

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 Corrections and Community Supervision

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Standards of Inmate Behavior; Institutional Rules of Conduct; Rule Series 113 Contraband

I.D. No. CCS-52-15-00001-EP

Filing No. 1067

Filing Date: 2015-12-10

Effective Date: 2015-12-10

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

Proposed Action: Amendment of section 270.2(b)(14)(xiv) and (xv) of Title 7 NYCRR.

Statutory authority: Correction Law, sections 112 and 138

Finding of necessity for emergency rule: Preservation of public safety.

Specific reasons underlying the finding of necessity: There has been a dramatic increase in the use by inmates of synthetic cannabinoids (also known as synthetic marijuana). Synthetic cannabinoids pose a grave threat in correctional facilities. Synthetic cannabinoids have caused inmates to engage in violent and erratic behavior and have led to a major increase in medical emergencies.

Synthetic cannabinoids are man-made compounds that are often applied to dried leaves and plants to give them a natural appearance, similar to that of marijuana. In reality, the plants have nothing to do with marijuana, and referring to them as synthetic marijuana is misleading and

has lead inmates to believe that these drugs are far less harmful than they really are.

Synthetic cannabinoids are extremely dangerous and addictive. These substances can be life-threatening and can cause intense hallucinations and psychotic episodes. Inmates may have suicidal thoughts and can be a danger to themselves or others while under the influence of these man-made substances. Effects of use include irregularities in blood pressure, agitation, irritability, nausea/vomiting, confusion, drowsiness, headache, electrolyte abnormalities, seizures, anxiety, paranoia, aggressive behavior, loss of consciousness, kidney failure, hypertension and even death.

Due to the imminent threat to the public safety, the Drug Enforcement Administration (DEA) used its emergency powers to render these substances illegal for sale by making them Schedule I controlled substances. The New York State Department of Health promulgated emergency regulations prohibiting the sale and possession of these substances in the State.

The emergency adoption of these regulation changes is needed in order to test substances found in correctional facilities for the presence of synthetic cannabinoids and other drugs.

Subject: Standards of Inmate Behavior; Institutional Rules of Conduct; Rule Series 113 Contraband.

Purpose: Provide clarification regarding the definition of a controlled substance for the purposes of this rule.

Text of emergency/proposed rule: Amend Section 270.2(b)(14)(xiv):

(xiv) 113.24 An inmate shall not use or be under the influence of any Tier II, III narcotics or controlled substances unless prescribed by a health service provider and then only in the amount prescribed.

Note: For purposes of this rule, a controlled substance is any substance listed in § 3306 of the Public Health Law; § 812 of Title 21 of the United States Code; § 1308.11 through 1308.15 of Title 21 of the Code of Federal Regulations; or § 9.1 of Title 10 NYCRR.

Amend Section 270.2(b)(14)(xv):

(xv) 113.25 An inmate shall not make, possess, sell or exchange any Tier II, III narcotic, narcotic paraphernalia, controlled substance or marijuana. An inmate shall not conspire with any person to introduce such items into the facility.

Note: For purposes of this rule, a controlled substance is any substance listed in § 3306 of the Public Health Law; § 812 of Title 21 of the United States Code; § 1308.11 through 1308.15 of Title 21 of the Code of Federal Regulations; or § 9.1 of Title 10 NYCRR.

This notice is intended: to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire March 8, 2016.

Text of rule and any required statements and analyses may be obtained from: Kevin P. Bruen, Deputy Commissioner and Counsel, NYS Department of Corrections and Community Supervision, 1220 Washington Avenue - Harriman State Campus - Building 2, Albany, NY 12226-2050, (518) 457-4951, email: Rules@Doccs.ny.gov

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

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

Regulatory Impact Statement

Statutory Authority

Correction Law Section 112 gives the Commissioner superintendence, management and control of the inmates confined in correctional facilities, and of all matters relating to the discipline thereof. Correction Law 138 requires that all institutional rules and regulations defining and prohibiting inmate misconduct shall be published.

Legislative Objective

To define and publish rules of inmate misconduct necessary for the management and control of correctional facilities and the inmates confined therein.

Needs and Benefits

The list of substances that are prohibited or restricted are not all set forth in any one statute or regulation. By way of example, forms of synthetic marijuana, the use of which can cause serious health and behavioral problems, are not currently listed in § 3306 of the New York State Public Health Law. They are, however, subject to governmental control under one or more sections of the United States Code; the Code of Federal Regulations; and the Official Compilation of Codes, Rules and Regulations of the State of New York. It is imperative for the safety of persons and the security of correctional facilities, that the meaning of "controlled substances," as used in the rules that govern inmate misbehavior, be construed broadly to cover the full array of state and federally regulated substances that are subject to abuse.

Costs

- To agency, the state and local governments: None.
- Cost to private regulated parties: None. The proposed amendment does not apply to private parties.
- This cost analysis is based upon the fact that this proposal merely defines what a "controlled substance" is.

