RULE MAKING ACTIVITIES

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

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

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

Department of Civil Service

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-30-14-00001-A
Filing No. 203
Filing Date: 2015-03-20
Effective Date: 2015-04-08

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

Action taken: Amendment of Appendixes 1 and 2 of Title 4 NYCRR.

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

Subject: Jurisdictional Classification.

Purpose: To classify positions in the exempt class and to delete positions from non-competitive class.

Text or summary was published in the July 30, 2014 issue of the Register, I.D. No. CVS-30-14-00001-P.

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

Text of rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: jennifer.paul@cs.ny.gov

Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-30-14-00002-A
Filing No. 197
Filing Date: 2015-03-20
Effective Date: 2015-04-08

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

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

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

Subject: Jurisdictional Classification.

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

Text or summary was published in the July 30, 2014 issue of the Register, I.D. No. CVS-30-14-00002-P.

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

Text of rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: jennifer.paul@cs.ny.gov

Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-30-14-00004-A
Filing No. 201
Filing Date: 2015-03-20
Effective Date: 2015-04-08

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

Action taken: Amendment of Appendixes 1 and 2 of Title 4 NYCRR.

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

Subject: Jurisdictional Classification.

Purpose: To delete and classify positions in the exempt and non-competitive classes.

Text of final rule: Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Department of Corrections and Community Supervision, by deleting therefrom the position of Secretary and in the Executive Department under the subheading "Office of the Governor," by decreasing the number of positions of Program Associate from 9 to 8; and, in the Department of Corrections and Community Supervision under the subheading "State Board of Parole," by adding thereto the position of Secretary and in the Executive Department under the subheading "Division of the Budget," by increasing the number of positions of Program Associate from 5 to 6; and

Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Corrections and Community Supervision under the subheading "State Board of Parole," by deleting therefrom the position of øSecretary 2 (1); and, in the Department of Corrections and Community Supervision, by increasing the number of positions of øSecretary 2 from 1 to 2.

*Originally had been submitted as including "in the Department of Agriculture and Markets, by decreasing the number of positions of

øAgricultural Policy Analyst from 2 to 1; and, in the Department of Economic Development, by adding thereto the position of øAgricultural Policy Analyst (1)" in the non-competitive class.

Final rule as compared with last published rule: Nonsubstantive changes were made in Appendix 2.

Text of rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: jennifer.paul@cs.ny.gov

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

Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-30-14-00005-A
Filing No. 205
Filing Date: 2015-03-20
Effective Date: 2015-04-08

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

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

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

Subject: Jurisdictional Classification.

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

Text or summary was published in the July 30, 2014 issue of the Register, I.D. No. CVS-30-14-00005-P.

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

Text of rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: jennifer.paul@cs.ny.gov

Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-30-14-00008-A
Filing No. 202
Filing Date: 2015-03-20
Effective Date: 2015-04-08

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

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

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

Subject: Jurisdictional Classification.

Purpose: To classify a position in the exempt class.

Text or summary was published in the July 30, 2014 issue of the Register, I.D. No. CVS-30-14-00008-P.

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

Text of rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: jennifer.paul@cs.ny.gov

Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-30-14-00009-A
Filing No. 200
Filing Date: 2015-03-20
Effective Date: 2015-04-08

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

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

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

Subject: Jurisdictional Classification.

Purpose: To classify a position in the exempt class.

Text or summary was published in the July 30, 2014 issue of the Register, I.D. No. CVS-30-14-00009-P.

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

Text of rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: jennifer.paul@cs.ny.gov

Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-30-14-00010-A
Filing No. 199
Filing Date: 2015-03-20
Effective Date: 2015-04-08

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

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

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

Subject: Jurisdictional Classification.

Purpose: To delete positions from and classify positions in the non-competitive class.

Text or summary was published in the July 30, 2014 issue of the Register, I.D. No. CVS-30-14-00010-P.

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

Text of rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: jennifer.paul@cs.ny.gov

Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-30-14-00012-A
Filing No. 198
Filing Date: 2015-03-20
Effective Date: 2015-04-08

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

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

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

Subject: Jurisdictional Classification.

Purpose: To classify a position in the exempt class.

Text or summary was published in the July 30, 2014 issue of the Register, I.D. No. CVS-30-14-00012-P.

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

Text of rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: jennifer.paul@cs.ny.gov

Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-30-14-00013-A
Filing No. 204
Filing Date: 2015-03-20
Effective Date: 2015-04-08

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

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

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

Subject: Jurisdictional Classification.

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

Text or summary was published in the July 30, 2014 issue of the Register, I.D. No. CVS-30-14-00013-P.

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

Text of rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: jennifer.paul@cs.ny.gov

Assessment of Public Comment
The agency received no public comment.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-14-15-00005-P

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

Proposed Action: Amendment of Appendix 1 of Title 4 NYCRR.

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

Subject: Jurisdictional Classification.

Purpose: To classify positions in the exempt class.

Text of proposed rule: Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Department of Labor under the subheading "Administration – General," by increasing the number of positions of Special Assistant from 13 to 17.

Text of proposed rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: jennifer.paul@cs.ny.gov

Data, views or arguments may be submitted to: Ilene Lees, Counsel, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: ilene.lees@cs.ny.gov

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

Regulatory Impact Statement
A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-15-00005-P, Issue of January 7, 2015.

Regulatory Flexibility Analysis
A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-15-00005-P, Issue of January 7, 2015.

Rural Area Flexibility Analysis
A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-15-00005-P, Issue of January 7, 2015.

Job Impact Statement
A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-15-00005-P, Issue of January 7, 2015.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-14-15-00006-P

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

Proposed Action: Amendment of Appendix 1 of Title 4 NYCRR.

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

Subject: Jurisdictional Classification.

Purpose: To classify positions in the exempt class.

Text of proposed rule: Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Department of Financial Services, by increasing the number of positions of Assistant Counsel from 16 to 20 and Special Assistant from 18 to 24.

Text of proposed rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: jennifer.paul@cs.ny.gov

Data, views or arguments may be submitted to: Ilene Lees, Counsel, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: ilene.lees@cs.ny.gov

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

Regulatory Impact Statement
A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-15-00005-P, Issue of January 7, 2015.

Regulatory Flexibility Analysis
A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-15-00005-P, Issue of January 7, 2015.

Rural Area Flexibility Analysis
A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-15-00005-P, Issue of January 7, 2015.

Job Impact Statement
A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-15-00005-P, Issue of January 7, 2015.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-14-15-00007-P

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

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

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

Subject: Jurisdictional Classification.

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

Text of proposed rule: Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Education Department, by increasing the number of positions of øState Education Psychometrician from 1 to 2.

Text of proposed rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: jennifer.paul@cs.ny.gov

Data, views or arguments may be submitted to: Ilene Lees, Counsel, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: ilene.lees@cs.ny.gov

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

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-15-00005-P, Issue of January 7, 2015.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-15-00005-P, Issue of January 7, 2015.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-15-00005-P, Issue of January 7, 2015.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-15-00005-P, Issue of January 7, 2015.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-14-15-00008-P

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

Proposed Action: Amendment of Appendix 1 and 2 of Title 4 NYCRR.

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

Subject: Jurisdictional Classification.

Purpose: To delete positions from the exempt and non-competitive classes.

Text of proposed rule: Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Executive Department under the subheading "Office of Information Technology Services," by deleting therefrom the positions of Confidential Assistant (2), Director Office Cyber Security, Employee Program Assistant (4), Employee Program Associate (6), Employee Relations Associate (2) and Information Technology Specialist (JCOPE) (3) and by decreasing the number of positions of Confidential Stenographer from 2 to 1 and Manager Information Services from 2 to 1; and

Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Executive Department under the subheading "Office of Information Technology Services," by deleting therefrom the positions of øCyber Security Associate Director (1) and øDirector Rehabilitation Information Technology (1).

Text of proposed rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: jennifer.paul@cs.ny.gov

Data, views or arguments may be submitted to: Ilene Lees, Counsel, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: ilene.lees@cs.ny.gov

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

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-15-00005-P, Issue of January 7, 2015.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-15-00005-P, Issue of January 7, 2015.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-15-00005-P, Issue of January 7, 2015.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-15-00005-P, Issue of January 7, 2015.

Department of Economic Development

EMERGENCY
RULE MAKING

Empire Zones Reform

I.D. No. EDV-14-15-00001-E
Filing No. 206
Filing Date: 2015-03-23
Effective Date: 2015-03-23

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

Action taken: Amendment of Parts 10 and 11; renumbering and amendment of Parts 12-14 to Parts 13, 15 and 16; and addition of new Parts 12 and 14 to Title 5 NYCRR.

Statutory authority: General Municipal Law, art. 18-B, section 959; L. 2000, ch. 63; L. 2005, ch. 63; L. 2009, ch. 57

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

Specific reasons underlying the finding of necessity: Regulatory action is needed immediately to implement the statutory changes contained in Chapter 57 of the Laws of 2009. The emergency rule also clarifies the administrative procedures of the program, improves efficiency and helps make it more cost-effective and accountable to the State's taxpayers, particularly in light of New York's current fiscal climate. It bears noting that General Municipal Law section 959(a), as amended by Chapter 57 of the Laws of 2009, expressly authorizes the Commissioner of Economic Development to adopt emergency regulations to govern the program.

Subject: Empire Zones reform.

Purpose: Allow department to continue implementing Zones reforms and adopt changes that would enhance program's strategic focus.

Substance of emergency rule: The emergency rule is the result of changes to Article 18-B of the General Municipal Law pursuant to Chapter 63 of the Laws of 2000, Chapter 63 of the Laws of 2005, and Chapter 57 of the Laws of 2009. These laws, which authorize the empire zones program, were changed to make the program more effective and less costly through higher standards for entry into the program and for continued eligibility to remain in the program. Existing regulations fail to address these requirements and the existing regulations contain several outdated references. The emergency rule will correct these items.

The rule contained in 5 NYCRR Parts 10 through 14 (now Parts 10-16 as amended), which governs the empire zones program, is amended as follows:

1. The emergency rule, tracking the requirements of Chapter 63 of the Laws of 2005, requires placement of zone acreage into "distinct and separate contiguous areas."

2. The emergency rule updates several outdated references, including: the name change of the program from Economic Development Zones to Empire Zones, the replacement of Standard Industrial Codes with the North American Industrial Codes, the renaming of census-tract zones as investment zones, the renaming of county-created zones as development zones, and the replacement of the Job Training Partnership Act (and private industry councils) with the Workforce Investment Act (and local workforce investment boards).

3. The emergency rule adds the statutory definition of "cost-benefit analysis" and provides for its use and applicability.

4. The emergency rule also adds several other definitions (such as applicant municipality, chief executive, concurring municipality, empire zone capital tax credits or zone capital tax credits, clean energy research and development enterprise, change of ownership, benefit-cost ratio, capital investments, single business enterprise and regionally significant

project) and conforms several existing regulatory definitions to statutory definitions, including zone equivalent areas, women-owned business enterprise, minority-owned business enterprise, qualified investment project, zone development plans, and significant capital investment projects. The emergency rule also clarifies regionally significant project eligibility. Additionally, the emergency rule makes reference to the following tax credits and exemptions: the Qualified Empire Zone Enterprise ("QEZE") Real Property Tax Credit, QEZE Tax Reduction Credit, and the QEZE Sales and Use Tax Exemption. The emergency rule also reflects the eligibility of agricultural cooperatives for Empire Zone tax credits and the QEZE Real Property Tax Credit.

5. The emergency rule requires additional statements to be included in an application for empire zone designation, including (i) a statement from the applicant and local economic development entities pertaining to the integration and cooperation of resources and services for the purpose of providing support for the zone administrator, and (ii) a statement from the applicant that there is no viable alternative area available that has existing public sewer or water infrastructure other than the proposed zone.

6. The emergency rule amends the existing rule in a manner that allows for the designation of nearby lands in investment zones to exceed 320 acres, upon the determination by the Department of Economic Development that certain conditions have been satisfied.

7. The emergency rule provides a description of the elements to be included in a zone development plan and requires that the plan be resubmitted by the local zone administrative board as economic conditions change within the zone. Changes to the zone development plan must be approved by the Commissioner of Economic Development ("the Commissioner").

Also, the rule adds additional situations under which a business enterprise may be granted a shift resolution.

8. The emergency rule grants discretion to the Commissioner to determine the contents of an empire zone application form.

9. The emergency rule tracks the amended statute's deletion of the category of contributions to a qualified Empire Zone Capital Corporation from those businesses eligible for the Zone Capital Credit.

10. The emergency rule reflects statutory changes to the process to revise a zone's boundaries. The primary effect of this is to limit the number of boundary revisions to one per year.

11. The emergency rule describes the amended certification and decertification processes. The authority to certify and decertify now rests solely with the Commissioner with reduced roles for the Department of Labor and the local zone. Local zone boards must recommend projects to the State for approval. The labor commissioner must determine whether an applicant firm has been engaged in substantial violations, or pattern of violations of laws regulating unemployment insurance, workers' compensation, public work, child labor, employment of minorities and women, safety and health, or other laws for the protection of workers as determined by final judgment of a judicial or administrative proceeding. If such applicant firm has been found in a criminal proceeding to have committed any such violations, the Commissioner may not certify that firm.

12. The emergency rule describes new eligibility standards for certification. The new factors which may be considered by the Commissioner when deciding whether to certify a firm is (i) whether a non-manufacturing applicant firm projects a benefit-cost ratio of at least 20:1 for the first three years of certification, (ii) whether a manufacturing applicant firm projects a benefit-cost ratio of at least 10:1 for the first three years of certification, and (iii) whether the business enterprise conforms with the zone development plan.

