckley, New York State Gaming Commission, 1 Broadway Center, PO Box 7500, Schenectady, New York 12301-7500, (518) 388-3407, email: gamingrules@gaming.ny.gov

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

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY: Racing, Pari-Mutuel Wagering and Breeding Law ("Racing Law") section 104(19) grants authority to the Gaming Commission ("Commission") to promulgate rules and regulations that it deems necessary to carry out its responsibilities. Racing Law section 1305(2) grants rule making authority to the Commission to implement, administer and enforce the provisions of Racing Law Article 13.

Racing Law section 1306(1) and section 1312(1) prescribe that the Gaming Facility Location Board ("Board"), which is established by the Commission, shall issue a request for applications ("RFA") for applicants seeking a license to develop and operate gaming facilities in New York State. On March 31, 2014, the Gaming Facility Location Board issued the RFA.

Racing Law section 1307(2) prescribes that the Commission regulate, among other things, the method and form of the application; the methods, procedures and form for delivery of information concerning an applicant's family, habits, character, associates, criminal record, business activities, and financial affairs; and the procedures for the fingerprinting of an applicant.

2. LEGISLATIVE OBJECTIVES: This rule making carries out the legislative objectives of the above-referenced statutes by implementing the requirements of Racing Law section 1307(2).

3. NEEDS AND BENEFITS: This rule making is necessary to enable the Board to carry out its statutory duty of issuing the RFA for applicants seeking a license to develop and operate a gaming facility in New York State.

4. COSTS:

(a) Costs to the regulated parties for the implementation of and continuing compliance with the rule: Those parties who choose to seek a gaming facility license will bear some costs. There is an application fee of $1 million that is prescribed by Racing Law section 1316(8) to defray the costs of processing the application and investigating the applicant. The extent of other costs incurred by applicants will depend upon the efforts that they put into completing and submitting the application.

(b) Costs to the regulating agency, the State, and local governments for the implementation of and continued administration of the rule: The rules will impose some costs on the Commission in reviewing gaming facility applications and in issuing licenses, but it is anticipated that the $1 million application fee paid by each applicant will offset such costs. The rules will not impose any additional costs on local governments.

(c) The information, including the source or sources of such information, and methodology upon which the cost analysis is based: The cost estimates are based on the Commission's experience regulating racing and gaming activities within the State.

5. PAPERWORK: The rules set forth the content of the application for a gaming facility license. The requirements apply only to those parties that choose to seek a gaming facility license.

6. LOCAL GOVERNMENT: The rules do not impose any mandatory program, service, duty, or responsibility upon local government because the licensing of gaming facilities is strictly a matter of State law.

7. DUPLICATION: The rules do not duplicate, overlap or conflict with any existing State or federal requirements.

8. ALTERNATIVES: The Commission is required to create these rules under Racing Law section 1307(2). Therefore, no alternatives were considered.

9. FEDERAL STANDARDS: There are no federal standards applicable to the licensing of gaming facilities in New York because such licensing is solely in accordance with New York State law.

10. COMPLIANCE SCHEDULE: The Commission anticipates that affected parties will be able to achieve compliance with the rules upon the adoption of the rules, which will occur upon filing.

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

This rule making will not have any adverse impact on small businesses, local governments, jobs or rural areas. The rules prescribe the method and form of the application for a gaming facility license; the methods, procedures and form for delivery of information concerning an applicant's family, habits, character, associates, criminal record, business activities, and financial affairs; and the procedures for fingerprinting an applicant. It is not expected that any small business or local government will apply for a gaming facility license.

The rules impose no adverse economic impact or reporting, recordkeeping, or other compliance requirements on small businesses in rural or urban areas or on employment opportunities. It is anticipated that the opening of up to four gaming facilities in upstate New York will create new job opportunities. The rules apply uniformly throughout the State to any ap-

plicant seeking a license to develop and operate a gaming facility in the State.

The proposal will not adversely impact small businesses, local governments, jobs, or rural areas. It does not require a full Regulatory Flexibility Analysis, Rural Area Flexibility Analysis, or Job Impact Statement.

Department of Labor

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Repeal and Removal of Fees

I.D. No. LAB-17-15-00013-EP
Filing No. 277
Filing Date: 2015-04-14
Effective Date: 2015-04-14

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

Proposed Action: Repeal of sections 82.2, 82.5 and 82.7; amendment of sections 59-1.10, 59-1.12, 60-1.5, 60-1.6, 60-1.17, 82.4 and 82.6 of Title 12 NYCRR.

Statutory authority: Labor Law, sections 21(11) and 204(3); Workers' Compensation Law, section 134(5)

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

Specific reasons underlying the finding of necessity: The 2015 enacted budget calls for and contemplates the repeal of certain safety and health fees without amending or repealing the safety and health protections. These fees were removed as part of the budget to relieve businesses and individuals from excess bureaucracy while still retaining the necessary functions that those fees originated from.

Subject: Repeal and removal of fees.

Purpose: To repeal and remove certain safety and health fees without amending or repealing the safety and health protections.

Text of emergency/proposed rule: 1. The title of Section 59-1.10 of Title 12 of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended to read as follows:

§ 59-1.10 Workplace safety and loss prevention consultation[and consultation fee charged by department]

2. Subdivision (c) of Section 59-1.10 of Title 12 of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended to read as follows:

(c) [Where the consultation is performed by the department, the fee for such consultation shall be $ 350 per day.]Any [additional]costs incurred during the course of the consultation, such as sampling, laboratory fees and laboratory reports, shall be paid by the employer[in addition to the consultation fee].

3. Paragraph 8 of Subdivision (b) of Section 59-1.12 of Title 12 of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended to read as follows:

(8) a department employee designated by the commissioner and in one of the following Civil Service titles: Safety and Health Inspector, Senior Safety and Health Inspector, Associate Safety and Health Inspector, Supervising Safety and Health Inspector, Senior Industrial Hygienist, Associate Industrial Hygienist, Supervising Industrial Hygienist, Principal Industrial Hygienist, Senior Safety and Health Engineer, Associate Safety and Health Engineer or Principal Safety and Health Engineer. Designated department employees are automatically certified[and shall not apply to the department for certification nor pay a certification fee].

4. Subdivision (e) of Section 59-1.12 of Title 12 of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended to read as follows:

(e) All applications for certification as a consultant shall be submitted to the department in writing on forms provided for that purpose and shall be accompanied by any other information or documentation deemed necessary by the department.[In addition, all applications shall be accompanied by a nonrefundable application fee of $100 and shall be sent to the address specified in the application package.]

5. Subdivision (g) of Section 59-1.12 of Title 12 of the Official Compilation of Codes, Rules and Regulations of the State of New York is repealed and reserved.

6. Subdivision (h) of Section 59-1.12 of Title 12 of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended to read as follows:

(h) Applicants must apply for recertification every three years. [, and will be assessed a recertification fee which shall be a sliding scale, recertification fee for an individual or firms that provide consultation services, as follows:

# of Individuals Seeking Recertification	Fee Per Person
1 - 2	$300
3 - 5	$210
6 - 10	$165
11 - 20	$150
21+	$135

]Applicants for recertification must advise the department of any circumstances which have occurred within the last three years which would disqualify them from recertification pursuant to the criteria set forth in this section.[There shall be no application fee for recertifications.]

7. Subdivision (l) of Section 59-1.12 of Title 12 of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended to read as follows:

(l) An individual applying for reinstatement of a workplace safety and loss prevention consultant certification shall be subject to the same procedures as those which pertained to application for the original certificate[, except that in the event that certification is reinstated within the period of time during which it would have been valid but for its revocation or suspension, the certificate holder shall not be required to pay a new certification or application fee for such reinstated certification].

8. Subdivision (d) of Section 60-1.5 of Title 12 of the Official Compilation of Codes, Rules and Regulations of the State of New York is repealed.

9. Subdivision (c) of Section 60-1.6 of Title 12 of the Official Compilation of Codes, Rules and Regulations of the State of New York is repealed and reserved.

10. Subdivision (b) of Section 60-1.8 of Title 12 of the Official Compilation of Codes, Rules and Regulations of the State of New York is repealed and reserved.

11. Subdivision (b) of Section 60-1.17 of Title 12 of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended to read as follows:

(b) Designated Department employees are automatically Certified and shall not be required to apply to the Department for Certification[nor pay a Certification fee]. An employee designated by the Department shall be in any of the Civil Service titles deemed appropriate by the Commissioner.

12. Subdivision (i) of Section 60-1.17 of Title 12 of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended to read as follows:

(i) [Costs of]Certification*s*:

(1) All applications for Certification as a Specialist shall be submitted to the Department in writing on forms provided for that purpose and shall be accompanied by any other information or documentation deemed necessary by the Department for the purposes of Certification.[All applications shall be accompanied by a non-refundable application fee of $ 100 for each Certification sought, made payable to the ''Commissioner of Labor.'' If the applicant is approved by the Department, the non-refundable application fee(s) of $100 will be applied to the Certification fee(s).]

13. Paragraphs (3) (4) and (6) of Subdivision (i) of Section 60-1.17 of Title 12 of the Official Compilation of Codes, Rules and Regulations of the State of New York are repealed and reserved.

14. Paragraph (5) of Subdivision (i) of Section 60-1.17 of Title 12 of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended as follows:

(5) A Specialist must apply for Recertification every three years.[There shall be a $ 50 non-refundable application fee for each Recertification. If the applicant is approved by the Department, the non-refundable application fee of $ 50 will be applied to the Recertification fee.]

15. Subdivision (n) of Section 60-1.17 of Title 12 of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended as follows:

(n) A Specialist applying for reinstatement of Certification shall be subject to the same procedures as those which pertained to application for the original Certification[, except that in the event that Certification is reinstated within the period of time during which it would have been valid but for its revocation or suspension, the Certificate holder shall not be required to pay a new Certification or application fee for such reinstated Certification].

16. Section 82.2 of Title 12 of the Official Compilation of Codes, Rules and Regulations of the State of New York is repealed.

17. Section 82.4 of Title 12 of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended to read as follows:

(a)[Certificate of competence. A non-refundable fee of $60 shall be paid in advance to the Commissioner of Labor for a certificate of competence to operate a mobile laser, and for each triennial renewal thereof.

(b)]Registration of installations and mobile lasers. A non-refundable fee of $ 600 shall be paid to the Commissioner of Labor upon the registration of a laser installation or mobile laser, and for each triennial renewal thereof. Such fee shall also be payable to the Commissioner of Labor for any existing laser installation or mobile laser presently registered with the Commissioner of Labor and upon payment thereof such present registration shall be valid for a period of three years from and after the date this section becomes effective. Exception: Laser installations and mobile lasers utilizing approved low intensity lasers exclusively are exempt from this fee requirement.

18. Section 82.5 of Title 12 of the Official Compilation of Codes, Rules and Regulations of the State of New York is repealed.

19. Section 82.6 of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended to read as follows:

(a)[A non-refundable fee of $600, payable to the Commissioner of Labor, shall accompany an application for the review of a quality control system of a boiler manufacturer or repairer and each triennial renewal thereof.

(b)] A non-refundable fee of $100, payable to the Commissioner of Labor, shall accompany each application to take the National Board of Boiler and Pressure Vessel Inspectors quarterly exam, administered by the Department.

[(c) A non-refundable fee of $35 shall be paid in advance to the Commissioner of Labor for a boiler inspector certificate of competence and shall accompany each annual renewal thereof.]

20. Section 82.7 of Title 12 of the Official Compilation of Codes, Rules and Regulations of the State of New York is repealed.

This notice is intended: to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire July 12, 2015.

Text of rule and any required statements and analyses may be obtained from: Michael Paglialonga, NYS Department of Labor, Building 12, State Office Campus, Room 509, Albany, NY 12240, (518) 485-2191, email: regulations@labor.ny.gov

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

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

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

Regulatory Impact Statement

Statutory Authority: Labor Law §§ 21(11), 204(3) and Workers Compensation Law § 134(5).

Legislative Objectives: The authorizing sections of law, both generally permitting the Commissioner of Labor (hereinafter "Commissioner") through Section 21(11) of the Labor Law to issue regulations, Section 204 of the Labor Law in relation to regulation of boilers, and in Section 134(5) of the Worker's Compensation Law in relation to regulation of workplace safety and loss programs, provide the Commissioner with authority over the administration and assessment of fees. In order to minimize impact on the regulated community, while ensuring that the protections contained in the Labor Law are effectuated, the proposed rulemaking eliminate fees for purposes of reducing costs for the regulated community.

Needs and Benefits: Elimination of fees assessed by the Commissioner will improve regulatory conditions in the State, by reducing costs on the regulated community.

Costs: The Department estimates that there will be no costs to the regulated community to implement this rulemaking. There would be a reduction in costs realized by the regulated community upon adoption of this rule/ these proposed fee reductions. The estimated annual savings for the regulations community as a result of this rulemaking is $150,000. The Department estimates that the elimination of the fees currently assessed will result in increased costs to the State.

Local Government Mandate: Elimination of fees effectuated by adoption of this/these rule(s) will not impose any mandate upon local governments or municipalities; rather it may remove limited financial burdens imposed on localities.

Paperwork: This rulemaking does not impact any reporting requirements currently required in either statute or regulation.

Duplication: This rulemaking does not duplicate, overlap or conflict with any other State or federal requirements.

Alternatives: There were no significant alternatives considered. The Department is seeking to adopt these fees eliminating fees in furtherance of the Governor's initiative to reduce administrative fees imposed upon the regulated community.

Federal Standards: This rulemaking is unrelated to any Federal rule or standard.

Compliance Schedule: This rulemaking shall become effective upon publication of its adoption in the State Register.

Regulatory Flexibility Analysis

Effect of Rule: This rulemaking will eliminate fees currently assessed by the Department of Labor (hereinafter "Department"). The Department anticipates this will have a positive impact on small businesses and local governments currently being assessed such fees.

Compliance Requirements: Small businesses and local governments will not have to undertake any new reporting, recordkeeping, or other affirmative act in order to comply with this rulemaking.

Professional Services: No professional services would be required to effectuate the purposes of this rulemaking.

Compliance Costs: Small businesses and local governments will not incur costs to comply with this rulemaking.

Economic and Technological Feasibility: The rulemaking does not require any use of technology to comply.

Minimizing Adverse Impact: This rulemaking provides approximately $150,000 in relief from fees currently being assessed by the Department. The Department does not anticipate that this rulemaking will adversely impact small businesses or local government. Since no adverse impact to small business or local government will be realized, it was unnecessary for the Department to consider approaches for minimizing adverse economic impacts as suggested in SAPA § 202-b(1).

Small Business and Local Government Participation: The Department anticipates that elimination of certain fees currently assessed will not have an adverse economic impact upon small business or local government nor will it impose new reporting, recordkeeping, or other compliance requirements upon them. Nevertheless, the Department has ensured that small businesses and local governments will have an opportunity to participate in the rule-making process. The Department will elicit input from small businesses and local governments during the public comment period.

Initial review of the rule: Initial review of this rulemaking shall occur no later than the third calendar year in which it is adopted.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas: The Department of Labor (hereinafter "Department") anticipates that the elimination of certain fees presently assessed pursuant to these sections 59, 60, and 82 of Title 12 of the New York Code of Rules and Regulations will have a positive or neutral impact upon all areas of the state; there is no adverse impact anticipated upon any rural area of the state resulting from adoption of this rulemaking.

2. Reporting, recordkeeping and other compliance requirements: This rulemaking will not otherwise impact reporting, recordkeeping or other compliance requirements.

3. Professional services: No professional services will be required to comply with this rule.

4. Costs: The Department estimates the cost to comply with this rule are minimal. There is an anticipated reduction of $150,000 in fees assessed on the regulated community upon adoption of this rulemaking through the proposed fee reductions/eliminations. The Department estimates that the elimination of the fees currently assessed will result in increased costs to the State.

5. Minimizing adverse impact: The Department does not anticipate that the adopted changes in regulation eliminating fees will have an adverse impact upon any region of the state. As such, different requirements for rural areas were not necessary.

6. Rural area participation: The Department has ensured that employers from all regions of the state, including rural areas, will have an opportunity to participate in the rule-making process. The Department will elicit input from members of the regulated community in rural areas during the public comment period.

Job Impact Statement

Nature of impact: The Department of Labor (hereinafter "Department") projects there will be no adverse impact on jobs or employment opportunities in the State of New York as a result of this proposed rulemaking. This rulemaking provides for the elimination of fees currently assessed upon certain regulated community members. The nature and purpose of the rule is such that it will not have a substantial adverse impact on jobs or employment opportunities.

Categories and numbers affected: The Department does not anticipate that this rulemaking will have an adverse impact on jobs or employment opportunities in any category of employment.

Regions of adverse impact: The Department does not anticipate that adoption of this rulemaking an adverse impact upon jobs or employment opportunities statewide or in any particular region of the state.

Minimizing adverse impact: Since the Department does not anticipate any adverse impact upon jobs or employment opportunities resulting from these fees being eliminated, no measures to minimize any unnecessary adverse impact on existing jobs or to promote the development of new employment opportunities are required.

Self-employment opportunities: The Department does not foresee a measureable impact upon opportunities for self-employment resulting from adoption of this rulemaking.

Initial review of the rule: Initial review of this rulemaking shall occur no later than the third calendar year in which it is adopted.

Department of Motor Vehicles

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Designation of Authorized Emergency Vehicles for Certain State Leaders

I.D. No. MTV-17-15-00012-EP

Filing No. 276

Filing Date: 2015-04-14

Effective Date: 2015-04-14

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

Proposed Action: Amendment of section 101.5 of Title 15 NYCRR.