13. The emergency rule adds the following new justifications for decertification of firms: (a) the business enterprise, that has submitted at least three years of business annual reports, has failed to provide economic returns to the State in the form of total remuneration to its employees (i.e. wages and benefits) and investments in its facility greater in value to the tax benefits the business enterprise used and had refunded to it; (b) the business enterprise, if first certified prior to August 1, 2002, caused individuals to transfer from existing employment with another business enterprise with similar ownership and located in New York state to similar employment with the certified business enterprise or if the enterprise acquired, purchased, leased, or had transferred to it real property previously owned by an entity with similar ownership, regardless of form of incorporation or organization; (c) change of ownership or moving out of the Zone, (d) failure to pay wages and benefits or make capital investments as represented on the firm's application, (e) the business enterprise makes a material misrepresentation of fact in any of its business annual reports, and (f) the business enterprise fails to invest in its facility substantially in accordance with the representations contained in its application. In addition, the regulations track the statute in permitting the decertification of a business enterprise if it failed to create new employment or prevent a loss of employment in the zone or zone equivalent area, and deletes the condition that such failure was not due to economic circumstances or conditions which such business could not anticipate or which were beyond its control. The emergency rule provides that the Commissioner shall revoke the certification of a firm if the firm fails the standard set forth in (a) above, or if the Commissioner makes the finding in (b) above, unless the Commissioner determines in his or her discretion, after consultation with the Director of the Budget, that other economic, social and environmental factors warrant continued certification of the firm. The emergency rule further provides for a process to appeal revocations of certifications based on (a) or (b) above to the Empire Zones Designation Board. The emergency rule also provides that the Commissioner may revoke the certification of a firm upon a finding of any one of the other criteria for revocation of certification set forth in the rule.

14. The emergency rule adds a new Part 12 implementing record-keeping requirements. Any firm choosing to participate in the empire zones program must maintain and have available, for a period of six years, all information related to the application and business annual reports.

15. The emergency rule clarifies the statutory requirement from Chapter 63 of the Laws of 2005 that development zones (formerly county zones) create up to three areas within their reconfigured zones as investment (formerly census tract) zones. The rule would require that 75% of the acreage used to define these investment zones be included within an eligible or contiguous census tract. Furthermore, the rule would not require a development zone to place investment zone acreage within a municipality in that county if that particular municipality already contained an investment zone, and the only eligible census tracts were contained within that municipality.

16. The emergency rule tracks the statutory requirements that zones reconfigure their existing acreage in up to three (for investment zones) or six (for development zones) distinct and separate contiguous areas, and that zones can allocate up to their total allotted acreage at the time of designation. These reconfigured zones must be presented to the Empire Zones Designation Board for unanimous approval. The emergency rule makes clear that zones may not necessarily designate all of their acreage into three or six areas or use all of their allotted acreage; the rule removes the requirement that any subsequent additions after their official redesignation by the Designation Board will still require unanimous approval by that Board.

17. The emergency rule clarifies the statutory requirement that certain defined "regionally significant" projects can be located outside of the distinct and separate contiguous areas. There are four categories of projects: (i) a manufacturer projecting the creation of fifty or more net new jobs in the State of New York; (ii) an agri-business or high tech or biotech business making a capital investment of ten million dollars and creating twenty or more net new jobs in the State of New York, (iii) a financial or insurance services or distribution center creating three hundred or more net new jobs in the State of New York, and (iv) a clean energy research and development enterprise. Other projects may be considered by the empire zone designation board. Only one category of projects, manufacturers projecting the creation of 50 or more net new jobs, are allowed to progress before the identification of the distinct and separate contiguous areas and/or the approval of certain regulations by the Empire Zones Designation Board. Regionally significant projects that fall within the four categories listed above must be projects that are exporting 60% of their goods or services outside the region and export a substantial amount of goods or services beyond the State.

18. The emergency rule clarifies the status of community development projects as a result of the statutory reconfiguration of the zones.

19. The emergency rule clarifies the provisions under Chapter 63 of the Laws of 2005 that allow for zone-certified businesses which will be located outside of the distinct and separate contiguous areas to receive zone benefits until decertified. The area which will be "grandfathered" shall be limited to the expansion of the certified business within the parcel or portion thereof that was originally located in the zone before redesignation. Each zone must identify any such business by December 30, 2005.

20. The emergency rule elaborates on the "demonstration of need" requirement mentioned in Chapter 63 of the Laws of 2005 for the addition (for both investment and development zones) of an additional distinct and separate contiguous area. A zone can demonstrate the need for a fourth or, as the case may be, a seventh distinct and separate contiguous area if (1) there is insufficient existing or planned infrastructure within the three (or six) distinct and separate contiguous areas to (a) accommodate business development and there are other areas of the applicant municipality that can be characterized as economically distressed and/or (b) accommodate development of strategic businesses as defined in the local development plan, or (2) placing all acreage in the other three or six distinct and separate contiguous areas would be inconsistent with open space and wetland protection, or (3) there are insufficient lands available for further business development within the other distinct and separate contiguous areas.

The full text of the emergency rule is available at www.empire.state.ny.us

This notice is intended to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires June 20, 2015.

Text of rule and any required statements and analyses may be obtained from: Thomas P Regan, NYS Department of Economic Development, 625 Broadway, Albany NY 12245, (518) 292-5123, email: tregan@esd.ny.gov

Regulatory Impact Statement

STATUTORY AUTHORITY:

Section 959(a) of the General Municipal Law authorizes the Commissioner of Economic Development to adopt on an emergency basis rules and regulations governing the criteria of eligibility for empire zone designation, the application process, the certification of a business enterprises as to eligibility of benefits under the program and the decertification of a business enterprise so as to revoke the certification of business enterprises for benefits under the program.

LEGISLATIVE OBJECTIVES:

The rulemaking accords with the public policy objectives the Legislature sought to advance because the majority of such revisions are in direct response to statutory amendments and the remaining revisions either conform the regulations to existing statute or clarify administrative procedures of the program. These amendments further the Legislative goals and objectives of the Empire Zones program, particularly as they relate to regionally significant projects, the cost-benefit analysis, and the process for certification and decertification of business enterprises. The proposed amendments to the rule will facilitate the administration of this program in a more efficient, effective, and accountable manner.

NEEDS AND BENEFITS:

The emergency rule is required in order to implement the statutory changes contained in Chapter 57 of the Laws of 2009. The emergency rule also clarifies the administrative procedures of the program, improves efficiency and helps make it more cost-effective and accountable to the State's taxpayers, particularly in light of New York's current fiscal climate.

COSTS:

A. Costs to private regulated parties: None. There are no regulated parties in the Empire Zones program, only voluntary participants.

B. Costs to the agency, the state, and local governments: There will be additional costs to the Department of Economic Development associated with the emergency rule making. These costs pertain to the addition of personnel that may need to be hired to implement the Empire Zones program reforms. There may be savings for the Department of Labor associated with the streamlining of the State's administration and concentration of authority within the Department of Economic Development. There is no additional cost to local governments.

C. Costs to the State government: None. There will be no additional costs to New York State as a result of the emergency rule making.

LOCAL GOVERNMENT MANDATES:

None. Local governments are not mandated to participate in the Empire Zones program. If a local government chooses to participate, there is a cost associated with local administration that local government officials agreed to bear at the time of application for designation as an Empire Zone. One of the requirements for designation was a commitment to local administration and an identification of local resources that would be dedicated to local administration.

This emergency rule does not impose any additional costs to the local governments for administration of the Empire Zones program.

PAPERWORK:

The emergency rule imposes new record-keeping requirements on businesses choosing to participate in the Empire Zones program. The emergency rule requires all businesses that participate in the program to establish and maintain complete and accurate books relating to their participation in the Empire Zones program for a period of six years.

DUPLICATION:

The emergency rule conforms to provisions of Article 18-B of the General Municipal Law and does not otherwise duplicate any state or federal statutes or regulations.

ALTERNATIVES:

No alternatives were considered with regard to amending the regulations in response to statutory revisions.

FEDERAL STANDARDS:

There are no federal standards in regard to the Empire Zones program. Therefore, the emergency rule does not exceed any Federal standard.

COMPLIANCE SCHEDULE:

The period of time the state needs to assure compliance is negligible, and the Department of Economic Development expects to be compliant immediately.

Regulatory Flexibility Analysis

1. Effect of rule

The emergency rule imposes new record-keeping requirements on small businesses and large businesses choosing to participate in the Empire Zones program. The emergency rule requires all businesses that participate in the program to establish and maintain complete and accurate books relating to their participation in the Empire Zones program for a period of six years. Local governments are unaffected by this rule.

2. Compliance requirements

Each small business and large business choosing to participate in the Empire Zones program must establish and maintain complete and accurate books, records, documents, accounts, and other evidence relating to such business's application for entry into the Empire Zone program and relating to existing annual reporting requirements. Local governments are unaffected by this rule.

3. Professional services

No professional services are likely to be needed by small and large businesses in order to establish and maintain the required records. Local governments are unaffected by this rule.

4. Compliance costs

No initial capital costs are likely to be incurred by small and large businesses choosing to participate in the Empire Zones program. Annual compliance costs are estimated to be negligible for both small and larges businesses. Local governments are unaffected by this rule.

5. Economic and technological feasibility

The Department of Economic Development ("DED") estimates that complying with this record-keeping is both economically and technologically feasible. Local governments are unaffected by this rule.

6. Minimizing adverse impact

DED finds no adverse economic impact on small or large businesses with respect to this rule. Local governments are unaffected by this rule.

7. Small business and local government participation

DED is in full compliance with SAPA Section 202-b(6), which ensures that small businesses and local governments have an opportunity to participate in the rule-making process. DED has conducted outreach within the small and large business communities and maintains continuous contact with small businesses and large businesses with regard to their participation in this program. Local governments are unaffected by this rule.

Rural Area Flexibility Analysis

The Empire Zones program is a statewide program. Although there are municipalities and businesses in rural areas of New York State that are eligible to participate in the program, participation by the municipalities and businesses is entirely at their discretion. The emergency rule imposes no additional reporting, record keeping or other compliance requirements on public or private entities in rural areas. Therefore, the emergency rule will not have a substantial adverse economic impact on rural areas or reporting, record keeping or other compliance requirements on public or private entities in such rural areas. Accordingly, a rural area flexibility analysis is not required and one has not been prepared.

Job Impact Statement

The emergency rule relates to the Empire Zones program. The Empire Zones program itself is a job creation incentive, and will not have a substantial adverse impact on jobs and employment opportunities. In fact, the emergency rule, which is being promulgated as a result of statutory reforms, will enable the program to continue to fulfill its mission of job creation and investment for economically distressed areas. Because it is evident from its nature that this emergency rule will have either no impact or a positive impact on job and employment opportunities, no further affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

Education Department

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Self-Administration of Certain Medications by Students

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

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

Proposed Action: Addition of section 136.7 to Title 8 NYCRR.

Statutory authority: Education Law, sections 207(not subdivided), 305(1), (2), 902-a(1), (2), 902-b(1), (2), 916-a(1), (2), 916-b(1), (2), 921(1) and (2); L. 2014, ch. 423

Subject: Self-administration of certain medications by students.

Purpose: To establish standards for the self-administration by students of certain prescribed medications on school property and at school functions; and to establish standards for the training of unlicensed school personnel to administer prescribed epinephrine auto injectors and glucagon to specific students under specified conditions.

Substance of proposed rule (Full text is posted at the following State website:http://www.p12.nysed.gov/sss/schoolhealth/schoolhealthservices/PROPOSED8NYCRRS136__7.html): The Commissioner of Education proposes to add a new section 136.7 of the Regulations of the Commissioner to establish standards for the self-administration by students of certain prescribed medications on school property and at school functions; and establish standards for the training of unlicensed school personnel to administer prescribed epinephrine auto injectors and glucagon to specific students under specified conditions, consistent with Chapter 423 of the Laws of 2015. The following is a summary of the substance of the proposed rule.

Section 136.7(a) sets forth definitions of "inhaled rescue medications", "epinephrine auto-injector", "ketone test", "blood glucose test", "insulin", "glucagon", "duly authorized health care provider", "cumulative health record", "emergency action plan", "diabetes management plan", "school day", "school property", and "school function".

Section 136.7(b) sets forth standards for the self-administration by students of prescribed inhaled rescue medications during the school day on school property or at a school function, including requirements for:

(1) written consent from the parent or person in parental relation; and

(2) written permission (also referred to as an order) and an attestation from a duly authorized health care provider of the following:

(i) that the student has a diagnosis of asthma or other respiratory disease for which inhaled rescue medications are prescribed;

(ii) that the student has demonstrated that he/she can self-administer the prescribed medication effectively; and

(iii) the expiration date of the order, name and dose of prescribed medication, times when medication is to be self-administered, and circumstances which may warrant the use of the medication.

A record of the written consents shall be maintained in the student's cumulative health record.

Upon written request of a parent or person in parental relation, the school district or board of cooperative educational services (BOCES) shall allow the student to maintain an extra inhaled rescue medication in the care and custody of a licensed nurse, nurse practitioner, physician assistant, or physician employed by the district or BOCES.

Such medication provided by the parent or person in parental relation shall be made available to the student as needed in accordance with school policy and the written permission provided by the duly authorized health provider.

Each student who is permitted to self-administer medication should have an emergency action plan on file with the district or BOCES.

Section 136.7(c) sets forth standards for the self-administration by students of prescribed epinephrine auto-injectors during the school day on school property or at a school function, including requirements for:

(1) written consent of the parent or person in parental relation; and

(2) written permission (also referred to as an order) and an attestation from a duly authorized health care provider of the following:

(i) the student has a diagnosis of an allergy for which an epinephrine auto-injector is needed;

(ii) the student has demonstrated that he/she can self-administer the epinephrine auto-injector effectively; and

(iii) the expiration date of the order, name and dose of prescribed medication, times when medication is to be self-administered, and circumstances which may warrant the use of the medication.

A record of such written consents shall be maintained in the student's cumulative health record.