Statutory authority: Vehicle and Traffic Law, sections 215(a) and 218

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

Specific reasons underlying the finding of necessity: It is necessary to adopt this amendment on an emergency basis, to protect the health, safety and general welfare of the citizens of New York State, effective immediately upon filing with the Department of State.

This amendment is adopted as an emergency measure to allow our State's leaders to quickly arrive at the scene of an emergency while saving State resources. The proposed rulemaking would classify a motor vehicle owned or operated by the head of the Division of Homeland Security & Emergency Services (DHSES), Department of Transportation (DOT), and Department of Environmental Conservation (DEC), as well as Secretary to the Governor, Director of State Operations, Governor, and Lieutenant Governor as an authorized emergency vehicle. Section 375(41) of the VTL provides that red and white lights may be displayed on an "authorized emergency vehicle," which is defined in section 101 of the VTL. Therefore, under this proposal, a motor vehicle owned or operated by the head of the Division of Homeland Security & Emergency Services (DHSES), Department of Transportation (DOT), and Department of Environmental Conservation (DEC), as well as Secretary to the Governor, Director of State Operations, Governor, and Lieutenant Governor could be equipped with red and white lights, insuring such person's swift arrival at the scene of a disaster or emergency, without a police escort. This would assist our leaders in expeditiously responding to emergencies, such as natural disasters, and it would save State resources by doing away with the need for a police escort.

Subject: Designation of authorized emergency vehicles for certain State leaders.

Purpose: Designates motor vehicle owned or operated by certain State leaders as authorized emergency vehicles.

Text of emergency/proposed rule: A new section 101.5 is added to read as follows:

101.5 Authorized emergency vehicle. Notwithstanding any other provision of law, an authorized emergency vehicle shall include any motor vehicle owned or operated by the heads of Division of Homeland Security & Emergency Services (DHSES), Department of Transportation (DOT), and Department of Environmental Conservation (DEC), as well as Secretary to the Governor, Director of State Operations, Governor, and Lieutenant Governor. Any such vehicle may have affixed thereto and displayed thereon colored lighting as provided in subdivision 41 of Section 375 of the Vehicle and Traffic Law, and, when engaged in an emergency operation, the operator of such vehicle shall have all of the rights and privileges granted an authorized emergency vehicle pursuant to Section 1104 of such law.

This notice is intended: to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire July 12, 2015.

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

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

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

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

Regulatory Impact Statement

1. Statutory authority: Vehicle and Traffic Law (VTL) § 215(a) provides that the Commissioner of Motor Vehicles may enact rules and regulations that regulate and control the exercise of the powers of the Department. VTL section 218 provides that any vehicle or class of vehicles may, by regulation of the commissioner, be added to or exempted from any of the definitions or classifications contained in this chapter, where such addition or exemption is deemed, in his discretion, either necessary, desirable or equitable because of the particular characteristics of such vehicle or class of vehicles.

2. Legislative objectives: The Legislature enacted section 218 of the VTL to give the Commissioner the authority to add to the definitions and classifications of vehicles where such addition is necessary due to the characteristics of such vehicles. This proposed rulemaking is in accordance with the legislative objective by defining a motor vehicle owned or operated by the heads of the Division of Homeland Security & Emergency Services (DHSES), Department of Transportation (DOT), and Department of Environmental Conservation (DEC), as well as Secretary to the Governor, Director of State Operations, Governor, and Lieutenant Governor as an authorized emergency vehicle. Such designation allows emergency lighting to be affixed to such vehicles during an emergency operation. This would assist in quickly and safely transporting the head of the Division of Homeland Security & Emergency Services (DHSES), Department of Transportation (DOT), and Department of Environmental Conservation (DEC), as well as Secretary to the Governor, Director of State Operations, Governor, and Lieutenant Governor to an emergency, such as the scene of a natural disaster.

3. Needs and benefits: This proposed rulemaking would classify a motor vehicle owned or operated by the head of the Division of Homeland Security & Emergency Services (DHSES), Department of Transportation (DOT), and Department of Environmental Conservation (DEC), as well as Secretary to the Governor, Director of State Operations, Governor, and Lieutenant Governor as an authorized emergency vehicle. Section 375(41) of the VTL provides that red and white lights may be displayed on an "authorized emergency vehicle," which is defined in section 101 of the VTL. Therefore, under this proposal, a motor vehicle owned or operated by the head of the Division of Homeland Security & Emergency Services (DHSES), Department of Transportation (DOT), and Department of Environmental Conservation (DEC), as well as Secretary to the Governor, Director of State Operations, Governor, and Lieutenant Governor could be equipped with red and white lights, insuring such person's swift arrival at the scene of a disaster or emergency, without a police escort.

An authorized emergency vehicle may display emergency lighting during an "emergency operation," as defined in Section 114-b of the VTL. Section 1104 of the VTL sets forth the rights and responsibilities of the operator of an authorized emergency vehicle. For example, the operator may proceed through a red light or exceed the speed limit, so long as he or she does not endanger life or property. In addition, drivers of other motor vehicles must yield the right of way when being approached by (VTL, Section 1144) or approaching a parked (VTL, Section 1144-a) authorized emergency vehicle.

Currently, a motor vehicle transporting head of the Division of Homeland Security & Emergency Services (DHSES), Department of Transportation (DOT), and Department of Environmental Conservation (DEC), as well as Secretary to the Governor, Director of State Operations, Governor, and Lieutenant Governor to the scene of an emergency is not authorized to display red or white lights. Therefore, a vehicle designated as an authorized emergency vehicle, such as a police vehicle, must escort such persons to the scene in order to insure their expeditious arrival. If such person's vehicle were equipped with red or white lights, he or she would not have to rely on a police escort, thereby conserving valuable resources.

This proposed rulemaking is both necessary and beneficial in that it assists our State's leaders in carrying out their duties in the case of an emergency, and it saves State resources by not requiring a police escort on route to an emergency.

4. Costs:
(i) Cost to the regulated parties for the implementation of and continuing compliance with the rule: There would be no cost to regulated parties for the implementation of and continuing compliance with the rule.
(ii) Costs to the agency, the State and local governments for the implementation of, and continued administration of, the rule: There are no costs to the Department, the State or to local governments.
(iii) The information, including the source of such information and the methodology upon which the cost analysis is based: The Department of Motor Vehicles.
5. Local government mandates: This rule would impose no additional requirements on local governments.
6. Paperwork: There are no paperwork requirements.
7. Duplication: This proposal does not duplicate, overlap or conflict with any relevant rule or legal requirement of the State and federal governments.
8. Alternatives: The Department did not consider any alternatives, because the proposed rulemaking represents a common sense approach to assist the State's leaders in carrying their duties in relation to responding to emergencies.
A no action alternative was not considered.
9. Federal standards: The proposal does not exceed any minimum standards of the federal government for the same or similar subject areas.
10. Compliance schedule: The Department anticipates that all affected parties will be able to achieve compliance with the rule upon adoption.

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

A regulatory flexibility analysis for small business and local governments, a rural area flexibility analysis, and a job impact statement are not required for this rulemaking proposal because it will not adversely affect small businesses, local governments, rural areas, or jobs.

This proposed rulemaking would classify a motor vehicle owned or operated by the head of the Division of Homeland Security & Emergency Services (DHSES), Department of Transportation (DOT), and Department of Environmental Conservation (DEC), as well as Secretary to the Governor, Director of State Operations, Governor, and Lieutenant Governor as an authorized emergency vehicle. Due to its narrow focus, this rule will not impose an adverse economic impact or reporting, record keeping, or other compliance requirements on small businesses in rural or urban areas or on employment opportunities. No local government activities are involved.

NOTICE OF ADOPTION

Electronic Insurance Identification Cards

I.D. No. MTV-08-15-00004-A

Filing No. 270

Filing Date: 2015-04-14

Effective Date: 2015-04-29

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

Action taken: Amendment of sections 32.3, 32.5, 32.10 and 32.17 of Title 15 NYCRR.

Statutory authority: Vehicle and Traffic Law, sections 215(a), 311(10) and 312(4)

Subject: Electronic insurance identification cards.

Purpose: Authorize insurance companies to issue electronic insurance identification cards.

Text or summary was published in the February 25, 2015 issue of the Register, I.D. No. MTV-08-15-00004-P.

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

Text of rule and any required statements and analyses may be obtained from: Heidi Bazicki, Department of Motor Vehicles, 6 Empire State Plaza, Rm. 526, Albany, NY 12228, (518) 474-0871, email: heidi.bazicki@dmv.ny.gov

Assessment of Public Comment

Comment: Sprague Insurance wrote that "[t]he company should be the only one that can issue an electronic ID card. Agencies can issue paper ID cards as they always have."

Response: The regulation is clear that only insurance companies may issue electronic insurance ID cards. However, an insurance company may, in its discretion, authorize an agent or broker to issue electronic insurance ID cards. The broker or agent would be required to use the same software application that the insurance company has been certified to use by the Department of Motor Vehicles.

Comment: The Professional Insurance Agents and the Independent Insurance Agents and Brokers requested that agents and brokers be authorized to issue electronic insurance ID cards.

Response: The regulation provides that insurance companies are authorized to issue electronic insurance ID cards. However, an insurance company may, in its discretion, authorize an agent or broker to issue electronic insurance ID cards. The broker or agent would be required to use the same software application that the insurance company has been certified to use by the Department of Motor Vehicles.

Comment: The Dutchess County Clerk asked if there be sufficient scanners for all offices if the DMV is purchasing only 100 scanners.

Response: The 100 scanners that the DMV is purchasing will replace out dated laser scanners with optical scanners. Offices with optical scanners will not need to replace its scanners. There will be sufficient scanners for the offices.

Public Service Commission

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Rehearing of the Commission's Order Adopting Regulatory Policy Framework and Implementation Plan

I.D. No. PSC-17-15-00004-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 for rehearing and/or clarification submitted by the Binghamton Regional Sustainability Coalition and others on March 30, 2015.

Statutory authority: Public Service Law, sections 4(1), 5(1), (2), 22, 65(1) and 66(1)

Subject: Rehearing of the Commission's Order Adopting Regulatory Policy Framework and Implementation Plan.

Purpose: Consideration of a petition for rehearing.

Substance of proposed rule: The Public Service Commission is considering a petition submitted on March 30, 2015 by Alliance for a Green Economy, Binghamton Regional Sustainability Coalition, the Center for Social Inclusion, Citizens' Environmental Coalition, Citizens for Local Power, and People United for Sustainable Housing (PUSH) Buffalo, requesting rehearing or clarification of the Commission's Order Adopting Regulatory Policy Framework and Implementation Plan issued on February 26, 2015 in Case 14-E-0101. The Petitioners raise the issues of "[u]tility ownership of distributed energy resources (DER) for moderate and low-income customers" and "[o]pportunities for participation by members of the public and public-interest stakeholders in Track 2." The Commission may reaffirm its initial decision or adhere to it with additional rationale, modify the decision, reverse the decision, or take such other or further action as it deems necessary.

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: Elaine Agresta, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2660, email: elaine.agresta@dps.ny.gov

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

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

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

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

(14-M-0101SP11)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Submetering of Electricity

I.D. No. PSC-17-15-00005-P

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

Proposed Action: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by Cottage Street Apartments, LLC, to submeter electricity at 31 Cottage Street, Troy, 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: Submetering of electricity.

Purpose: To consider the request of Cottage Street Apartments, LLC, to submeter electricity at 31 Cottage Street, Troy, New York.

Substance of proposed rule: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by Cottage Street Apartments, LLC, to submeter electricity at 31 Cottage Street, Troy, NY, located in the territory of Niagara Mohawk Power Corporation, 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: Elaine Agresta, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2660, email: Elaine.Agresta@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.

(15-E-0200SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Petition to Submeter Electricity

I.D. No. PSC-17-15-00006-P

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

Proposed Action: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by 56th and Park (NY) LLC, to submeter electricity at 432 Park Avenue, New York, 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: Petition to submeter electricity.

Purpose: To consider the request of 56th and Park (NY) LLC, to submeter electricity at 432 Park Avenue, New York, New York.

Substance of proposed rule: The Public Service Commission is considering whether to grant, deny or modify, in whole or in part, the petition filed by 56th and Park (NY) LLC, to submeter electricity at 432 Park Avenue, New York, New York, located in the service territory of Consolidated Edison Company of New York, 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: Elaine Agresta, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2660, email: Elaine.Agresta@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.

(15-E-0198SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

To Consider the Petition of Leatherstocking Gas Company, LLC Seeking Authority to Issue Long-Term Debt of $2.75 Million

I.D. No. PSC-17-15-00007-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 the petition of Leatherstocking Gas Company, LLC for authority to issue long-term debt of $2.75 million to fund new construction projects in the Town and Village of Windsor.

Statutory authority: Public Service Law, section 69

Subject: To consider the petition of Leatherstocking Gas Company, LLC seeking authority to issue long-term debt of $2.75 million.

Purpose: To consider the petition of Leatherstocking Gas Company, LLC seeking authority to issue long-term debt of $2.75 million.

Substance of proposed rule: The Public Service Commission is considering whether to approve, deny, or modify, in whole or in part, a petition by Leatherstocking Gas Company, LLC to issue long-term debt of $2.75 million. The proposed action would allow Leatherstocking Gas Company, LLC to fund construction projects relating to new franchises for the Town and Village of Windsor in Broome County, New York.

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: Elaine Agresta, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2660, email: Elaine.Agresta@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.

(15-G-0128SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Whether to Approve, Modify or Reject in Whole or in Part an Increase in Annual Revenues of Approximately $35,507 or 22.8%

I.D. No. PSC-17-15-00008-P

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

Proposed Action: The Public Service Commission is considering a proposed tariff filing by Hudson Valley Water Companies, Inc. to increase its annual revenues by approximately $35,507 or 22.8%, to become effective October 1, 2015.

Statutory authority: Public Service Law, sections 4(1), 5(1)(f), 89-c(1), (10)(a), (b), (e) and (f)

Subject: Whether to approve, modify or reject in whole or in part an increase in annual revenues of approximately $35,507 or 22.8%.

Purpose: Whether to approve, modify or reject in whole or in part an increase in annual revenues of approximately $35,507 or 22.8%.

Substance of proposed rule: The Commission is considering whether to approve, modify or reject, in whole or in part, a tariff filing by Hudson Valley Water Companies, Inc. to amend its tariff schedule P.S.C. No. 2 — Water, to increase its annual revenues by approximately $35,507, or 22.8%. The tariff amendments have an effective date of October 1, 2015. The Commission may consider any related matters.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website http://www.dps.ny.gov/f96dir.htm. For questions, contact: Elaine Agresta, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2600, email: elaine.agresta@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.

(15-W-0209SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

To Make Clarifying Tariff Revisions

I.D. No. PSC-17-15-00009-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 proposed tariff filing by Niagara Mohawk Power Corporation, d/b/a National Grid to make clarifying revisions to Rule 28 — Special Services Performed by Company at a Charge contained in P.S.C. No. 220 — Electricity.

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

Subject: To make clarifying tariff revisions.

Purpose: For approval to make clarifying revisions to Rule 28 — Special Services Performed by Company at a Charge.

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 Niagara Mohawk Power Corporation d/b/a National Grid (NMPC or the Company) to make clarifying revisions to Rule 28 — Special Services performed by Company at a Charge contained in P.S.C. No. 220 — Electricity. NMPC proposes to revise wording in Rule 28.1 and 28.2 to, respectively, clarify the Company's right to charge customers for removal of equipment and for customer-requested services beyond those normally required. The amendments have an effective date of July 20, 2015. The Company has requested a waiver of the requirements of newspaper publication due to the clarifying nature of this filing. The Commission may grant, deny or modify the Company's request in whole or in part. 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: Elaine Agresta, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2660, email: elaine.agresta@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.

(15-E-0210SP1)

Department of State

EMERGENCY
RULE MAKING

Orders to Remedy Violation(s) of the Uniform Code Issued Under Article 18 of the Executive Law

I.D. No. DOS-04-15-00004-E

Filing No. 267

Filing Date: 2015-04-10

Effective Date: 2015-04-10

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

Action taken: Amendment of section 1203.1; and addition of section 1203.5 to Title 19 NYCRR.

Statutory authority: Executive Law, sections 381(1) and 382(2)

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

Specific reasons underlying the finding of necessity: This rule is adopted as an emergency measure for the preservation of the public safety and general welfare.

Executive Law § 381(1) directs the Secretary of State to promulgate rules and regulations for the administration of the State Uniform Fire Prevention and Building Code (Uniform Code).

Executive Law § 382(2) provides, in pertinent part, that "any person, having been served, either personally or by registered or certified mail, with an order to remedy any condition found to exist in, on, or about any building in violation of the [Uniform Code], who shall fail to comply with such order within the time fixed by the regulations promulgated by the Secretary of State pursuant to [Executive Law § 381(1)], such time period stated in the order, shall be punishable by a fine of not more than one thousand dollars per day of violation, or imprisonment not exceeding one year, or both."

Prior to the initial emergency adoption of this rule, the regulations adopted by the Department of State pursuant to Executive Law § 381(1) have never ''fixed'' a time within which a person served with an order to remedy must comply with that order. In most cases, the local government that issues an order to remedy determines a "reasonable time" within which compliance with the order would be required.

This rule adds a new section 1203.5 to 19 NYCRR Part 1203. New section 1203.5 fixes the time within which compliance with an order to remedy any condition found to exist in, on, or about any building in violation of the Uniform Code at thirty (30) days following the date of the order.

The initial adoption of this rule on an emergency basis was necessary in light of the recent decision issued by the New York State Supreme Court, Appellate Term, Second Department, 9th and 10th Judicial Districts, in People v. Plateau Associates, LLC. The Court held that in the absence of a Department of State regulation fixing the time within which compliance with an order to remedy is required, a party served with such an order could not be charged under Executive Law § 382(2) for failure to comply with such order within the time fixed by regulation for such compliance. The Court rejected the argument that the local government that issued the order to remedy should be permitted to determine the "reasonable time" within which compliance with the order to remedy would be required.