Upon written request of a parent or person in parental relation, the school district or board of cooperative educational services (BOCES) shall allow the student to maintain an extra epinephrine auto-injector in the care and custody of a licensed nurse, nurse practitioner, physician assistant, or physician employed by the district or BOCES.

Such epinephrine auto-injector provided by the parent or person in parental relation shall be made available to the student as needed in accordance with school policy and the orders prescribed by the duly authorized health provider.

Each student who is permitted to self-administer an epinephrine auto-injector should have an emergency action plan on file with the district or BOCES.

Section 136.7(d) sets forth standards for allowing students to carry and self-administer prescribed insulin, carry glucagon, and carry and use equipment and supplies necessary to check blood glucose and/or ketone levels during the school day on school property or at a school function, including requirements for:

(1) written consent of the parent or person in parental relation; and

(2) written permission (also referred to as an order) and an attestation from a duly authorized health care provider of the following:

(i) that the student has a diagnosis of diabetes for which insulin and glucagon, and the use of equipment and supplies to check glucose and/or ketone levels are necessary;

(ii) that the student has demonstrated that he/she can self-administer the insulin effectively, can self-check glucose or ketone levels independently, and can independently follow prescribed treatment orders; and

(iii) the expiration date of the order, name of the prescribed insulin or glucagon, the type of insulin delivery system, the dose of insulin to be administered, the times when the insulin is to be self-administered, the dose of glucagon to be administered, and the circumstances which may warrant the administration of insulin or glucagon.

(iv) The written permission must also identify the prescribed blood glucose or ketone test, the times testing is to be done, and any circumstances which warrant testing.

A written diabetes management plan shall be provided. A record of the written consents shall be maintained in the student's cumulative health record.

Upon written request of a parent or person in parental relation, the school district or board of cooperative educational services (BOCES) shall allow the student to maintain extra insulin, insulin delivery system, glucagon, blood glucose meter and related supplies in the care and custody of a licensed nurse, nurse practitioner, physician assistant, or physician employed by the district or BOCES.

Such insulin, insulin delivery system, glucagon, blood glucose meter and related supplies provided by the parent or person in parental relation shall be made available to the student as needed in accordance with school policy and the orders prescribed by the duly authorized health provider.

Students with diabetes may also carry food, oral glucose, or other similar substances necessary to treat hypoglycemia pursuant to district policy, provided such policy shall not unreasonably interfere with a student's ability to treat hypoglycemia.

A record of such written consents shall be maintained in the student's cumulative health record.

Each student who is permitted to self-administer and self-test should have an emergency action plan on file with the district or BOCES.

Licensed nurses, nurse practitioners, physician assistants, or physicians employed by school districts or BOCES are authorized to calculate prescribed insulin dosages, administer prescribe insulin, program the prescribed insulin pump, refill the reservoir in the insulin pump, change the infusion site, inject prescribed glucagon, teach an unlicensed person to administer glucagon, and perform other authorized services within their scope of practice to students diagnosed with diabetes and who are permitted to self-administer and self-test.

Section 136.7(f)(1) establishes standards for the training of unlicensed school personnel to administer prescribed epinephrine auto-injectors to a student. Such training must be provided and documented by an authorized licensed health professional and include, but not be limited to:

(i) identification of the specific allergen(s) of the student, review of each student's emergency action plan if available;

(ii) signs and symptoms of a severe allergic reaction warranting administration of epinephrine;

(iii) how to access emergency services per school policy;

(iv) steps for administering the prescribed epinephrine auto-injector;

(v) observation of the trainee suing an auto-injector training device;

(vi) steps for providing ongoing care while waiting for emergency services;

(vii) notification of appropriate school personnel; and

(viii) methods of safely storing, handling and disposing of auto-injectors.

Section 136.7(2) establishes standards for the training of unlicensed school personnel to administer prescribed glucagon to a student. Such training must be provided and documented by an authorized licensed health professional and include, but not be limited to:

(i) overview of diabetes and hypoglycemia per Department of Health approved webinar;

(ii) review of student's emergency action plan if available, including treatment of mild or moderate hypoglycemia;

(iii) signs and symptoms of a severe hypoglycemia warranting administration of glucagon;

(iv) how to access emergency services per school policy;

(v) steps for mixing and administering the prescribed glucagon;

(vi) observation of the trainee using a glucagon training device;

(vii) steps for providing ongoing care while waiting for emergency services;

(viii) notification of appropriate school personnel; and

(ix) methods of safely storing, handling, and disposing of glucagon and used needles and syringes.

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

Data, views or arguments may be submitted to: Cosimo Tangorra, Jr., Deputy Commissioner, State Education Department, Office of P-12 Education, State Education Building 2M West, 89 Washington Ave., Albany, NY 12234, (518) 474-5520, email: NYSEDP12@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 207 empowers the Board of Regents and the Commissioner of Education to adopt rules and regulations to carry out the laws of the State regarding education and the functions and duties conferred on the State Education Department by law.

Education Law section 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.

Chapter 423 of the Laws of 2014 amended section 916 of the Education Law and added new sections 916-a, 916-b, 902-a, and 902-b, effective July 1, 2015, to establish standards for the self-administration by students of certain prescribed medications on school property and at school functions. Additionally, Chapter 423 of the Laws of 2014 added a new section 921 to authorize, but not obligate, boards of education or trustees of each school district and boards of cooperative educational services (BOCES) and nonpublic schools to have certain specified licensed professionals to train unlicensed school personnel to inject prescribed glucagon or epinephrine auto-injectors to specific students under specified conditions during the school day on school property or at school functions. Training must be provided by a physician or other duly authorized licensed health care professional in a competent manner and must be completed in a form and manner prescribed by the Commissioner in regulation.

2. LEGISLATIVE OBJECTIVES:

The proposed rule is consistent with the above statutory authority and is necessary to implement Education Law sections 916, 916-a, 916-b, 902-a, 902-b and 921, as added and amended by by Chapter 423 of the Laws of 2014.

3. NEEDS AND BENEFITS:

The proposed rule is necessary to set forth standards for the self-administration by students of prescribed inhaled rescue medications and epinephrine auto-injectors, and standards for allowing students to carry and self-administer prescribed insulin, carry glucagon, and carry and use equipment and supplies necessary to check blood glucose and/or ketone levels, during the school day on school property and at a school function, including requirements for the written consent of the parent or person in parental relation and written permission (also referred to as an order) and an attestation from a duly authorized health care provider providing certain specified information including the expiration date of the order, name and dose of prescribed medication, times when medication is to be self-administered, and circumstances which may warrant the use of the medication.

The proposed rule is also necessary to establish standards for the training of unlicensed school personnel to administer prescribed epinephrine auto-injectors and glucagon to specific students under specified conditions, consistent with Chapter 423 of the Laws of 2014, for those school districts and BOCES that choose to provide such training.

4. COSTS:

(a) Costs to State: none.

(b) Costs to local governments: in general, the proposed rule does not impose any costs beyond those inherent in Chapter 423 of the Laws of 2014. Consistent with the statute, school districts, BOCES, and non-public schools may, but are not required to, provide training to unlicensed school personnel to inject prescribed glucagon or epinephrine auto-injectors to specific students under specified conditions during the school day on school property or at school functions. Furthermore, any costs associated with maintaining the written consents in the student's cumulative health record are anticipated to be minimal and capable of being absorbed using existing district staff and resources.

(c) Costs to private regulated parties: there may be costs associated with the written permission/order and attestation of the authorized health care provider, and documentation of training by such health professional, but these costs are expected to be minimal and capable of being absorbed using existing staff and resources.

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

5. LOCAL GOVERNMENT MANDATES:

The proposed rule does not impose any mandatory program, service, duty, or responsibility upon local government, including school districts or BOCES. Consistent with the statute, school districts, BOCES and non-public schools may, but are not required to, provide training to unlicensed school personnel to inject prescribed glucagon or epinephrine auto-injectors to specific students under specified conditions during the school day on school property or at school functions.

6. PAPERWORK:

A record of the written consents shall be maintained in the student's cumulative health record. Training of unlicensed school personnel under section 136.7(f) must be documented.

7. DUPLICATION:

The proposed rule does not duplicate any existing State or Federal requirements, and is necessary to implement Education Law sections 916, 916-a, 916-b, 902-a, 902-b and 921, as added and amended by by Chapter 423 of the Laws of 2014.

8. ALTERNATIVES:

The proposed rule is necessary to implement Education Law sections 916, 916-a, 916-b, 902-a, 902-b and 921, as added and amended by Chapter 423 of the Laws of 2014. There were no significant alternatives and none were considered.

9. FEDERAL STANDARDS:

There are no applicable Federal standards.

10. COMPLIANCE SCHEDULE:

It is anticipated that regulated parties can achieve compliance with the proposed rule by its effective date. Consistent with the statute, school districts, BOCES and non-public schools may, but are not required to, provide training to unlicensed school personnel to inject prescribed glucagon or epinephrine auto-injectors to specific students under specified conditions during the school day on school property or at school functions. The proposed rule also merely provides definitions and otherwise clarifies the circumstances regarding the proper self-administration by students of prescribed inhaled rescue medications and epinephrine auto-injectors, and the proper self-administration and self-testing by students with diabetes, during the school day on school property or at a school function.

Regulatory Flexibility Analysis

(a) Small businesses:

The purpose of the proposed rule is to establish standards for the self-administration by students of certain prescribed medications on school property and at school functions; and establish standards for the training of unlicensed school personnel to administer prescribed epinephrine auto injectors and glucagon to specific students under specified conditions, consistent with Chapter 423 of the Laws of 2015. The proposed rule does not impose any economic impact, or other compliance requirements on small businesses. Because it is evident from the nature of the proposed rule 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.

(b) Local governments:

1. EFFECT OF RULE:

The rule applies to each of the 695 school districts and 37 BOCES in the State.

2. COMPLIANCE REQUIREMENTS:

The proposed rule generally does not impose any compliance requirements upon local governments. Consistent with the statute, school districts and BOCES may, but are not required to, provide training to unlicensed school personnel to inject prescribed glucagon or epinephrine auto-injectors to specific students under specified conditions during the school day on school property or at school functions.

The proposed rule also merely provides definitions and otherwise clarifies the circumstances regarding the proper self-administration by students of prescribed inhaled rescue medications and epinephrine auto-injectors, and the proper self-administration and self-testing by students with diabetes, during the school day on school property or at a school function. A record of the written consents obtained pursuant to the proposed rule shall be maintained in the student's cumulative health record.

3. PROFESSIONAL SERVICES:

The proposed rule does not impose any additional professional services requirements on local governments.

4. COMPLIANCE COSTS:

In general, the proposed rule does not impose any costs beyond those inherent in Chapter 423 of the Laws of 2014. Consistent with the statute, school districts and BOCES may, but are not required to, provide training to unlicensed school personnel to inject prescribed glucagon or epinephrine auto-injectors to specific students under specified conditions during the school day on school property or at school functions. Furthermore, any costs associated with maintaining the written consents in the student's cumulative health record are anticipated to be minimal and capable of being absorbed using existing district staff and resources.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:
The proposed rule does not impose any additional costs or technological requirements on local governments.
6. MINIMIZING ADVERSE IMPACT:
Consistent with the statute, school districts and BOCES may, but are not required to, provide training to unlicensed school personnel to inject prescribed glucagon or epinephrine auto-injectors to specific students under specified conditions during the school day on school property or at school functions. The proposed rule also merely provides definitions and otherwise clarifies the circumstances regarding the proper self-administration by students of prescribed inhaled rescue medications and epinephrine auto-injectors, and the proper self-administration and self-testing by students with diabetes, during the school day on school property or at a school function. Any costs associated with maintaining the written consents in the student's cumulative health record are anticipated to be minimal and capable of being absorbed using existing district staff and resources.
7. LOCAL GOVERNMENT PARTICIPATION:
Comments on the proposed rule were solicited from school districts through the offices of the district superintendents of each supervisory district in the State, and from the chief school officers of the five big city school districts.
8. INITIAL REVIEW OF RULE (SAPA § 207):
Pursuant to State Administrative Procedure Act section 207(1)(b), the State Education Department proposes that the initial review of this rule shall occur in the fifth calendar year after the year in which the rule is adopted, instead of in the third calendar year. The justification for a five year review period is that the proposed rule is necessary to implement the statutory requirements of Chapter 423 of the Laws of 2014, and, therefore, the substantive provisions of the proposed rule cannot be repealed or modified unless there is a further statutory change. Accordingly, there is no need for a shorter review period. The Department invites public comment on the proposed five year review period for this rule. Comments should be sent to the agency contact listed in item 10 of the Notice of Proposed Rule Making published herewith, and must be received within 45 days of the State Register publication date of the Notice.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:
The proposed rule applies to school districts, boards of cooperative educational services (BOCES), and nonpublic elementary and secondary schools, including those located in the 44 rural counties with fewer than 200,000 inhabitants and the 71 towns and urban counties with a population density of 150 square miles or less.
2. REPORTING, RECORDKEEPING, AND OTHER COMPLIANCE REQUIREMENTS; AND PROFESSIONAL SERVICES:
The proposed rule generally does not impose any compliance requirements upon local governments. Consistent with the statute, school districts, BOCES and nonpublic schools may, but are not required to, provide training to unlicensed school personnel to inject prescribed glucagon or epinephrine auto-injectors to specific students under specified conditions during the school day on school property or at school functions.
The proposed rule also merely provides definitions and otherwise clarifies the circumstances regarding the proper self-administration by students of prescribed inhaled rescue medications and epinephrine auto-injectors, and the proper self-administration and self-testing by students with diabetes, during the school day on school property or at a school function. A record of the written consents obtained pursuant to the proposed rule shall be maintained in the student's cumulative health record.
The proposed rule does not require any additional professional services upon entities in rural areas.
3. COSTS:
In general, the proposed rule does not impose any costs beyond those inherent in Chapter 423 of the Laws of 2014. Consistent with the statute, school districts, BOCES and nonpublic schools may, but are not required to, provide training to unlicensed school personnel to inject prescribed glucagon or epinephrine auto-injectors to specific students under specified conditions during the school day on school property or at school functions. Furthermore, any costs associated with maintaining the written consents in the student's cumulative health record, or costs associated with the written permission/order and attestation of the authorized health care provider, and documentation of training by such health professional, are anticipated to be minimal and capable of being absorbed using existing district staff and resources.
4. MINIMIZING ADVERSE IMPACT:
Consistent with the statute, school districts, BOCES and nonpublic schools may, but are not required to, provide training to unlicensed school personnel to inject prescribed glucagon or epinephrine auto-injectors to specific students under specified conditions during the school day on school property or at school functions. The proposed rule also merely provides definitions and otherwise clarifies the circumstances regarding the proper self-administration by students of prescribed inhaled rescue medications and epinephrine auto-injectors, and the proper self-administration and self-testing by students with diabetes, during the school day on school property or at a school function. Any costs associated with maintaining the written consents in the student's cumulative health record, or costs associated with the written permission/order and attestation of the authorized health care provider, and documentation of training by such health professional, are anticipated to be minimal and capable of being absorbed using existing district staff and resources.
Because the Regents policy and statute upon which the proposed amendment is based applies to all school districts and BOCES in the State, it is not possible to establish differing compliance or reporting requirements or timetables or to exempt schools in rural areas from coverage by the proposed amendment.
5. RURAL AREA PARTICIPATION:
The proposed amendment was submitted for review and comment to the Department's Rural Education Advisory Committee, which includes representatives of school districts in rural areas.
6. INITIAL REVIEW OF RULE (SAPA § 207):
Pursuant to State Administrative Procedure Act section 207(1)(b), the State Education Department proposes that the initial review of this rule shall occur in the fifth calendar year after the year in which the rule is adopted, instead of in the third calendar year. The justification for a five year review period is that the proposed rule is necessary to implement the statutory requirements of Chapter 423 of the Laws of 2014, and, therefore, the substantive provisions of the proposed rule cannot be repealed or modified unless there is a further statutory change. Accordingly, there is no need for a shorter review period. The Department invites public comment on the proposed five year review period for this rule. Comments should be sent to the agency contact listed in item 10 of the Notice of Proposed Rule Making published herewith, and must be received within 45 days of the State Register publication date of the Notice.

Job Impact Statement

The purpose of the proposed rule is to establish standards for the self-administration by students of certain prescribed medications on school property and at school functions; and to establish standards for the training of unlicensed school personnel to administer prescribed epinephrine auto injectors and glucagon to specific students under specified conditions, consistent with Chapter 423 of the Laws of 2015. Because it is evident from the nature of the proposed rule that it will have no impact on the number of jobs or employment opportunities in New York State, no further steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Pupils with Limited English Proficiency

I.D. No. EDU-14-15-00004-P

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

Proposed Action: Amendment of section 154-2.3(h) of Title 8 NYCRR.

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

Subject: Pupils with Limited English Proficiency.

Purpose: Technical amendments relating to Units of Study and Provision of Credits For English As A New Language and Native Language Arts.

Text of proposed rule: Subdivision (h) of section 154-2.3 of the Regulations of the Commissioner of Education is amended, effective July 1, 2015, as follows:

(h) Provision of programs. For purposes of this subdivision, a unit of study and a unit of credit shall be as defined in section 100.1(a) and (b), respectively, of this Title.

(1) English as new language [K-B] *K-8*. Each school district shall provide an English as a new language program in grades K-8, based on a student's English language proficiency level, as identified by the Statewide English language proficiency identification assessment or the annual English language proficiency assessment, as follows:

(i) beginner/entering. Students shall receive at least two units of study or its equivalent of English as a new language instruction. At least one unit of study or its equivalent shall be stand-alone English as a new language instruction and at least one unit of study or its equivalent shall be Integrated English as a new language [and] *in* English language arts instruction.

(ii) low intermediate/emerging. Students shall receive at least two units of study or its equivalent of English as new language instruction. At least one half of a unit of study or its equivalent shall be in stand-alone English as a new language, at least one unit of study or its equivalent shall be Integrated English as a new language [and] *in* English Language Arts instruction, and one half of a unit of study or its equivalent shall be either Integrated English as a new language or stand-alone English as a new language instruction.

(iii) intermediate/transitioning. Students shall receive at least one unit of study or its equivalent of English as a new language. At least one half of a unit of study or its equivalent shall be in integrated English as a new language [and] *in* English language arts instruction, and at least one half of a unit of study or its equivalent shall be either Integrated English as a new language or stand-alone English as a new language instruction.

(iv) advanced/expanding. Students shall receive at least one unit of study or its equivalent of integrated English as a new language [and] *in* English language arts or another content area.

(v) proficient/commanding. For at least two school years following the school year in which a student is exited from English language learner status, as prescribed in subdivision (m) of this section, such student shall receive at least one half of one unit of study or its equivalent of integrated English as a new language [and] *in* English language arts or another content area, or such other services that monitor and support the student's language development and academic progress, as shall be approved by the Commissioner to assist Former English language learners once they have exited from an English as a new language or bilingual education program.

(2) English as a new language 9-12. Each school district shall, provide an English as a new language program in grades 9-12, based on a student's English language proficiency level, as identified by the Statewide English language proficiency identification assessment or the annual English language proficiency assessment, as follows:

(i) beginner/entering. Students shall receive at least three units of study or its equivalent of English as a new language instruction. At least one unit of study or its equivalent shall be stand-alone English as a new language instruction; at least one unit of study or its equivalent shall be integrated English as a new language [and] *in* English language arts; and one unit of study or its equivalent shall be either integrated English as a new language or stand-alone English as a new language instruction. A student shall earn one unit of English language arts credit for successful completion of an integrated English as a new language [and] *in* English language arts unit of study, one unit of credit in the content area for successful completion of each integrated English as a new language unit of study; and one unit of elective credit for successful completion of a second stand-alone English as a new language unit of study.

(ii) low Intermediate/emerging. Students shall receive at least two units of study or its equivalent of English as a new language instruction. At least one half of a unit of study or its equivalent shall be in stand-alone English as a new language, at least one unit of study or its equivalent shall be integrated English as a new language [and] *in* English language arts instruction, and one half of a unit of study or its equivalent shall be either integrated english as a new language or stand-alone English as new language instruction. A student shall earn one unit of English language arts credit for successful completion of integrated English as new language [and] *in* English language arts unit of study or one unit of credit in the content area for successful completion of an integrated English as a new language unit of study, or one unit of elective credit for successful completion of stand-alone English as a new language unit of study.

(iii) intermediate/transitioning. Students shall receive at least one unit of study or its equivalent of English as a new language instruction. At least one half of a unit of study or its equivalent shall be in integrated English as a new language instruction and at least one half of a unit of study or its equivalent shall be either integrated English as a new language instruction or stand-alone English as a new language instruction. A student shall earn one unit of English language arts credit for successful completion of integrated English as new language [and] *in* English language arts unit of study or one unit of credit in the content area for successful completion of an integrated English as a new language unit of study, or one unit of elective credit for successful completion of stand-alone English as a new language unit of study.

(iv) advanced/expanding. Students shall receive at least one unit of study or its equivalent of integrated English as new language instruction. A student shall earn one unit of credit in a content area for successful completion of the integrated English as a new language unit of study in a content area [other than] *which may include* English language arts.

(v) proficient/commanding. For at least two school years following the school year in which a student is exited from English language learner status, as prescribed in subdivision (m) of this section, such student shall receive at least one half of one unit of study or its equivalent of integrated English as a new language or such other services that monitor and support their language development and academic progress, as shall be approved by the Commissioner to assist former English language learners once they have exited from an English as a new language or bilingual education program.

(3) Bilingual education programs. A bilingual education program in grades K-12 shall provide:

(i) two units of study or its equivalent in language arts, one in English and one in the student's home language. English language arts may be provided through integrated English as a new language as prescribed in paragraphs (1) and (2) of this subdivision. A student shall earn one [half] *English language arts or home language arts/languages other than English* credit for each language arts unit of study, for a total of [one combined] *two* total [credit] *credits* for language arts each year.

(ii) content area instruction in the required content area subjects in the home language and in English (including all bilingual core content areas, i.e. math, science, and social studies, depending on the bilingual education program model and the student's level of English language development*)*. [, but must include] *Beginner/entering and low intermediate/emerging students must receive* a minimum of two bilingual core content areas other than language arts taught in both the student's home language and English[)], in accordance with section 100.1(a) and (b) of this Title. *Intermediate/transitioning and advanced/expanding students must receive a minimum of one bilingual core content area other than language arts taught in both the student's home language and English, in accordance with section 100.1(a) and (b) of this Title.*

(iii) English as a new language instruction, as prescribed in paragraphs (1) and (2) of this subdivision.

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

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

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

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

Regulatory Impact Statement

STATUTORY AUTHORITY:

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

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

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

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

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

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

LEGISLATIVE OBJECTIVES:

The proposed amendment is consistent with the above statutory authority, and is necessary to clarify the units of study mandated for and credits given to English Language Learners (ELLs) for Integrated English as a New Language (ENL) instruction, and clarify the units of study mandated for and credits given to ELLs in Bilingual Education Programs for ENL and bilingual core content area instruction. The proposed amendment also corrects certain terminology used in section 154-2.3(h).

NEEDS AND BENEFITS:

The proposed amendment enacts technical amendments to § 154-2.3(h) of the Commissioner's Regulations, relating to units of study and provision of credits For English as a New Language and Native Language Arts, to:

• clarify the units of study mandated for and credits given to all English Language Learners (ELLs) for Integrated English as a New Language (ENL) instruction;
• clarify the units of study mandated for and credits given to ELLs in Bilingual Education programs for ENL and bilingual core content area instruction; and
• change the phrase "Integrated English as a New Language and English Language Arts instruction" to "Integrated English as a New Language in English Language Arts instruction."

Pursuant to Subpart 154-2, beginning with the 2015-2016 school year, all school districts must provide ELLs with an ENL (previously called "English As a Second Language" or "ESL") program (in addition to providing Bilingual Education when 20 or more ELL students of the same grade speak the same home language district-wide). An ENL program is a research-based program comprised of two components:

• Integrated ENL, which is a content area (e.g., English language arts, math, science, social studies) instructional component in English with home language supports and appropriate scaffolds; and
• Stand-alone ENL, which is an English language development component.

Section 154-2.3(h)(1) and (2) sets forth the units of study mandated for and credits given to ELLs for ENL coursework, based on a student's level of English proficiency as identified by the statewide English language proficiency identification assessment or annual English language proficiency assessment. Under § 154-2.3(h)(2), ENL program and crediting requirements for students in grades 9-12 are as follows, broken down by English proficiency level:

• Beginner/Entering: Beginner/Entering students get at least 3 units of ENL in total, of which 1 unit shall be Stand-alone ENL, 1 unit shall be Integrated ENL, and the remaining 1 unit shall be either Stand-alone or Integrated ENL;
• Low Intermediate/Emerging: Low Intermediate/Emerging students get at least 2 units of ENL in total, of which.5 unit shall be Stand-alone ENL, 1 unit shall be in Integrated ENL in English language arts, and the remaining.5 unit shall be either Stand-alone or Integrated ENL;
• Intermediate/Transitioning: Intermediate/Transitioning students get at least 1 unit of ENL in total, of which.5 unit shall be Integrated ENL, and the other.5 unit shall be either Stand-alone or Integrated ENL;
• Advanced/Expanding: Advanced/Expanding students get at least 1 unit of ENL in total, and that unit shall be Integrated ENL;
• Proficient/Commanding: For 2 years after exiting from ELL status, Proficient/Commanding students get at least.5 unit of ENL in total, and that.5 unit shall be Integrated ENL or other such services that monitor and support their language development and academic progress, as approved by the Commissioner.

Section 154-2.3(h) also sets forth program requirements for Bilingual Education programs, including units of study mandated for and credits given to ELLs. Under § 154-2.3(h)(3), students in Bilingual Education programs receive 2 units of study or its equivalent in Language Arts, 1 in English and 1 in the student's home language. The English component of Language Arts is provided through Integrated ENL in English language arts, as described above. Students earn one half credit for successful completion of each credit of Language Arts study. Students in Bilingual Education programs must also receive instruction in both the student's home language and English in a minimum of two bilingual core content areas other than Language Arts (i.e., math, science, and social studies).

The proposed amendment provides that Integrated ENL coursework for Advanced/Expanding ELLs in grades 9-12 may be in English Language Arts or in another content area.

The proposed amendment also provides that students in Bilingual Education programs shall earn one English Language Arts credit for each English As a New Language unit of study, and one Native Language Arts or Languages Other Than English (LOTE) credit for each unit of Language Arts study in the student's home language.

Furthermore, the proposed amendment provides that students in a Bilingual Education Program at the Beginning/Entering and Low Intermediate/Emerging levels must receive instruction in both the student's home language and English in a minimum of two bilingual core content areas other than Language Arts (i.e., math, science, and social studies). It also provides that students in a Bilingual Education Program at the Intermediate/Transitioning and Advanced/Expanding levels must receive instruction in both the student's home language and English in a minimum of one bilingual core content area other than Language Arts (i.e., math, science, and social studies).

Finally, the proposed amendment makes a technical amendment to replace the phrase "Integrated English as a New Language and English Language Arts instruction" throughout § 154-2.3(h) with "Integrated English as a New Language in English Language Arts instruction" (emph. added).

COSTS:

(a) Costs to the State: none.
(b) Costs to local governments: none.
(c) Cost to private regulated parties: none.
(d) Costs to regulating agency for implementation and continued administration of this rule: none.