The Plateau Associates Decision may result in local courts deciding not to subject a person who is served with an order to remedy, and who fails to comply within the time specified in such order, to the penalties contemplated by Executive Law § 382(2). This could seriously jeopardize the effectiveness of orders to remedy, and limit the ability of local governments to enforce the Uniform Code.

The Department of State found that the initial emergency adoption of this rule was necessary for the preservation of the general welfare and public safety because the absence of a regulation fixing the time within which full compliance with an order to remedy is required may, under the precedent established by the Plateau Associates decision, cause courts to refuse to impose the penalties contemplated by Executive Law § 382(2). This, in turn, would seriously diminish the effectiveness of orders to remedy, resulting in inadequate enforcement of the Uniform Code, thereby potentially subjecting the people of this State to the real and present dangers to public health and safety posed by fire, as identified by the State Legislature in Executive Law § 371(1)(d). The initial adoption of this rule on an emergency basis was necessary to halt such undesirable result at the earliest possible date.

The initial emergency adoption of this rule will expire on April 12, 2015. The Department of State finds that re-adoption of this rule on an emergency basis is necessary for the preservation of the general welfare and public safety because allowing this rule to expire would cause there to be no regulation fixing the time for compliance with an order to remedy, which, under the precedent established by the Plateau Associates decision, may cause courts to refuse to impose the penalties contemplated by Executive Law § 382(2).

Subject: Orders to remedy violation(s) of the Uniform Code issued under Article 18 of the Executive Law.

Purpose: To fix the time to comply with an order to remedy violation(s) of the Uniform Code.

Text of emergency rule: 1. Section 1203.1 of Part 1203 of Title 19 of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended to read as follows:

1203.1 Introduction.

Section 381 of the Executive Law directs the Secretary of State to promulgate rules and regulations for administration of the Uniform Fire Prevention and Building Code (Uniform Code) *and the State Energy Con-*

servation Construction Code (Energy Code). These rules and regulations are to address the nature and quality of enforcement and are the subject of this Part.

2. Part 1203 of Title 19 of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended by adding a new section 1203.5 to read as follows:

1203.5 Compliance with an order to remedy.

(a) Section 381 of the Executive Law provides for the administration and enforcement of the Uniform Code and authorizes the promulgation of this Part to establish minimum standards for such administration and enforcement. In addition, subdivision 2 of section 382 of the Executive Law provides, in part, that any person, having been served, either personally or by registered or certified mail, with an order to remedy any condition found to exist in, on, or about any building in violation of the Uniform Code, who shall fail to comply with such order within the time fixed by the regulations promulgated by the Secretary of State pursuant to subdivision 1 of section 381 of the Executive Law, such time period to be stated in the order, shall be punishable by a fine of not more than one thousand dollars per day of violation, or imprisonment not exceeding one year, or both. For the purposes of subdivision 2 of section 382 of the Executive Law, the time within which compliance with an order to remedy is required is hereby fixed at thirty (30) days following the date of the order to remedy.

(b) When a city, village, town, or county, charged under subdivision 2 of section 381 of the Executive Law with administration and enforcement of the Uniform Code, or a state agency accountable under subdivision (d) of section 1201.2 of this Title for administration and enforcement of the Uniform Code, or the Secretary of State acting under Part 1202 of this Title, issues an order to remedy any condition found to exist in, on, or about any building in violation of the Uniform Code, such order to remedy shall set forth the date of the order, the date by which compliance must be completed, and shall include a statement substantially similar to the following:

"NOTICE: Full compliance with this order to remedy is required by _____ [specify date], which is thirty (30) days after the date of this order. If the person or entity served with this order to remedy fails to comply in full with this order to remedy within the thirty (30) day period, that person or entity will be subject to a fine of not more than $1,000 per day of violation, or imprisonment not exceeding one year, or both."

(c) An order to remedy a condition found to exist in, on, or about any building in violation of the Uniform Code shall be served personally or by certified or registered mail within five (5) days of the date of the order.

(d) Nothing in this section shall be construed as prohibiting any city, village, town, county, state agency or the Secretary of State from providing in an order to remedy that the person or entity served with such order must begin to remedy the violation(s) described in the order immediately, or within some other period of time which is specified in the order and which may be less than thirty (30) days; must thereafter continue diligently to remedy such violation(s) until each such violation is fully remedied; and must in any event fully remedy all such violation(s) within thirty (30) days of the date of such order.

(e) Nothing in this section shall be construed as limiting the authority of any city, village, town, county, state agency or the Secretary of State to employ any other means of enforcing the Uniform Code and/or Energy Code, including, but not limited to:

(1) issuing notices of violation;

(2) issuing appearance tickets;

(3) commencing and prosecuting an appropriate action or proceeding pursuant to that part of subdivision 2 of section 382 of the Executive Law that provides that any owner, builder, architect, tenant, contractor, subcontractor, construction superintendent or their agents or any other person taking part or assisting in the "construction" (as defined in subdivision 4 of section 372 of the Executive Law) of any building who shall knowingly violate any of the applicable provisions of the Uniform Code or any lawful order of a city, village, town, county, state agency or the Secretary of State made thereunder regarding standards for construction, maintenance, or fire protection equipment and systems, shall be subject to a fine of not more than one thousand dollars per day of violation, or imprisonment not exceeding one year, or both;

(4) commencing and prosecuting an appropriate action or proceeding pursuant to subdivision 3 of section 382 of the Executive Law which seeks, in a case where the construction or use of a building is in violation of any provision of the Uniform Code or any lawful order obtained thereunder, an order from a Justice of the Supreme Court directing the removal of the building or an abatement of the condition in violation of such provisions;

(5) issuing stop work orders;

(6) revoking or suspending building permits; revoking or suspending certificates of occupancy; or

(7) commencing and prosecuting an appropriate action or proceeding to impose such criminal and/or civil sanctions as may be provided in applicable local laws, ordinances, rules or regulations.

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. DOS-04-15-00004-EP, Issue of January 28, 2015. The emergency rule will expire June 8, 2015.

Text of rule and any required statements and analyses may be obtained from: Mark Blanke, Department of State, One Commerce Plaza, 99 Washington Ave., Albany, NY 12231-0001, (518) 474-4073, email: Mark.Blanke@dos.ny.gov

Regulatory Impact Statement

1. STATUTORY AUTHORITY AND LEGISLATIVE OBJECTIVES

Executive Law § 381(1) provides that the Secretary of State shall promulgate rules and regulations prescribing minimum standards for administration and enforcement of the Uniform Fire Prevention and Building Code (Uniform Code).

Executive Law section 383(2) provides, in part, that "(a)ny person, having been served, either personally or by registered or certified mail, with an order to remedy any condition found to exist in, on, or about any building in violation of the [Uniform Code], who shall fail to comply with such order within the time fixed by the regulations promulgated by the secretary pursuant to [Executive Law § 381(1)], such time period to be stated in the order, . . . shall be punishable by a fine of not more than one thousand dollars per day of violation, or imprisonment not exceeding one year, or both."

This rule adds a new section 1203.5 to 19 NYCRR Part 1203. The new section 1203.5 effectuates the objectives of Executive Law §§ 381(1) and 382(2) by promulgating a regulation that (1) fixes the time within which compliance with an order to remedy will be required at thirty (30) days following the date of the order and (2) requiring each order to remedy to include a notice that clearly states the time within which compliance with the order is required and the consequences of failure to comply with the order within that stated time.[1]

2. NEEDS AND BENEFITS

When current Article 18 of the Executive Law was adopted in 1981, there was no single building code applicable in all parts of the state; local governments were free to adopt their own code, to "accept" the applicability of the State Building Construction Code, or to have no building code at all. When it adopted the current Article 18, the Legislature found and declared that "(w)hether because of the absence of applicable codes, inadequate code provisions or inadequate enforcement of codes, the threat to the public health and safety posed by fire remains a real and present danger for the people of the state" (Executive Law § 371 (1)(d), emphasis added). The Legislature addressed the first two concerns (absence of applicable codes or inadequate code provisions) by providing, in Article 18, that the State Uniform Fire Prevention and Building Code (Uniform Code) would be applicable in all parts of the State except New York City. The Legislature addressed the third concern (inadequate enforcement of codes) by requiring local governments to administer and enforce the Uniform Code (Executive Law § 381(2)) and by providing a non-exclusive list of enforcement tools, including "the power to order in writing the remedying of any condition found to exist in, on or about any building in violation of the [Uniform Code]" (Executive Law § 382(1)).

As stated above, Executive Law § 382(2) provides, in part, that a person served with an order to remedy who fails to comply with such order "within the time fixed by the regulations promulgated by the [Secretary of State] pursuant to [Executive Law § 381(1)], such time period to be stated in the order" shall be punishable by a fine of not more than one thousand dollars per day of violation, or imprisonment not exceeding one year, or both.