The proposed amendment does not impose any costs on the State, local governments, private regulated parties or the State Education Department. It merely enacts technical amendments to clarify the units of study mandated for and credits given to all ELLs for Integrated ENL instruction; clarify the units of study mandated for and credits given to ELLs in Bilingual Education programs for ENL and bilingual core content area instruction; and change the phrase "Integrated English as a New Language and English Language Arts instruction" to "Integrated English as a New Language in English Language Arts instruction."

LOCAL GOVERNMENT MANDATES:

The proposed amendment does not impose any additional program, service, duty or responsibility upon local governments. It merely enacts technical amendments to clarify the units of study mandated for and credits given to all ELLs for Integrated ENL instruction; clarify the units of study mandated for and credits given to ELLs in Bilingual Education programs for ENL and bilingual core content area instruction; and change the phrase "Integrated English as a New Language and English Language Arts instruction" to "Integrated English as a New Language in English Language Arts instruction."

PAPERWORK:

The proposed amendment does not impose any additional reporting or other paperwork requirements.

DUPLICATION:

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

ALTERNATIVES:

There were no significant alternatives and none were considered. The proposed amendment merely enacts technical amendments to clarify the units of study mandated for and credits given to all ELLs for Integrated ENL instruction; clarify the units of study mandated for and credits given to ELLs in Bilingual Education programs for ENL and bilingual core content area instruction; and change the phrase "Integrated English as a New Language and English Language Arts instruction" to "Integrated English as a New Language in English Language Arts instruction."

FEDERAL STANDARDS:

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

COMPLIANCE SCHEDULE:

It is anticipated that regulated parties can achieve compliance with the proposed amendment by its effective date. The proposed amendment merely enacts technical amendments to clarify the units of study mandated for and credits given to all ELLs for Integrated ENL instruction; clarify the units of study mandated for and credits given to ELLs in Bilingual Education programs for ENL and bilingual core content area instruction; and change the phrase "Integrated English as a New Language and English Language Arts instruction" to "Integrated English as a New Language in English Language Arts instruction."

Regulatory Flexibility Analysis

Small Businesses:

The proposed amendment enacts technical amendments to § 154-2.3(h) of the Commissioner's Regulations to clarify the units of study mandated for and credits given to all English Language Learners (ELLs) for Integrated English as a New Language (ENL) instruction; clarify the units of study mandated for and credits given to ELLs in Bilingual Education programs for ENL and bilingual core content area instruction; and change the phrase "Integrated English as a New Language and English Language Arts instruction" to "Integrated English as a New Language in English Language Arts instruction." The proposed amendment does not impose any adverse economic impact, reporting, record keeping or other compliance requirements on small businesses. No further steps were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses is not required and one has not been prepared.

Local Governments:

1. EFFECT OF RULE:

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

2. COMPLIANCE REQUIREMENTS:

The proposed amendment does not impose any additional compliance requirements on local governments. The proposed amendment merely enacts technical amendments to clarify the units of study mandated for and credits given to all English Language Learners (ELLs) for Integrated English as a New Language (ENL) instruction; clarify the units of study

mandated for and credits given to ELLs in Bilingual Education programs for ENL and bilingual core content area instruction; and change the phrase "Integrated English as a New Language and English Language Arts instruction" to "Integrated English as a New Language in English Language Arts instruction."

3. PROFESSIONAL SERVICES:

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

4. COMPLIANCE COSTS:

The proposed amendment does not impose any costs on local governments. It merely enacts technical amendments to clarify the units of study mandated for and credits given to all ELLs for ENL instruction; clarify the units of study mandated for and credits given to ELLs in Bilingual Education programs for ENL and bilingual core content area instruction; and change the phrase "Integrated English as a New Language and English Language Arts instruction" to "Integrated English as a New Language in English Language Arts instruction."

5. ECONOMIC AND TECHNOLOGICAL FEASIBILTY:

The proposed amendment does not impose any additional costs or technological requirements on local governments.

6. MINIMIZE ADVERSE IMPACT:

The proposed amendment does not impose any additional compliance requirements or costs on local governments. It merely enacts technical amendments to clarify the units of study mandated for and credits given to all ELLs for ENL instruction; clarify the units of study mandated for and credits given to ELLs in Bilingual Education programs for ENL and bilingual core content area instruction; and change the phrase "Integrated English as a New Language and English Language Arts instruction" to "Integrated English as a New Language in English Language Arts instruction."

7. LOCAL GOVERNMENT PARTICIPATION:

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

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

Pursuant to State Administrative Procedure Act section 207(1)(b), the State Education Department proposes that the initial review of the proposed amendment shall occur in the fifth calendar year after the year in which the rule is adopted, instead of in the third calendar year. The justification for a five year review period is that the proposed rule is necessary to implement long-range Regents policy relating to bilingual education and English as a New Language programs for students who are English Language Learners. Accordingly, there is no need for a shorter review period.

The Department invites public comment on the proposed five year review period for this rule. Comments should be sent to the agency contact listed in item 10. of the Notice of Proposed Rule Making published herewith, and must be received within 45 days of the State Register publication date of the Notice.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

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

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

The proposed amendment does not impose any additional compliance requirements on entities in rural areas. The proposed amendment merely enacts technical amendments to clarify the units of study mandated for and credits given to all English Language Learners (ELLs) for Integrated English as a New Language (ENL) instruction; clarify the units of study mandated for and credits given to ELLs in Bilingual Education programs for ENL and bilingual core content area instruction; and change the phrase "Integrated English as a New Language and English Language Arts instruction" to "Integrated English as a New Language in English Language Arts instruction."

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

3. COMPLIANCE COSTS:

The proposed amendment does not impose any costs on entities in rural areas. It merely enacts technical amendments to clarify the units of study mandated for and credits given to all ELLs for ENL instruction; clarify the units of study mandated for and credits given to ELLs in Bilingual Education programs for ENL and bilingual core content area instruction; and change the phrase "Integrated English as a New Language and English Language Arts instruction" to "Integrated English as a New Language in English Language Arts instruction."

4. MINIMIZING ADVERSE IMPACT:

The proposed amendment does not impose any additional compliance requirements or costs on entities in rural areas. It merely enacts technical amendments to clarify the units of study mandated for and credits given to all ELLs for ENL instruction; clarify the units of study mandated for and credits given to ELLs in Bilingual Education programs for ENL and bilingual core content area instruction; and change the phrase "Integrated English as a New Language and English Language Arts instruction" to "Integrated English as a New Language in English Language Arts instruction."

The proposed amendment is necessary to implement Regents policy on standards for instruction of English Language Learners (ELL), to ensure compliance with Education Law sections 3204 and 4403, and Title I and III of the Elementary and Secondary Education Act (ESEA), Title IV of the Civil Rights Act of 1964, Equal Educational Opportunities Act of 1974 (EEOA). Since these requirements apply to all school districts and BOCES in the State, it is not possible to adopt different standards for those located in rural areas.

5. RURAL AREA PARTICIPATION:

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

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

Pursuant to State Administrative Procedure Act section 207(1)(b), the State Education Department proposes that the initial review of the proposed amendment shall occur in the fifth calendar year after the year in which the rule is adopted, instead of in the third calendar year. The justification for a five year review period is that the proposed rule is necessary to implement long-range Regents policy relating to bilingual education and English as a New Language programs for students who are English Language Learners. Accordingly, there is no need for a shorter review period.

The Department invites public comment on the proposed five year review period for this rule. Comments should be sent to the agency contact listed in item 10. of the Notice of Proposed Rule Making published herewith, and must be received within 45 days of the State Register publication date of the Notice.

Job Impact Statement

The proposed amendment enacts technical amendments to § 154-2.3(h) of the Commissioner's Regulations to clarify the units of study mandated for and credits given to all English Language Learners (ELLs) for Integrated English as a New Language (ENL) instruction; clarify the units of study mandated for and credits given to ELLs in Bilingual Education programs for ENL and bilingual core content area instruction; and change the phrase "Integrated English as a New Language and English Language Arts instruction" to "Integrated English as a New Language in English Language Arts instruction." The proposed rule will not have a substantial impact on jobs and employment opportunities. Because it is evident from the nature of the amendment that it will not affect job and employment opportunities, no affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required, and one has not been prepared.

REVISED RULE MAKING NO HEARING(S) SCHEDULED

Tuition Assistance Program

I.D. No. EDU-05-15-00009-RP

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

Proposed Action: Repeal of section 145-2.2(b)(2)(ii); and addition of new section 145-2.2(b)(2)(ii) to Title 8 NYCRR.

Statutory authority: Education Law, sections 101, 207 (not subdivided), 305(1), (2), 602(2), 661(2) and 665(6)

Subject: Tuition Assistance Program.

Purpose: Establishment of standards for a student to regain good academic standing for the purposes of receiving awards under TAP.

Text of revised rule: Subparagraph (ii) of paragraph (2) of subdivision (b) of section 145-2.2 of the Regulations of the Commissioner of Education is repealed and a new subparagraph is added, effective June 3, 2015, to read as follows:

(ii) Following a determination that the recipient of an award has lost good academic standing, further payments of any award under article 13 or 14 of the Education Law shall be suspended until the student is restored to good academic standing by either:

(a) a waiver from the required cumulative C average or its equivalent, for a student having completed his or her second academic year, for undue hardship pursuant to section 661(4)(c) of the Education Law;

(b) a one-time certification by an institution that a waiver from the good standing requirement is in the best interests of the student pursuant to subparagraph (v) of this paragraph;

(c) establishing, to the satisfaction of the Commissioner, evidence of the student's ability to successfully complete an approved program through one of the following options:

(1) demonstrating that the student has made up any deficiencies in his/her program and achieved academic progress and has achieved good academic standing without the benefit of the tuition assistance program, or other State financial aid support;

(2) applying for and being readmitted to the same institution after withdrawing as a student from such institution for at least one academic year; or

(3) transferring to another higher education institution and meeting the new institution's admissions' requirements.

Revised rule compared with proposed rule: Substantial revisions were made in section 145-2.2(b)(2).

Text of revised proposed rule and any required statements and analyses may be obtained from Kirti Goswami, New York State Education Department, 89 Washington Avenue, Room 148, Albany, New York 12234, (518) 474-6400, email: legal@nysed.gov

Data, views or arguments may be submitted to: Peg Rivers, New York State Education Department, 89 Washington Avenue, Room 148, Albany, New York 12234, (518) 486-3633, email: regcomments@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 February 4, 2015, the proposed rule has been substantially revised as follows.

Based on field feedback, the proposed revised emergency regulation clarifies the requirements for regaining good academic standing for recipients of an award who lost good standing.

Specifically, section 145-2.2(b)(2)(ii) is repealed and a new subparagraph (ii) is added to eliminate the requirement that payments be suspended for a semester, or the equivalent, as the previous proposed rule required and to allow a recipient's status to be restored if he/she receives a waiver of the cumulative C average pursuant to Education Law § 661(4)(c) or if a recipient receives a one- time certification by an institution that a waiver from the good standing requirement is in the best interests of the student pursuant to subparagraph (v) of this paragraph. The revised amendment also addresses public comment by defining the evidence needed to demonstrate to the satisfaction of the Commissioner a student's ability to successfully complete an approved program by either demonstrating that the student has made up any deficiencies in his/her program and achieved academic progress and has achieved good academic standing without the benefit of the tuition assistance program, or other State financial aid support; applying for and being readmitted to the same institution after withdrawing as a student from such institution for at least one academic year; or transferring to another higher education institution and meeting the new institution's admissions' requirements.

The above revision requires that the Needs and Benefits and Costs sections in the previously published Regulatory Impact Statement be revised to read as follows.

3. NEEDS AND BENEFITS:

The New York State Tuition Assistance Program (TAP) provides for an annual award of up to $5,165, payable over two semesters, to help eligible New York residents pay tuition at approved colleges and universities in New York State.

Education Law § 661 sets forth the eligibility requirements and conditions for receiving a TAP award. For a student to continue to receive an award under the TAP, Education Law § 665(6) requires that the student maintain good academic standing: (1) by meeting or exceeding minimum cumulative grade point average requirements; and (2) by making satisfactory progress toward the completion of his or her program's academic requirements, measured by credit hour accumulation. This section also establishes minimum thresholds for each of these two requirements based on the year the student first receives aid, the length of the student's program and whether the student is a remedial student. However, institutions may establish and apply stricter standards of satisfactory academic progress, provided such standards include the required levels of achievement to be measured at the statutory intervals. If an institution implements stricter criteria for satisfactory academic progress, the criteria must include a minimum number of credit hours to be earned and a minimum cumulative grade point average, and must be measured at set intervals, such as semesters or trimesters. If a student fails to make satisfactory progress toward the completion of the program's academic requirements, or fails to maintain the minimum cumulative GPA, the student will not be in good academic standing and, thus, will become ineligible for awards under the TAP.

Regaining Good Academic Standing

When a student does not meet the good academic standing requirement to continue receiving a TAP award, further payments of any state award(s) is/are also suspended until the student is reinstated in good standing within a reasonable time set by the Commissioner. Currently, section 145-2.2(b)(1)(ii) of the Commissioner's regulations provides that a student may be restored to good academic standing by:

(a) pursuing the program of study in which he or she is enrolled and making satisfactory progress toward the completion of his or her program's academic requirements; or

(b) establishing in some other way, to the satisfaction of the Commissioner, evidence of his or her ability to successfully complete an approved program.