Prior to the initial emergency adoption of this rule, the regulations adopted by the Department of State (DOS) pursuant to Executive Law § 381(1) contained no provision fixing the time for compliance with an order to remedy. DOS understands that a local government issuing an order to remedy would, in most cases, determine a reasonable time within which compliance with the order would be required. However, the recent case of People v. Plateau Associates, LLC, the Appellate Term for the Second Department, 9th and 10th Judicial Districts, held that in the absence of a DOS regulation fixing the time within which compliance with an order to remedy is required, the party served with such an order could not be charged under Executive Law § 382(2). The Court rejected the argument that the local government that issued the order to remedy should be permitted to determine the "reasonable time" within which compliance with the order to remedy would be required.

This rule adopts a regulation that fixes the time within which compliance with an order to remedy is required. This rule is necessary because in the absence of a regulation fixing the time within which full compliance with an order to remedy is required, courts may, under the precedent established by Plateau Associates, refuse to impose the penalties contemplated by Executive Law § 382(2) upon persons who are served with an

order to remedy who fail to comply with the order to remedy. This, in turn, would seriously diminish the effectiveness of orders to remedy, resulting in inadequate enforcement of the Uniform Code and potentially subject the people of this State to the real and present dangers of to public safety posed by fire, as identified by the State Legislature in Executive Law § 371(1)(d).

3. COSTS

Costs to Regulated Parties

Pursuant to Executive Law § 382(2), a person served with an order to remedy who fails to comply with the order within the time fixed by this rule will be subject to the penalties prescribed by Executive Law § 382(2), viz., a fine not to exceed $1,000 per day of violation, imprisonment for not more than one year, or both.

A person served with an order to remedy is already required by existing law to comply with that order. This rule merely fixes the time within which compliance with the order is required. This rule will impose no additional initial capital costs on any person served with an order to remedy. This rule will impose no additional annual compliance costs on any person served with an order to remedy.

Upon learning of the decision in People v. Plateau Associates, LLC, the Department of State's Division of Building Standards and Codes solicited information from local governments' code enforcement officials from around the State. These officials were surveyed regarding times within which compliance with an order to remedy is typically required. Among those surveyed, the majority of participants affirmed that they included in orders to remedy, a specific date by which any violations must be corrected. On average, the time allowed before re-inspection or correction of the violations was reported to be twenty (20) days. The time fixed by this rule for compliance with an order to remedy (30 days from the date of the order) is actually slightly longer that this reported average.

This rule expressly provides (1) that an order to remedy may provide that the person served with the order must begin to remedy the violation(s) immediately and (2) that new section 1203.5 does not limit any other enforcement tool. These provisions allow a local government to address situations in which immediate action is required to protect health and safety.

Costs to the Department of State, New York State, and Local Governments

In general, local governments are responsible for enforcing the Uniform Code. In certain instances, the Department of State (DOS) is responsible for enforcing the Uniform Code.

This rule requires a local government (or DOS in those instances where it enforces the Uniform Code) to include in each order to remedy a notice substantially similar to the following: "NOTICE: Full compliance with this order to remedy is required by _____ [specify date], which is thirty (30) days after the date of this order. If the person or entity served with this order to remedy fails to comply in full with this order to remedy within the thirty (30) day period, that person or entity will be subject to a fine of not more than $1,000 per day of violation, or imprisonment not exceeding one year, or both."

This rule also requires the local government or other enforcing agency that issues an order to remedy to serve the order (personally or by registered or certified mail) within 5 days of the date of the order.

The initial costs to be incurred by local governments that enforce the Uniform Code (and by DOS in those instances where it enforces the Uniform Code) will include (1) the cost of modifying their order to remedy forms to include the notice required by this rule and (2) the cost of training their code enforcement personnel on the requirements of this rule. However, DOS anticipates that the cost of modifying a local government's order to remedy form to include the notice required by this rule will be negligible. In addition, code enforcement personnel are required by existing law to receive 24 hours of in-service training each year, and DOS anticipates that training on the requirements of the new this rule can be provided within the already required annual in-service training.

The annual or on-going compliance costs for local governments that enforce the Uniform Code (and by DOS in those instances where it enforces the Uniform Code) will include the costs associated with tracking service of orders to remedy to assure that service is made within the five day time limit established by this rule. However, DOS anticipates that a local government will be able to fulfill these obligations using its existing code enforcement personnel, at little or no additional cost to the local government. Further, local governments are authorized by existing law to charge fees to defray the cost of their code enforcement activities.

DOS does not anticipate that the State of New York will incur any costs for the implementation of, and continued administration of, this rule.

4. PAPERWORK

As stated above, this rule requires a local government (or DOS, in instances where it enforces the Uniform Code) to include a notice in each order to remedy specifying the date by which compliance with such order will be required and specifying the consequences of failure to comply with the order within that stated time.

5. LOCAL GOVERNMENT MANDATES

This rule requires a local government that issues an order to remedy to include in that order a notice specifying the date by which compliance with such order will be required and specifying the consequences of failure to comply with the order within that stated time. This rule also requires a local government that issues an order to remedy to see that the order is served (personally or by registered or certified mail) with 5 days of the date of the order.

Local governments that enforce the Uniform Code will be required to ensure that their code enforcement personnel receive training on the provisions of this rule.

DOS anticipates that any such additional training and enforcement obligations will have little or no impact on the code enforcement expenses incurred by local governments. In addition, local governments are authorized by existing law to charge fees to offset their code enforcement expenses.

6. DUPLICATION

This rule implements the requirements of Executive Law § 382(2). This rule does not duplicate any rule or other legal requirement of the State or Federal government known to DOS.

7. ALTERNATIVES

DOS considered a rule that would allow local governments to determine the time within which compliance with an order to remedy would be required on a case by case basis. However, the court in the Plateau Associates, LLC case cited above rejected this approach, and indicated that Executive Law § 382(2) requires DOS to adopt a regulation fixing a time within which compliance with an order to remedy would be required.

8. FEDERAL STANDARDS

This rule does not exceed any known minimum standards of the Federal government for the same or similar subject areas.

9. COMPLIANCE SCHEDULE

DOS anticipates that local governments and other code enforcing agencies will be able to comply with this rule immediately.

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[1] This rule also amends section 1203.1 of Title 19 NYCRR to include a reference to and definition of the term "Energy Code."

Regulatory Flexibility Analysis

1. EFFECT OF RULE.

Executive Law § 382(2) provides, in part, that any person, having been served, either personally or by registered or certified mail, with an order to remedy any condition found to exist in, on, or about any building in violation of the State Uniform Fire Prevention and Building Code (the Uniform Code), who shall fail to comply with such order within the time fixed by the regulations promulgated by the secretary pursuant to Executive Law § 381(1), such time period to be stated in the order, shall be punishable by a fine of not more than one thousand dollars per day of violation, or imprisonment not exceeding one year, or both. This rule amends 19 NYCRR Part 1203 by adding Section 1203.5 (entitled "Compliance with an order to remedy") which fixes the time within which compliance with an order to remedy is required. Under new Section 1203.5, the time within which compliance with an order to remedy is required is fixed at thirty (30) days following the date of the order.

New section 1203.5 also requires (1) that each order to remedy include a notice indicating the date by which compliance with the order is required and the consequences of failure to comply with the order by that date and (2) that each order to remedy be served (personally or by registered or certified mail) within 5 days of the date of the order.[1]

The Uniform Code is applicable in all areas of the State except New York City. Therefore, this rule will affect any small business which owns or occupies a building or structure anywhere in the State except New York City and which is served with an order to remedy Uniform Code violation(s) found to exist in, on, or about such building or structure. The Department of State is not able to estimate the number of small businesses that will be served with such an order to remedy.

In general, local governments (cities, towns, and villages) are required to enforce the Uniform Code. In some cases, a county may enforce the Uniform Code. Therefore, this rule will affect any local government or county which enforces the Uniform Code and which chooses to issue an order to remedy. The Department of State estimates that approximately 1,600 local governments and counties enforce the Uniform Code, and that most of these local governments and counties issue orders to remedy from time to time.

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

This rule will fix the time for compliance with an order to remedy at thirty (30) days from the date of the order. A person or entity (including a small business) served with an order to remedy is already required by existing law to comply with that order. This rule merely fixes the time within which compliance with the order is required. Failure to comply

with an order to remedy within the time fixed by this rule will make the person or entity served with the order subject to the penalties prescribed by Executive Law § 382(2). This rule will impose no new reporting, recordkeeping or other compliance requirements on any person served with an order to remedy.

A person or entity (including a small business) served with an order to remedy may find it necessary or desirable to hire an engineer, architect or other professional who constructs or assists in the construction or maintenance of buildings to assist with compliance with the order; however, this rule will not increase the need for any such professional services.

Local government that enforce the Uniform Code and issue orders to remedy will be required to include in each such order a notice indicating the date by which compliance with the order is required and the consequences of failure to comply with the order by that date. Local governments will be required to modify their order to remedy forms to include this notice.

Local government that enforce the Uniform Code and issue orders to remedy will be required to serve each such order to remedy (personally or by registered or certified mail) within 5 days of the date of the order. Local governments will be required to track service of their orders to remedy to assure that they are served within the applicable five day period.

The Department of State anticipates that local governments will be able to comply with the new requirements added by section 1203.5 with their current code enforcement personnel, and will not require any significant additional professional services.

3. COMPLIANCE COSTS.

Pursuant to Executive Law § 382(2), a person served with an order to remedy who fails to comply with the order within the time fixed by this rule will be subject to the penalties prescribed by Executive Law § 382(2), viz., a fine not to exceed $1,000 per day of violation, imprisonment for not more than one year, or both. However, a person or entity (including a small business) served with an order to remedy is already required by existing law to comply with that order. This rule merely fixes the time within which compliance with the order is required. This rule will impose no additional initial capital costs on any person or entity (including any small business) served with an order to remedy.

This rule will impose no additional annual compliance costs on any person or entity (including any small business) served with an order to remedy.

The initial costs to be incurred by local governments that enforce the Uniform Code will include (1) the cost of modifying their order to remedy forms to include the notice required by this rule and (2) the cost of training their code enforcement personnel on the requirements of this rule. However, the Department of State anticipates that the cost of modifying a local government's order to remedy form to include the notice required by this rule will be negligible. In addition, code enforcement personnel are required by existing law to receive 24 hours of in-service training each year, and the Department of State anticipates that training on the requirements of the new this rule can be provided within the already required annual in-service training.

The annual or on-going compliance costs for local governments that enforce the Uniform Code will include the costs associated with tracking service of orders to remedy to assure that service is made within the five day time limit established by this rule. However, the Department of State anticipates that a local government will be able to fulfill these obligations using its existing code enforcement personnel, at little or no additional cost to the local government. Further, local governments are authorized by existing law to charge fees to defray the cost of their code enforcement activities.

4. ECONOMIC AND TECHNOLOGICAL FEASIBILITY.

It is economically and technologically feasible for regulated parties to comply with the rule. No substantial capital expenditures are imposed and no new technology need be developed for compliance.

The Department of State anticipates that local governments will be able to comply with this rule using their existing code enforcement personnel.

5. MINIMIZING ADVERSE IMPACT.

This rule was designed to minimize any adverse impact on all affected parties, including small businesses and local governments, by: (1) fixing the time within which compliance with an order to remedy is required at 30 days from the date of the order, thereby enabling local governments easily to compute the date by which compliance is required and to state that date in the order to remedy, as required by Executive Law § 382(2); (2) specifying the form of the notice to be included in the order to remedy that will enable local governments to state the time within which compliance is required, which will facilitate local governments' ability to comply with the requirements of Executive Law § 382(2); (3) providing that local governments can include in an order to remedy provisions requiring that the person or entity served with the order must begin to remedy the violation(s) immediately, and must diligently continue to remedy the violation(s), thereby allowing local governments to include appropriate provisions in an order to remedy to address a situation where immediate action is required to address life /safety concerns; and (4) providing a time within which compliance is required (30 days) which is longer than the average time currently specified by local governments that responded to the Department of State's survey (20 days), thereby assuring that a person or entity served with an order to remedy will have a reasonable time to comply before being subject to the penalties prescribed by Executive Law § 382(2).

Approaches such as establishing different compliance or reporting requirements or timetables that take into account the resources available to small businesses and local governments and/or providing exemptions from coverage by the rule, or any part thereof, for small businesses and local governments were not considered because doing so is not authorized by the statute and would endanger the public safety and general welfare.

6. SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION.

The Department of State gave small businesses and local governments an opportunity to participate in this rule making by posting a notice regarding this rule on the Department of State's website and by publishing a notice regarding this rule in Building New York, a monthly electronic news bulletin covering topics related to the Uniform Code and the construction industry that is prepared by the Department of State and is currently distributed to approximately 10,000 subscribers, including local governments, design professionals and others involved in all aspects of the construction industry.

7. VIOLATIONS AND PENALTIES ASSOCIATED WITH VIOLATIONS.

The applicable statute (Executive Law § 382(2)) establishes a violation (viz., failure to comply with an order to remedy) and establishes penalties associated with such violation (viz., a fine of not more than one thousand dollars per day of violation, or imprisonment not exceeding one year, or both). While this rule will relate to the violation and penalty established by Executive Law § 382(2) in the sense that this rule will fix the time within which compliance with an order to remedy is required, this rule will not directly establish or modify a violation and this rule will not directly establish or modify penalties associated with a violation. Therefore, for the purposes of Chapter 524 of the Laws of 2011 and subdivision 1-a of section 202-b of the State Administrative Procedure Act, this rule is not required to include a cure period or other opportunity for ameliorative action, the successful completion of which will prevent the imposition of penalties on the party or parties subject to enforcement. It should be noted, however, that this rule will, in effect, include a cure period or other opportunity for ameliorative action in the sense that this rule will provide that a person served with an order to remedy will have at least 30 days to comply with the order before the statutory penalties can be imposed.

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[1] This rule also amends section 1203.1 of Title 19 NYCRR to include a reference to and definition of the term "energy code."

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBERS OF RURAL AREAS.

This rule adds a new section 1203.5 to Title 19 of the NYCRR. New section 1203.5 fixes the time within which compliance with an order to remedy violations of the State Uniform Fire Prevention and Building Code (the Uniform Code) is required.[1]

The Uniform Code applies in all parts of the State except New York City. Therefore, this rule applies in all rural areas of the State.

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

Executive Law § 382(2) provides, in part, that any person, having been served, either personally or by registered or certified mail, with an order to remedy any condition found to exist in, on, or about any building in violation of the State Uniform Fire Prevention and Building Code (the Uniform Code), who shall fail to comply with such order within the time fixed by the regulations promulgated by the secretary pursuant to subdivision one of section three hundred eighty-one of this article, such time period to be stated in the order, shall be punishable by a fine of not more than one thousand dollars per day of violation, or imprisonment not exceeding one year, or both. This rule adds a new section 1203.5 to Title 19 of the NYCRR. New section 1203.5 fixes the time for compliance with an order to remedy at thirty (30) days from the date of the order.

A person served with an order to remedy in any part of the State, including any rural area, is already required by existing law to comply with that order. This rule merely fixes the time within which compliance with the order is required. Failure to comply with an order to remedy within the time fixed by this rule will make the person served with the order subject to the penalties prescribed by Executive Law § 382(2).

This rule will impose no new reporting, recordkeeping or other compliance requirements on any person served with an order to remedy.

A person served with an order to remedy may find it necessary or desirable to hire an engineer, architect or other professional who constructs or assists in the construction or maintenance of buildings to assist with compliance with the order; however, this rule will not increase the need for any such professional services.

New section 1203.5 requires a local government that issues an order to remedy to include in the order a notice stating (1) that full compliance with the order within thirty (30) days of the date of the order is required and (2) that in the event the person served with the order to remedy fails to comply in full with the order within the thirty (30) day period, such person will be subject to the penalties prescribed by Executive Law § 382(2), viz., a fine of not more than $1,000 per day of violation, or imprisonment not exceeding one year, or both. Local governments (including local governments in rural areas) will be required to modify their order to remedy forms to include this notice.

New section 1203.5 provides that an order to remedy must be served within five days of the date of the order. Local governments (including local governments in rural areas) will be required to track service of their orders to remedy to assure that they are served within the applicable five day period.

The Department of State anticipates that local governments will be able to enforce the new requirement added by section 1203.5 with their current code enforcement personnel, and will not require any significant additional professional services.

3. COSTS.

Pursuant to Executive Law § 382(2), a person served with an order to remedy who fails to comply with the order within the time fixed by this rule will be subject to the penalties prescribed by Executive Law § 382(2), viz., a fine not to exceed $1,000 per day of violation, imprisonment for not more than one year, or both. However, a person served with an order to remedy in any part of the State, including any rural area, is already required by existing law to comply with that order. This rule merely fixes the time within which compliance with the order is required. This rule will impose no additional initial capital costs on any person served with an order to remedy. This rule will impose no additional annual compliance costs on any person served with an order to remedy.

The initial costs to be incurred by local governments (including local governments in rural areas) will include (1) the cost of modifying their order to remedy forms to include the notice required by this rule and (2) the cost of training their code enforcement personnel on the requirements of this rule. However, the Department of State anticipates that the cost of modifying a local government's order to remedy form to include the notice required by this rule will be negligible. In addition, code enforcement personnel are required by existing law to receive 24 hours of in-service training each year, and the Department of State anticipates that training on the requirements of the new this rule can be provided within the already required annual in-service training.

The annual or on-going compliance costs for local governments (including local governments in rural areas) will include the costs associated with tracking service of orders to remedy to assure that service is made within the five day time limit established by this rule. However, the Department of State anticipates that a local government will be able to fulfill these obligations using its existing code enforcement personnel, at little or no additional cost to the local government. Further, local governments are authorized by existing law to charge fees to defray the cost of their code enforcement activities.