In order to provide clarity to the field, the proposed amendment provides if there is a determination that the recipient of an award has lost good standing, further payments of any award under article 13 or 14 of the Education Law shall be suspended until the student is restored to good academic standing by either:

(a) a waiver from the required cumulative C average or its equivalent, for a student having completed his or her second academic year, for undue hardship pursuant to section 661(4)(c) of the Education Law;

(b) a one-time certification by an institution that a waiver from the good standing requirement is in the best interests of the student pursuant to subparagraph (v) of this paragraph;

(c) establishing, to the satisfaction of the Commissioner, evidence of the student's ability to successfully complete an approved program through one of the following options:

(1) demonstrating that the student has made up any deficiencies in his/her program and achieved academic progress and has achieved good academic standing without the benefit of the tuition assistance program, or other State financial aid support;

(2) applying for and being readmitted to the same institution after withdrawing as a student from such institution for at least one academic year; or

(3) transferring to another higher education institution and meeting the new institution's admissions' requirements.

4. COSTS:

(a) Costs to State government. The proposed amendment may result in additional costs on State government as a result of more students regaining TAP eligibility.

(b) Costs to local government. None.

(c) Costs to private regulated parties. The proposed amendment will not impose any additional costs upon public or nonpublic colleges and universities, education opportunity centers, or other postsecondary institutions beyond the minimal costs to such institutions to update information materials concerning the number of credits and minimum grade point average a student must have completed before the school's certification for payment on the student's award.

(d) Costs to the regulatory agency. As stated above under Costs to State Government, the proposed amendment may impose additional costs on the State government, but not the Education Department specifically.

Revised Regulatory Flexibility Analysis

The purpose of the proposed amendment is to provide clarity to the field by establishing standards for reinstatement to the status of good academic standing in order to resume receiving awards that were previously suspended under the Tuition Assistance Program.

It is evident from the subject matter of the proposed amendment that it will have no effect on local governments or small businesses. The amendment will not impose any adverse economic impact or any additional recordkeeping, reporting, or other compliance requirements 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 further steps were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis is not required and one has not been prepared.

Revised Rural Area Flexibility Analysis

Since publication of a Notice of Emergency Adoption and Proposed Rule Making in the State Register on February 4, 2015, 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 the Costs sections 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 New York State Tuition Assistance Program (TAP) provides for an annual award of up to $5,165, payable over two semesters, to help eligible New York residents pay tuition at approved colleges and universities in New York State.

Education Law § 661 sets forth the eligibility requirements and conditions for receiving a TAP award. For a student to continue to receive an award under the TAP, Education Law § 665(6) requires that the student maintain good academic standing: (1) by meeting or exceeding minimum cumulative grade point average requirements; and (2) by making satisfactory progress toward the completion of his or her program's academic requirements, measured by credit hour accumulation. This section also establishes minimum thresholds for each of these two requirements based on the year the student first receives aid, the length of the student's program and whether the student is a remedial student. However, institutions may establish and apply stricter standards of satisfactory academic progress, provided such standards include the required levels of achievement to be measured at the statutory intervals. If an institution implements stricter criteria for satisfactory academic progress, the criteria must include a minimum number of credit hours to be earned and a minimum cumulative grade point average, and must be measured at set intervals, such as semesters or trimesters. If a student fails to make satisfactory progress toward the completion of the program's academic requirements, or fails to maintain the minimum cumulative GPA, the student will not be in good academic standing and, thus, will become ineligible for awards under the TAP.

Regaining Good Academic Standing

When a student does not meet the good academic standing requirement to continue receiving a TAP award, further payments of any state award(s) is/are also suspended until the student is reinstated in good standing within a reasonable time set by the Commissioner. Currently, section 145-2.2(b)(1)(ii) of the Commissioner's regulations provides that a student may be restored to good academic standing by:

(a) pursuing the program of study in which he or she is enrolled and making satisfactory progress toward the completion of his or her program's academic requirements; or

(b) establishing in some other way, to the satisfaction of the Commissioner, evidence of his or her ability to successfully complete an approved program.

In order to provide clarity to the field, the proposed amendment provides if there is a determination that the recipient of an award has lost good standing, further payments of any award under article 13 or 14 of the Education Law shall be suspended until the student is restored to good academic standing by either:

(a) a waiver from the required cumulative C average or its equivalent, for a student having completed his or her second academic year, for undue hardship pursuant to section 661(4)(c) of the Education Law;

(b) a one-time certification by an institution that a waiver from the good standing requirement is in the best interests of the student pursuant to subparagraph (v) of this paragraph;

(c) establishing, to the satisfaction of the Commissioner, evidence of the student's ability to successfully complete an approved program through one of the following options:

(1) demonstrating that the student has made up any deficiencies in his/her program and achieved academic progress and has achieved good academic standing without the benefit of the tuition assistance program, or other State financial aid support;

(2) applying for and being readmitted to the same institution after withdrawing as a student from such institution for at least one academic year; or

(3) transferring to another higher education institution and meeting the new institution's admissions' requirements.

3. COSTS:

The proposed amendment may impose additional costs on State government if additional students regain eligibility under the TAP program. There will be no additional costs on TAP recipients.

Revised Job Impact Statement

Since publication of a Notice of Emergency Adoption and Proposed Rule Making in the State Register on January 20, 2015, the proposed rule has been substantially revised as set forth in the Revised Regulatory Impact Statement submitted herewith.

The purpose of the proposed amendment is to provide clarity to the field by establishing standards for reinstatement to the status of good academic standing in order to resume receiving awards that were previously suspended under the Tuition Assistance Program. Because it is evident from the nature of the revised amendment that it will have a positive impact, or no impact, on jobs or employment opportunities, no further steps were needed to ascertain those facts and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

Assessment of Public Comment

Since publication of a Notice of Proposed Rule Making in the February 4, 2015 State Register, the State Education Department received the following comments:

1. COMMENT:

One commenter expressed concern regarding the proposed amendment to section145-2.2(b)(2)(ii) which would suspend awards for a minimum of one semester or its equivalent.

The commenter expressed concern that "semester" is not defined as to length, credits, results or even enrollment and had the following questions: What actions must the student take during this semester of suspended TAP? Can a non-traditional semester (summer, winter or intersession) qualify? a one-credit course? Must the student successfully complete the course? In fact, the proposed change does not state whether students must enroll during the semester of suspended aid. Can a student meet this requirement by merely staying out of school for the semester?

Another commenter indicated that a minimum of one semester or its equivalent - is potentially problematic. If the student has an incomplete course which causes them to fail SAP and finishes it - now they would have to sit out a full term. For schools with rolling start dates or multiple start date opportunities during a term now we would be forced to make the student sit out for at least 15 weeks. Ex. Student has an incomplete the Fall 1 2014 term (sept- dec) which puts them in bad SAP for the Spring 1 term (Jan- May) The student completes the course- passing it and is now in good standing as of the end of January. Empire has a March term (Spring 2 term March- June) but this student would still be ''failing" in your interpretation?

DEPARTMENT RESPONSE:

The issue of the length of ineligibility for loss of good academic standing has resulted in a revision to eliminate the proscribed length of ineligibility in favor of a standard that indicates that the student is ineligible unless they have received a waiver, as allowed by law or regulation, or has taken specific steps to remediate their academic deficiencies without the benefit of state financial aid, or if the student withdrew from the institution and reapplied, or was admitted to another institution. In this way, the student who takes immediate steps to remediate their academic deficiency will not be adversely penalized, and indeed will regain eligibility as soon as they have regained good academic standing. The goal is not to penalize students, but to encourage them to regain in good academic standing, and to regain that status as quickly as possible should they lose that status.

Because the revised proposed regulation no longer carries a specific period of ineligibility, the discussion of semester versus other academic terms are unnecessary as the student may be able to regain good academic standing through the completion of adequate coursework during one or more of these alternative academic periods.

2. COMMENT:

The commenter also questioned the language in 145-2.2(b)(2)(ii)(a) and requested clarification in what was meant by pursuing the program of study in which he or she is enrolled and making satisfactory progress toward completion of his or her program's academic requirements. The commenter indicated that words such as "pursuing" and "making" communicate a process – rather than a demonstrated result determined when the student gets grades at the end of the semester.

The commenter also questioned the difference between 145-2.2(b)(2)(ii)(a) and 145-2.2(b)(2)(ii)(b)(1) however (ii)(b)(1).

The commenter also indicates that the language in section 145-2.2(b)(2)(ii)(b)(4) which states: "providing other evidence satisfactory to the Commissioner that the student will successfully complete the program" is unclear and vague and does not provide clear guidance to schools, students, as to what the Commissioner considers "evidence satisfactory." It also requested that SED's requirements for "evidence satisfactory" to the Commissioner be communicated so that all parties viewing the same facts can reach similar determinations. If not, schools will be left to make these determinations as they see fit; and OSC will lack criteria against which to determine compliance. Importantly, the evidence required is of a future event – that the student "will" successfully complete the program. It is a challenge to envision what would constitute satisfactory evidence to demonstrate that a future event will happen.

DEPARTMENT RESPONSE:

These comments were extremely helpful and resulted in several revisions to the proposed regulation in an effort to clarify and streamline the issues raised by the commenter. The concerns surrounding what constitutes satisfactory evidence of a student's ability to successfully complete an approved program have been clarified in regulation to include (1) demonstration that the student has made up any deficiencies in his/her program and achieved academic progress and has achieved good academic standing without the benefit of the tuition assistance program, or other State financial support; (2) applying for and being readmitted to the same institution after withdrawing as a student from such institution for at least one academic year; or (3) transferring to another higher education institution and meeting the new institution's admissions' requirements.

3. COMMENT:

A commenter indicated that the options to regain good academic standing omit mention of use of waivers currently used to regain good academic standing, including:

a. The C average waiver is in section 661(4)(c) of the Education Law.
b. The one-time TAP waiver provided for in regulations.
DEPARTMENT REPSONSE:
The Department agrees with the commenter and has revised the proposed amendment to add these two existing waivers to the list of options to regain good academic standing.
4. COMMENT
One commenter expressed concern that the Regulatory Impact Statement refers to ''promise'' often - referring to a student's ''promise to successfully complete a program''.
The role of a ''promise'' is not provided for in the Proposed Amendment. This needs to be deleted or clarified. It raises questions as to whether a ''promise'' is sufficient to meet 145-2.2(b)(2)(ii)(b).
The commenter also notes that the costs section in the regulatory impact statement is incorrect, in that the proposed amendment may have costs on State government if students regain TAP eligibility faster.
DEPARTMENT RESPONSE:
This comment is correct and the proposed amendment has been revised to focus specifically on the actions taken by the student to regain good academic standing and not their 'promise' to successfully complete an academic program. Therefore, the word "promise" has also been eliminated from the Regulatory Impact Statement.
The Costs section of the Regulatory Impact Statement has also been revised to clarify that there may be additional costs to State government if more students regain their TAP eligibility.
5. COMMENT
''For Applying to and being readmitted....''.Am I interpreting this correctly then that the student who simply "sits out'' for a year (doesn't officially withdraw) would not be eligible for state aid then? At nontraditional schools such as ESC or community colleges where the student is not living on campus, students often don't officially withdraw from the school instead they just take time off so would an unofficial leave of absence (''sitting out'') be an unacceptable approach?
DEPARTMENT RESPONSE:
A student cannot simply sit out a semester and through this absence from the institution somehow regain good academic standing. The student must engage in an affirmative process of obtaining a waiver, as allowed by law or regulation, complete sufficient academic coursework to regain good academic standing, or withdraw and reapply after a year, or be admitted to a different institution. A student who simply "takes time off" has not met the requirement for regaining good academic standing.

Department of Financial Services

EMERGENCY RULE MAKING

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

I.D. No. DFS-14-15-00002-E
Filing No. 207
Filing Date: 2015-03-23
Effective Date: 2015-03-23

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

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

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

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

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

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

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

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

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

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

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

Purpose: To set forth the basis for allocating all costs and expenses among and between any person or entity licensed, registered, incorporated or otherwise formed pursuant the Banking Law.

Text of emergency rule: *Part 501*
Superintendent's Regulations
(Banking Division Assessments)
(Statutory authority: Banking Law § 17; Financial Services Law § 206)
§ 501.1 Background.
Pursuant to the Financial Services Law ("FSL"), the New York State Banking Department ("Banking Department") and the New York State Insurance Department were consolidated on October 3, 2011 into the Department of Financial Services ("Department").
Prior to the consolidation, assessments of institutions subject to the Banking Law ("BL") were governed by Section 17 of the BL. Effective October 3, 2011, assessments are governed by Section 206 of the FSL, provided that Section 17 of the BL continues to apply to assessments for the fiscal year commencing on April 1, 2011.
Both Section 17 of the BL and Section 206 of the FSL provide that all expenses (including, but not limited to, compensation, lease costs and other overhead costs) of the Department attributable to institutions subject to the BL are to be charged to, and paid by, such regulated institutions. These institutions ("Regulated Entities") are now regulated by the Banking Division of the Department. Under both Section 17 of the BL and Section 206 of the FSL, the Superintendent is authorized to assess Regulated Entities for its total costs in such proportions as the Superintendent shall deem just and reasonable.
The Banking Department has historically funded itself entirely from industry assessments of Regulated Entities. These assessments have covered all direct and indirect expenses of the Banking Department, which are activities that relate to the conduct of banking business and the regulatory concerns of the Department, including all salary expenses, fringe benefits, rental and other office expenses and all miscellaneous and overhead costs such as human resource operations, legal and technology costs.
This regulation sets forth the basis for allocating such expenses among Regulated Entities and the process for making such assessments.
§ 501.2 Definitions.
The following definitions apply in this Part:
(a) "Total Operating Cost" means for the fiscal year beginning on April 1, 2011, the total direct and indirect costs of operating the Banking Division. For fiscal years beginning on April 1, 2012, "Total Operating Cost" means (1) the sum of the total operating expenses of the Department that are solely attributable to regulated persons under the Banking Law and (2) the proportion deemed just and reasonable by the Superintendent of the other operating expenses of the Department which under Section 206(a) of the Financial Services Law may be assessed against persons regulated under the Banking Law and other persons regulated by the Department.
(b) "Industry Group" means the grouping to which a business entity regulated by the Banking Division is assigned. There are three Industry Groups in the Banking Division:
(1) The Depository Institutions Group, which consists of all banking organizations and foreign banking corporations licensed by the Department to maintain a branch, agency or representative office in this state;
(2) The Mortgage-Related Entities Group, which consists of all mortgage brokers, mortgage bankers and mortgage loan servicers; and

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 501.3 Billing and Assessment Process.