4. MINIMIZING ADVERSE IMPACT.

This rule was designed to minimize any adverse impact on all areas of the State, including rural areas, by: (1) fixing the time within which compliance with an order to remedy is required at 30 days from the date of the order, thereby enabling local governments easily to compute the date by which compliance is required and to state that date in the order to remedy, as required by Executive Law § 382(2); (2) specifying the form of the notice to be included in the order to remedy that will enable local governments to state the time within which compliance is required, which will facilitate local governments' ability to comply with the requirements of Executive Law § 382(2); (3) providing that local governments can include in an order to remedy provisions requiring that the person or entity served with the order must begin to remedy the violation(s) immediately, and must diligently continue to remedy the violation(s), thereby allowing local governments to include appropriate provisions in an order to remedy to address a situation where immediate action is required to address life /safety concerns; and (4) providing a time within which compliance is required (30 days) which is longer than the average time currently specified by local governments that responded to the Department of State's survey (20 days), thereby assuring that a person or entity served with an order to remedy will have a reasonable time to comply before being subject to the penalties prescribed by Executive Law § 382(2).

Establishing different compliance requirements for public and private sector interests in rural areas and/or providing exemptions from coverage by the rule for public and private sector interests in rural areas was not considered because doing so is not authorized by the statute and would endanger the public safety and general welfare.

5. RURAL AREA PARTICIPATION.

The Department of State notified interested parties throughout the State, including interested parties in rural areas, of the proposed adoption of this rule by means of notices posted on the Department's website and published in Building New York, a monthly electronic news bulletin covering topics related to the Uniform Code/Energy Code and the construction industry which is prepared by the Department of State and which is currently distributed to approximately 10,000 subscribers, including local governments, design professionals and others involved in all aspects of the construction industry.

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[1] This rule also amends section 1203.1 of Title 19 NYCRR to include a reference to and definition of the term "energy code."

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 in New York.

Executive Law § 382(2) provides, in part, that any person, having been served, either personally or by registered or certified mail, with an order to remedy any condition found to exist in, on, or about any building in violation of the State Uniform Fire Prevention and Building Code (the Uniform Code), who shall fail to comply with such order within the time fixed by the regulations promulgated by the secretary pursuant to Executive Law § 381(1), such time period to be stated in the order, shall be punishable by a fine of not more than one thousand dollars per day of violation, or imprisonment not exceeding one year, or both. This rule adds a new section 1203.5 to Title 19 of the Official Compilation of Codes, Rules and Regulations of the State of New York. New section 1203.5 fixes the time for compliance with an order to remedy at thirty (30) days from the date of the order.

A person served with an order to remedy is required by existing law to comply with that order. This rule merely fixes the time within which compliance with the order is required. Failure to comply with an order to remedy within the time fixed by this rule will make the person served with the order subject to the penalties prescribed by Executive Law § 382(2).

Therefore, the Department of State concludes that it is apparent from the nature and purpose of this rule that it will have no substantial adverse impact on jobs and employment opportunities.

Department of Taxation and Finance

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

City of New York Withholding Tables and Other Methods

I.D. No. TAF-17-15-00010-EP
Filing No. 275
Filing Date: 2015-04-14
Effective Date: 2015-04-14

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

Proposed Action: Amendment of Appendix 10-C of Title 20 NYCRR.

Statutory authority: Tax Law, sections 171, subdivision First, 671(a)(1), 697(a), 1309 and 1312(a); Administrative Code of the City of New York, sections 11-1771(a) and 11-1797(a); L. 2015, ch. 59, part B

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

Specific reasons underlying the finding of necessity: As part of the recently enacted Budget legislation, Part B of Chapter 59 of the Laws of 2015 made certain changes to the personal income tax law that require the Commissioner to adjust the withholding tables and other methods in Appendix 10-C of 20 NYCRR, and to promulgate rules to implement the changes for 2015 as soon as practicable. Section 4 of Part B specifically authorizes emergency action to adopt rules implementing these changes. These rules are being adopted on an emergency basis in accordance with the requirement that rules be adopted and effective as soon as practicable

and consistent with the explicit legislative authorization to adopt the rules on an emergency basis.

Subject: City of New York withholding tables and other methods.

Purpose: To provide current City of New York withholding tables and other methods.

Substance of emergency/proposed rule (Full text is posted at the following State website:http://www.tax.ny.gov): See the Appendix in the back of this issue.

This notice is intended: to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire July 12, 2015.

Text of rule and any required statements and analyses may be obtained from: Kathleen D. O'Connell, Tax Regulations Specialist 1, Department of Taxation and Finance, Taxpayer Guidance Division, Building 9, W.A. Harriman Campus, Albany, NY 12227, (518) 530-4153, email: Kathleen.OConnell@tax.ny.gov

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

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

Regulatory Impact Statement

1. Statutory authority: 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 1309 (not subdivided) provides that City of New York personal income tax withholding shall be withheld from city residents in the same manner and form as that required by New York State; section 1312(a) provides that any personal income tax imposed on New York City residents by the City of New York 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, except where noted; Administrative Code of the City of New York, section 11-1771(a) provides that the method of determining the amount of City tax withholding will be prescribed by regulations promulgated by the Commissioner; section 11-1797(a) provides for the Commissioner to make such rules and regulations that are necessary to enforce the provisions of the Administrative Code of the City of New York. Section 4 of Part B of Chapter 59 of the Laws of 2015 requires the Commissioner to adopt rules to implement changes in the withholding tax tables and methods relating to the personal income tax increases made by Part B.

2. Legislative objectives: The proposal amends Appendix 10-C related to the exact calculation method (Method II) for the City of New York personal income tax on residents for withholding purposes as required by Chapter 59 of the Laws of 2015. Because the income tax changes made by Chapter 59 relate to taxpayers with incomes over certain amounts, the wage bracket table method (Method I) tables are not affected. The amendments implement revised City of New York withholding tables and other methods applicable to wages and other compensation paid on or after June 1, 2015. Specifically, the amendments reflect the increased rate of New York City personal income tax applicable to income over $500,000 provided in Part B of Chapter 59. As required by the new law, the withholding rates for the remainder of tax year 2015 reflect the full amount of tax liability for tax year 2015 as accurately as practicable.

3. Needs and benefits: This rule sets forth amendments to the City of New York withholding tables and other methods, applicable to wages and other compensation paid on or after June 1, 2015, reflecting the revision of the tax rates contained in Part B of Chapter 59 of the Laws of 2015. This rule benefits taxpayers by providing City of New York withholding rates that more accurately 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.

4. Costs: (a) Costs to regulated parties for the implementation and continuing compliance with this rule: Since (i) the Tax Law and the Administrative Code of the City of New York already mandate withholding in amounts that are substantially equivalent to the amounts of City of New York personal income tax on residents reasonably estimated to be due for the taxable year, and (ii) this rule conforms Appendix 10-C of Title 20 NYCRR to the rates of the City of New York personal income tax on residents, as required by Chapter 59 of the Laws of 2015, 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 make amendments to the New York City Personal Income Tax on Residents Regulations and to Appendix 10-C arises due to the statutory changes in the rates of the City of New York personal income tax on residents, 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 Tax Policy Analysis, 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 amendments to the tables and other methods and directed to the Department's website for the updated tables and other methods.

7. Duplication: This rule does not duplicate any other requirements.

8. Alternatives: Since section 11-1771(a) of the Administrative Code of the City of New York and Chapter 59 of the Laws of 2015 require that 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: The required information will be made available to affected employers in sufficient time to implement the revised City of New York withholding tables and other methods for wages and other compensation paid on or after June 1, 2015.

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 New York 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 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 New York withholding requirements to continue to deduct and withhold amounts from employees using the revised City of New York withholding tables and other methods. The promulgation of this rule will not require small businesses 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 New York 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 mandates that New York State withholding tables and other methods be promulgated. Section 1309 of the Tax Law mandates, in part, that the City of New York 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 governments 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, including any public or private employer located in a rural area as defined in section 102(10) of the State Administrative Procedure Act, that is currently subject to the City of New York withholding requirements will continue to be subject to such requirements and will be required to comply with the provisions of this rule. The number of employers that are also public or private interests in rural areas cannot be determined with any degree of certainty. The effect on employers in rural areas is minimized because the changes relate to the New York City personal income tax 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 New York 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 City of New York 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 New York 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 11-1771(a) of the Administrative Code of the City of New York mandates that City of New York State withholding tables and other methods be promulgated. There are no provisions in the Tax Law or the Administrative Code of the City of New York that exclude employers located in rural areas from the 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 Statement is not being submitted with this rule because it is evident from the subject matter of the rule that it would have no adverse impact on jobs and employment opportunities. The purpose of the rule is to provide City of New York withholding tables and other methods, applicable for compensation paid on or after June 1, 2015, which reflect the revision of the New York City rate enacted pursuant to Chapter 59 of the Laws of 2015.