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

§ 501.4 Computation of Assessment.

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

§ 501.5 Penalties/Enforcement Actions.

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

§ 501.6 Effective Date.

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

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire June 20, 2015.

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

Regulatory Impact Statement

1. Statutory Authority

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

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

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

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

2. Legislative Objectives

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

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

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

3. Needs and Benefits

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

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

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

4. Costs

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

5. Local Government Mandates
None.
6. Paperwork
The regulation does not change the process utilized by the Banking Division to determine and collect assessments.
7. Duplication
The regulation does not duplicate, overlap or conflict with any other regulations.
8. Alternatives
The purpose of the regulation is to formally set forth the process employed by the Department to carry out the statutory mandate to assess and collect the operating costs of the Banking Division from regulated entities. In light of Homestead, the Department believes that promulgating this formal regulation is necessary in order to allow it to continue to assess all of its regulated institutions in the manner deemed most appropriate by the Superintendent. Failing to formalize the Banking Division's allocation methodology would potentially leave the assessment process open to further judicial challenges.
9. Federal Standards
Not applicable.
10. Compliance Schedule
The emergency regulations are effective immediately. Regulated institutions will be expected to comply with the regulation for the fiscal year beginning on April 1, 2011 and thereafter.

Regulatory Flexibility Analysis

1. Effect of the Rule:
The regulation does not have any impact on local governments.
The regulation simply codifies the methodology used by the Banking Division of the Department of Financial Services (the "Department") to assess all entities regulated by it, including those which are small businesses. The regulation does not increase the total costs assessed to the regulated industries or alter the allocation of regulatory costs between the various industries regulated by the Banking Division.
Indeed, the only change from the allocation methodology used by the Banking Department in the previous state fiscal years is that the regulatory costs assessed to the mortgage banking industry will be divided among the entities in that group on a basis which includes income derived from secondary market and servicing activities. The Department believes that this is a more appropriate basis for allocating the costs associated with supervising mortgage banking entities. It is expected that the effect of this change will be that larger members of the mortgage banking industry will pay an increased proportion of the total cost of regulating that industry, while the relative assessments paid by smaller industry members will be reduced.
2. Compliance Requirements:
The regulation does not change existing compliance requirements. Both Section 17 of the Banking Law and Section 206 of the Financial Services Law provide that all expenses (compensation, lease costs and other overhead) of the Department in connection with the regulation and supervision of any person or entity licensed, registered, incorporated or otherwise formed pursuant to the Banking Law are to be charged to, and paid by, the regulated institutions subject to the supervision of the Banking Division. Under both statutes, the Superintendent is authorized to assess regulated institutions in the Banking Division in such proportions as the Superintendent shall deem just and reasonable.
3. Professional Services:
None.
4. Compliance Costs:
All regulated institutions are currently subject to assessment by the Banking Division. The regulation simply formalizes the Banking Division's assessment methodology. It makes only one change from the allocation methodology used by the Banking Department in the previous state fiscal years. That change affects only one of the industry groups regulated by the Banking Division. Regulatory costs assessed to the mortgage banking industry are now divided among the entities in that group on a basis which includes income derived from secondary market and servicing activities. Even within the one industry group affected by the change, additional compliance costs, if any, are expected to be minimal.
5. Economic and Technological Feasibility:
All regulated institutions are currently subject to the Banking Division's assessment requirements. The formalization of the Banking Division's assessment methodology in a regulation will not impose any additional economic or technological burden on regulated entities which are small businesses.
6. Minimizing Adverse Impacts:
Even within the mortgage banking industry, which is the one industry group affected by the change in assessment methodology, the change will not affect the total amount of the assessment. Indeed, it is anticipated that this change may slightly reduce the proportion of mortgage banking industry assessments that is paid by entities that are small businesses.
7. Small Business and Local Government Participation:
This regulation does not impact local governments.
This regulation simply codifies the methodology which the Banking Division uses for determining the just and reasonable proportion of the Banking Division's costs to be charged to and paid by each regulated institution, including regulated institutions which are small businesses. The overall methodology was adopted in 2005 after extensive discussion with regulated entities and industry associations representing groups of regulated institutions, including those that are small businesses.
Thereafter, the Banking Department applied assessments against all entities subject to its regulation. In addition, for fiscal 2010, the Banking Department changed its overall methodology slightly with respect to assessments against the mortgage banking industry to include income derived from secondary market and servicing activities. Litigation was commenced challenging this latter change, and in a recent decision, In the Matter of Homestead Funding Corporation v. State of New York Banking Department et al., 944 N.Y.S. 2d 649 (2012), the court determined that the Department should adopt a change to its assessment methodology for mortgage bankers through a formal assessment rule promulgated pursuant to the requirements of the State Administrative Procedures Act. The challenged change in methodology had the effect of increasing the proportion of assessments against the mortgage banking industry paid by its larger members, while reducing the assessments paid by smaller participants, including those which are small businesses.

Rural Area Flexibility Analysis

Types and Estimated Numbers: There are entities regulated by the New York State Department of Financial Services (formerly the Banking Department) located in all areas of the State, including rural areas. However, this rule simply codifies the methodology currently used by the Department to assess all entities regulated by it. The regulation does not alter that methodology, and thus it does not change the cost of assessments on regulated entities, including regulated entities located in rural areas.
Compliance Requirements: The regulation would not change the current compliance requirements associated with the assessment process.
Costs: While the regulation formalizes the assessment process, it does not change the amounts assessed to regulated entities, including those located in rural areas.
Minimizing Adverse Impacts: The regulation does not increase the total amount assessed to regulated entities by the Department. It simply codifies the methodology which the Superintendent has chosen for determining the just and reasonable proportion of the Department's costs to be charged to and paid by each regulated institution.
Rural Area Participation: This rule simply codifies the methodology which the Department currently uses for determining the just and reasonable proportion of the Department's costs to be charged to and paid by each regulated institution, including regulated institutions located in rural areas. The overall methodology was adopted in 2005 after extensive discussion with regulated entities and industry associations representing groups of regulated institutions, including those located in rural areas. It followed the loss of several major banking institutions that had paid significant portions of the former Banking Department's assessments.
Thereafter, the Department applied assessments against all entities subject to its regulation. In addition, for fiscal 2010, the Department changed this overall methodology slightly with respect to assessments against the mortgage banking industry to include income derived from secondary market income and servicing income. This latter change was challenged by a mortgage banker, and in early May, the Appellate Division determined that the latter change should have been made in conformity with the State Administrative Procedures Act. The challenged part of the methodology had the effect of increasing the proportion of assessments against the mortgage banking industry paid by its larger members, while reducing the assessments paid by smaller participants.

Job Impact Statement

The regulation is not expected to have an adverse effect on employment.
All institutions regulated by the Banking Division (the "Banking Division") of the Department of Financial Services are currently subject to assessment by the Department. The regulation simply formalizes the assessment methodology used by the Banking Division. It makes only one change from the allocation methodology used by the former Banking Department in the previous state fiscal years.
That change affects only one of the industry groups regulated by the Banking Division. It somewhat alters the way in which the Banking Division's costs of regulating mortgage banking industry are allocated among entities within that industry. In any case, the total amount assessed against regulated entities within that industry will remain the same.

Public Service Commission

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Sale of Utility Property

I.D. No. PSC-14-15-00010-P

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

Proposed Action: The Commission is considering whether to grant, reject or modify the petition of New York State Electric & Gas Corporation to sell street lighting facilities to the Town of West Seneca.

Statutory authority: Public Service Law, section 70

Subject: Sale of utility property.

Purpose: Whether to authorize the sale of street lighting facilities to the Town of West Seneca.

Substance of proposed rule: On March 11, 2015, New York State Electric & Gas Corporation (NYSEG) filed a petition seeking authorization under Public Service Law (PSL) § 70 to sell street lighting infrastructure to the Town of West Seneca, Erie County (Town). The petition states that the property to be sold consists of street lighting poles, luminaries, lamps, and associated hardware installed in the Town. The petition also states that, under the agreement between NYSEG and the Town, the property would be sold for $804,866, which is characterized fair market value. NYSEG also requests waiver of the newspaper publication requirement of PSL § 66(12)(b), arguing that the proposed sale will not affect the provision of service to NYSEG ratepayers. The Commission may accept, reject or modify the petition and consider any related items.

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-M-0142SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Refinancing Proposed by East River Housing Corporation

I.D. No. PSC-14-15-00011-P

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

Proposed Action: The Commission is considering whether to approve East River Housing Corporation's proposed refinancing of a $23.5 million mortgage and addition of a $5 million line of credit.

Statutory authority: Public Service Law, section 82

Subject: Refinancing proposed by East River Housing Corporation.

Purpose: To consider refinancing proposed by East River Housing Corporation.

Substance of proposed rule: The Public Service Commission is considering a petition filed by East River Housing Corporation on March 13, 2014, requesting approval, pursuant to Public Service Law (PSL) § 82, of the proposed refinancing of a $23.5 million mortgage and the addition of a $5 million line of credit. The Commission may adopt, reject or modify, in whole or in part, the relief proposed and may resolve related matters.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website http://www.dps.ny.gov/f96dir.htm. For questions, contact: 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-S-0150SP1)

Workers' Compensation Board

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Health Insurance Matching Program (HIMP)

I.D. No. WCB-14-15-00009-P

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

Proposed Action: Repeal of Subparts 325-5 and 325-6; and addition of new Subparts 325-5 and 325-6 to Title 12 NYCRR.

Statutory authority: Workers' Compensation Law, sections 117, 13(d) and (h)

Subject: Health Insurance Matching Program (HIMP).

Purpose: Provide the process for health insurers to recover from workers' compensation carriers.

Substance of proposed rule (Full text is posted at the following State website:wcb.ny.gov):

Subparts 325-5 and 325-6 are repealed and new Subparts 325-5 and 325-6 are added.

Section 325-5.1 is unchanged.

Section 325-5.2 has been added that includes the definitions contained in 325-6.1, amends the definition of health insurer to clarify that provisions related to a health insurer include a health insurer "when acting directly or through a HIMP agent." Section 325-5.2 adds a new definition for a HIMP agent at subparagraph (h).

Section 325-5.3 has minor changes to reflect changes in the HIMP process.

Section 325-5.4, formerly 325-5.2, describes eligibility to participate in the program and clarifies the roles of insurers and HIMP agents.

Section 325-5.5, formerly Section 325-5.6, subparagraph (a) permits the Chair to prescribe the format and content for computer searches. Subparagraph (b) sets forth a time limitation for the insurer to obtain a computer match of 360 days between the date of accident for the compensation injury and the date of treatment for which the health insurer seeks reimbursement. Subparagraph (c) defines what constitutes a "full match" and subparagraph (d) defines what constitutes a "partial match." Subparagraph (g) describes the process for access to the Board's electronic case files and for manual searches of archived paper files by Board staff.

Section 325-5.6, formerly Section 325-5.7, increases the fee for each search from $.043 to $.045. The new 325-5.6 increases the fee for manual review of an archived Board file from $1.795 to $2.50, and requires the health insurer to pay the copying costs for such file. Section 325-5.6 eliminates the $25 fee for a manual search for Board records. Copying costs are as prescribed in the Public Officer's Law, section 87(1)(b)(iii).

In addition to requiring the insurer to report the total amount recovered under the HIMP program each year, section 325-5.7, formerly Section 5.11, requires reporting of the total amount of reimbursement requested, the number of arbitrations requested and the number of arbitrations resolved in favor of the insurer, and the names of medical providers who received duplicate payments from the insurer and the carrier.

Section 325-5.8, formerly Section 325-5.5(a), imposes a penalty of $10,000 for misuse of confidential information as provided in subdivision (h) of section thirteen of the Workers' Compensation Law.

The cross-references in Section 325-5.9 have been updated.

Section 325-6.1 is now in alphabetical order and a definition for HIMP agent has been added.

In Section 325-6.2 clarifies that when a health insurer receives a full match on a claim, the health insurer does not need to resubmit subsequent

treatments for that claimant to the Board seeking a new full match on the identical case. Section 325-6.3 has been revised to clarify and simplify the process and time limitations for filing a HIMP-1 claim form filed by a health insurer with a compensation carrier. In addition, the health insurer must now include standard medical codes, such as ICD, CPT and DRG codes, on the HIMP-1 claim form to enhance the carrier's ability to compare the request for reimbursement against the information in the matching workers' compensation case. Section 325-6.3 also describes the process for a carrier to obtain clarifying medical records.

Section 325-6.4 has been amended to provide that the carrier may object to requests for reimbursement (1) if the treatment was provided on or after the date that the Board approved a waiver on the part of the claimant to the right to medical treatment in connection with a settlement under WCL Section 32; (2) if the carrier would not be obligated to pay for the treatment pursuant to WCL Section 29 because the claimant recovered proceeds from a third party and the corresponding carrier lien or offset has not been extinguished; 3) if the treatment was not made in accordance with the medical treatment guidelines; and 4) when authorization for the treatment had been previously sought by the medical provider from the compensation carrier and the authorization was denied.

Section 325-6.5 has minor updates in the terms used.

Section 325-6.6 describes the timelines pertaining to requests for arbitration. While the substantive provisions have not been modified, the text has been clarified.

Section 325-6.7, formerly Section 325-6.11, describes the process for initiating arbitration.

Section 325-6.8, formerly Section 325-6.12, describes the process for withdrawing arbitration requests.

In Section 325-6.9, formerly Section 325-6.11, in subparagraph (b) the time to request oral hearing for arbitration has been changed from 10 business days to 14 days and the Board no longer plays a role in selecting the location for such arbitration. Subparagraph (c) reiterates that the dispute forum shall set the date, time and location of an oral hearing and permits such hearings to take place via video-conference.

Section 325-6.10, formerly Section 325-6.15, increases the fee for a desk arbitration from $150 to $175. Subparagraph (c) provides for a $150 fee for requests for reconsideration made pursuant to the Section 325-6.12. The fees for oral hearing are unchanged.

Section 325-6.11, formerly Section 325-6.13, subparagraph (a) adds a sentence permitting a party to seek reconsideration pursuant to Section 325-6.12. In addition to updating the cross-references in subparagraph (c) the time for service has been changed from 10 business days to 14 calendar days. Subparagraph (d) has been updated to remove the reference to a "stenographic" record. The fees charged when an adjournment is requested are unchanged.

Section 325-6.12, formerly Section 325-6.14, incorporates the new means of service defined in Section 325-6.15. Subparagraph (b) permits recovery of the fee for manual searches by the health insurer in arbitration when the health insurer prevails. Subparagraph (c) permits the arbitrator to impose a fee of a $1000 for a frivolous or bad faith request for arbitration or request for reconsideration of an arbitration decision. Subparagraph (d) describes a process for filing an application for reconsideration of the arbitrator's decision when it is believed that there is a mistake of law or fact in the arbitrator's decision.

Section 325-6.13, formerly Section 325-6.16, describes the process for enforcement and appeals of arbitrator's decisions.

Section 325-6.14, formerly Section 325-6.17, sets forth that the parties are subject to the dispute forum's rules.

Section 325-6.15 sets forth acceptable methods of service for pre-arbitration service and service of documents related to arbitration. Section 325-6.15 clarifies and expands the methods of service that are available to the parties for requests for reimbursement, payment, and objections, and for requests for arbitration. The language of the regulation contemplates and allows for other means of service of documents that may become available due to further technological advances.

Section 325-6.16 is added to permit health insurers and carriers to modify HIMP processes upon agreement.

Section 325-6.17 establishes a term of three years for arbitrators appointed by the Chair of the Workers' Compensation Board.

Text of proposed rule and any required statements and analyses may be obtained from: Heather MacMaster, Workers' Compensation Board, 328 State Street, Schenectady, NY 12305-2318, (518) 486-9564, email: regulations@wcb.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.

Summary of Regulatory Impact Statement

1. Statutory Authority:

The Workers' Compensation Board (Board) is authorized to repeal and add new Subparts 325-5 and 325-6. WCL Section 13(h)(3) authorizes the Chair to adopt rules and regulations to carry out the provisions of WCL Section 13(d)(1) and (2) and WCL Section 13(h).

2. Legislative Objective:

By Chapter 924 of the Laws of 1990, and amended by Chapter 364 of the Laws of 1992, the Legislature created a mechanism whereby health insurers that made payments for medical and/or hospital services for workers' compensation injuries would be entitled to reimbursement for such payments from the workers' compensation carrier or employer (carrier) (WCL Section 13[d] and [h]).

3. Needs and Benefits:

Section 325-5 governs the process that is used to assist insurers in identifying claims that the insurers have paid which may be the responsibility of the carrier. Section 325-6 sets forth the procedures for reimbursement requests, arbitration procedures and other rules applicable to disputed requests for reimbursement. The proposal repeals Subparts 325-5 and 325-6 and adds new Subparts 325-5 and 325-6 in order to makes changes to the large scale order of these sections.

In addition, the proposal makes substantive changes to sections 325-5 and 325-6 that reflect how the HIMP process actually operates; to add provisions regarding HIMP agents and electronic access to claimant case folders; to increase the annual reporting requirements for HIMP agents to improve the Board's ability to understand how well the system is functioning; and to modestly increase fees and impose a penalty for misuse of the arbitration process. Substantive changes are described in detail in the complete RIS.

4. Costs:

There are no additional costs to the Board in the added Subparts 325-5 and 325-6.

Health insurers and HIMP agents will be subject to an increase from $.043 to $.045 in the fees for a computer search request. Health insurers and HIMP agents will also be subject to an increase from $1.795 to $2.50 for a manual search of Board records. Copying charges for manual searches will be governed by the fees set forth in the Public Officer's Law. The Board has eliminated the requirements for duplicate computer searches for subsequent medical bills, thus the proposed rule should reduce the number of computer searches requested by health insurers and HIMP agents. The Board has eliminated the fee of $25 for a search of Board records due to increases in the efficiency of conducting these searches. Health insurers and HIMP agents will also be subject to increased fees to request a desk arbitration for disputed claims from $150 to $175. There is no increase in the fee for an oral hearing. Health insurers, HIMP agents, and carriers will be subject to a fee of $150 for filing a request for reconsideration of an arbitrator's decision. The request for reconsideration is a new process and is not available in the current regulation. Health insurers, HIMP agents, and carriers will also be subject to a $1000 penalty for each frivolous or bad faith request for arbitration.

5. Local Government Mandates:

Under WCL Section 13(d)(1) the definition of a health insurer or health benefits plan includes a self-insured or self-funded health care benefits plan operated by or on behalf of any business, municipality or other entity. There is only one self-funded or self-insured municipalities for health care benefits currently participating in HIMP using a HIMP agent. If the health insurer is successful at the arbitration, the amount paid to the health insurer is increased by the filing fee paid for the arbitration. This increase is required by statute, WCL Section 13(h)(3), rather than by the regulation.

6. Paperwork:

The repeal and addition of these sections does not add or eliminate any paperwork requirements.

7. Duplication:

HIMP is a unique program administered solely by the Board and therefore there is no duplication.

8. Alternatives:

An alternative to repealing Subparts 325-5 and 325-6 and adding new Subparts 325-5 and 325-6 would be to keep the current regulation in place. However, several of the changes being proposed more accurately reflect the current practices of the Board, as well as the practices of the health insurers and HIMP agents. Keeping the current regulation in place will result in provisions which are inconsistent with current Board practices. The Board seeks to implement the simplest process to assist health insurers in identifying claims for reimbursement, and in resolving disputed requests for reimbursement.

An alternative to the increased fees for search requests would be to keep the current fees in place. However, the proposed increase in the fee for computer search requests ($0.045, up from $0.043) and manual searches ($2.50, up from $1.795) is only a slight increase from when the initial fees were set in 1993. The fee of $25 for manual searches of a Board file has been eliminated. The health insurer pays for copying costs of the Board file.

As to the proposed increase in the fees associated with the arbitration

process, an alternative to amending section 325-6.15 would be to keep the current arbitration fees in place. This alternative has proved unsatisfactory and has resulted in an arbitration process that does not adequately meet the present demands of HIMP, and is vulnerable to sharp increases in arbitration filings.

As to the $1,000 penalty which is proposed for each frivolous request for arbitration and for each frivolous request for reconsideration of an arbitrator's decision, the alternative would be to do nothing. However, the penalty will promote efficiency in the arbitration process by discouraging parties from filing requests for arbitration and/or reconsideration without having a legitimate basis for doing so.

Another alternative would be for the Board to set the penalty at a lower amount. However, setting the penalty at an amount that is lower than $1,000 is less likely to provide a disincentive to those parties who have no legitimate basis for a request for arbitration or reconsideration.

9. Federal Standards:

There are no federal standards applicable.

10. Compliance Schedule:

Affected parties will be able to achieve compliance with the rule upon its adoption.

Regulatory Flexibility Analysis

1. Effect of rule: The proposed rule will affect only those small businesses that participate in the Health Insurance Matching Program (HIMP) and the reimbursement process. The proposed rule will affect all local governments, including the approximately 2300 that are self-insured for workers' compensation purposes, inasmuch as they may be subject to reimbursement requests by health insurers. However, the proposed rule does not impose any new obligations on either small businesses or local governments. In addition, if a small business or local government is not self-insured, the insurance carrier or State Insurance Fund is responsible for ensuring compliance with this rule. Neither the State Insurance Fund nor private insurance carriers are small businesses. However, other participants in the HIMP process such as attorneys, third party administrators who handle claims for self-insured local governments, group self-insured trusts, HIMP agents and insurance carriers may be small businesses.

2. Compliance requirements: This proposed rule does not require self-insured local governments or small businesses to submit any additional documentation to the Board. The proposed rule clarifies and simplifies the existing requirements and processes for health insurers to seek reimbursement from worker's compensation carriers and self-insured employers including self-insured local governments.

3. Professional services: In order to comply with the proposed rule, small businesses and self-insured local governments will not be required to hire or utilize any new professional services. As stated above, small businesses must be covered for workers' compensation by the State Insurance Fund, private insurance carrier or group self-insured, whose responsibility it is to either handle such matters or the services of attorneys or third party administrators. In addition, the clarifications and simplifications to the current regulations will not change current procedures and practice in such a manner to require any additional professional services. It is not anticipated that small businesses and self-insured local governments will have to secure additional professional services in order to comply with the rule changes.

4. Compliance costs: Compliance costs associated with the proposed rule should be minimal as small businesses and self-insured local governments are already participating in this HIMP program. The only additional costs imposed by the rule are a modest increase of $.002 per computer match by a health insurer or HIMP agent, an increase of $.705 per manual search, an increase of $25 in the cost of requesting a desk arbitration and the imposition of a $1000 penalty for the filing of a frivolous request for arbitration. It is noted that the penalty is easily avoided by good business practice. In addition the cost of arbitration and manual searches is recoverable to the party prevailing in the arbitration.

5. Economic and technological feasibility: It will be economically and technologically feasible for self-insured local governments to comply with the proposed rule. The proposed rule is intended to allow for more flexibility in the technological solutions health insurers and workers' compensation carriers are able to employ throughout the reimbursement process. The proposed rule does not mandate any economic or technological changes by small businesses or local governments.

6. Minimizing adverse impact: The proposed rule will not cause an adverse impact on any small business or self-insured local government. The repeal of Subparts 325-5 and 325-6 and addition of Subparts 325-5 and 325-6 is intended to clarify and simplify the existing rules that have been operating since 1993. The Board has used its own experience with the operation of HIMP, has worked with stakeholders over the years and has sought stakeholder input into the development of the proposed rule, to clarify and simplify the process to ensure that it is administered efficiently and fairly. Procedures on how and when a health insurer may seek reimbursement are already part of the current Subparts 325-5 and 325-6 and WCL § 13(d) and (h).

7. Small business and local government participation: The Chair sought the participation of local governments in the drafting of this rule by meeting with and providing early drafts of the proposed rule to the City of New York. The Chair also sought the participation of small businesses by meeting with various HIMP agents and meeting with insurance carriers who represent small businesses in the HIMP process.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas: The rule applies to all health insurers in all areas of the state, including rural areas, when they participate in the Workers' Compensation Board's Health Insurance Matching Program (HIMP) for the purpose of obtaining reimbursement from workers' compensation carriers and self-insured employers for payment for medical treatment. In addition it applies to workers' compensation carriers and self-insured employers in rural areas that may be subject to reimbursement requests.

2. Reporting, recordkeeping and other compliance requirements; and professional services: This proposed rule does not increase the reporting, recordkeeping or other compliance requirements from the existing rule. The sole increase in reporting is in the items contained in the health insurer's annual report to the Board to include the total number of HIMP-1 forms submitted for reimbursement, the total number of requests for arbitration submitted in the prior calendar year, and the number of arbitrations resolved in favor of the health insurer. It is believed that this additional information is maintained by health insurers and HIMP agents in the regular course of business and will not impose any additional recordkeeping burden. This proposed rule diminishes reporting requirements inasmuch as it permits multiple reimbursement requests to be submitted on a single HIMP-1 form.

3. Costs: Costs to health insurers, including those located in rural areas, include modest increases to the fees for participation in the program. Since 1993 the only increase in any of the fees associated to the HIMP program was an increase in the fees for desk arbitrations in 2008. On December 24, 2008, the fee for desk arbitrations was increased from $75 (with $15 payable to the arbitrator) to $150 (with $40 payable to the arbitrator). The increase in fees appear to be justified based on the work associated at the Workers' Compensation Board and at the American Arbitration Association. In addition, the costs for manual searches and arbitration may be recoverable from the workers' compensation carrier if the health insurer prevails at the arbitration. The proposed rule also includes a penalty for filing a frivolous claim.

4. Minimizing adverse impact: The proposed rule implements the requirements set forth in WCL section 13(d) and (h). The proposed rule essentially coordinates benefits between two insurance carriers, the health insurer and the workers' compensation carrier. In this new version, the rule creates an opportunity to request reconsideration in arbitration and permits recovery of fees paid for manual searches, to more accurately allocate costs on the appropriate party. In addition, penalties will be imposed when a health insurer files a frivolous reimbursement request, and the Board will collect data regarding the number of requests made each year, the amount recovered and the times when the health insurer prevailed in an effort to determine how well the system is functioning.

5. Rural area participation: The Chair sought the participation of the regulated parties from across the state, including rural areas, in the drafting of this rule by providing early drafts to and meeting with the AFL-CIO, the New York State Business Council, the State Insurance Fund, the City of New York, health insurers and their representatives including, MRM, HCSG, and Wellpoint, as well as the American Arbitration Association.

Job Impact Statement

The purpose for the rescission and adoption of new Subparts 325-5 and 325-6 is to clarify and update the process for a health insurer to request reimbursement from a workers' compensation carrier and resolve disputes between the health insurer and the workers' compensation carrier. The nature of the reimbursement will not be impacted by the regulation and thus the business practices of health insurers and workers' compensation carriers will remain the same. It is anticipated that adoption of new Subparts-325-5 and 325-6 will have no impact on jobs in New York State. It is apparent from the nature and purpose of the rule that it will not have a substantial adverse impact on jobs or employment, and therefore a Job Impact Statement is not required.