Local Government Mandates

This proposal imposes no program, service, duty or responsibility upon any county, city, town, village, school district or other special district. It applies only to the internal management of correctional facilities and the inmates located therein.

Paperwork

The proposal would not add any new reporting requirements, including forms and other paperwork. The forms and other paperwork currently used in inmate disciplinary cases will be used.

Duplication

There is no overlap or conflict with any other legal requirements of the state or federal government.

Alternatives

There are no significant alternatives to be considered.

Federal Standards

There are no federal government standards applicable to this proposal.

Compliance Schedule

Compliance with this proposal is expected upon adoption.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not required for this proposal since it will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on small businesses or local governments. This proposal provides clarification regarding the definition of a controlled substance for the purposes of inmate disciplinary rules.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not required for this proposal since it will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on rural areas. This proposal provides clarification regarding the definition of a controlled substance for the purposes of inmate disciplinary rules.

Job Impact Statement

A job impact statement is not submitted because this proposed rule will have no adverse impact on jobs or employment opportunities. This proposal provides clarification regarding the definition of a controlled substance for the purposes of inmate disciplinary rules.

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Contraband Drugs

I.D. No. CCS-52-15-00002-EP

Filing No. 1066

Filing Date: 2015-12-10

Effective Date: 2015-12-10

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

Proposed Action: Amendment of sections 1010.2, 1010.4(b), (c), (d), (e) and 1010.5(d); and addition of section 1010.7 to Title 7 NYCRR.

Statutory authority: Correction Law, section 112

Finding of necessity for emergency rule: Preservation of public safety.

Specific reasons underlying the finding of necessity: There has been a dramatic increase in the use by inmates of synthetic cannabinoids (also known as synthetic marijuana). Synthetic cannabinoids pose a grave threat in correctional facilities. Synthetic cannabinoids have caused inmates to

engage in violent and erratic behavior and have led to a major increase in medical emergencies.

Synthetic cannabinoids are man-made compounds that are often applied to dried leaves and plants to give them a natural appearance, similar to that of marijuana. In reality, the plants have nothing to do with marijuana, and referring to them as synthetic marijuana is misleading and has led inmates to believe that these drugs are far less harmful than they really are.

Synthetic cannabinoids are extremely dangerous and addictive. These substances can be life-threatening and can cause intense hallucinations and psychotic episodes. Inmates may have suicidal thoughts and can be a danger to themselves or others while under the influence of these man-made substances. Effects of use include irregularities in blood pressure, agitation, irritability, nausea/vomiting, confusion, drowsiness, headache, electrolyte abnormalities, seizures, anxiety, paranoia, aggressive behavior, loss of consciousness, kidney failure, hypertension and even death.

Due to the imminent threat to the public safety, the Drug Enforcement Administration (DEA) used its emergency powers to render these substances illegal for sale by making them Schedule I controlled substances. The New York State Department of Health promulgated emergency regulations prohibiting the sale and possession of these substances in the State.

The emergency adoption of these regulation changes is needed in order to test substances found in correctional facilities for the presence of synthetic cannabinoids and other drugs.

Subject: Contraband Drugs.

Purpose: This proposal introduces a second testing system that may be utilized when testing for suspected contraband drugs.

Text of emergency/proposed rule: Amend Section 1010.2 as follows:

This regulation outlines the procedures to be followed by each facility in the testing of suspected contraband drugs. *The department currently utilizes two testing systems, the Safariland NIK® poly testing system, and the Sirchie NARK® II drug testing system.*

Amend Section 1010.4(b) as follows:

(b) Initiate a request for test of suspected contraband drugs (see section 1010.8[a] of this Part) to include details of circumstances leading to request. Each person handling the suspected substance shall make an appropriate notation on the form to document the action taken as well as the chain of custody of the substance until it is identified or, if applicable, placed in control of the [Inspector General]Office of Special Investigations [s] narcotics staff or a police agency or the State Police laboratory.

Amend Section 1010.4(c) as follows:

(c) If the substance is not to be identified immediately, it shall be stored/[secured] in secure evidence drop box or the secure evidence locker in accordance with Directive #4910A, "Contraband/Evidence – Handling, Storage, and Disposition."

Amend Section 1010.4(d) as follows:

(d) [If t]The substance[is in tablet or capsule form, it] shall be inspected at the facility pharmacy for possible identification, *or if appropriate pharmacy staff are not available, with the assistance of nursing staff.*

Amend Section 1010.4(e) as follows:

(e) If the substance has not been conclusively identified at the facility pharmacy, it shall be tested by [the] use of the narcotics identification kit (NIK®) manufactured by Public Safety, Inc. Always begin NIK®[Poly] testing with Test A and continue from test to test until a positive or negative result is obtained. Tests E, L, M, N, P, Q and R, and Bath Salts Test are exceptions to this rule and are designed as stand alone tests (see section 1010.8[c][i] of this Part, NIK® Tests list), *or the narcotics identification kit (NARK® II) manufactured by Sirchie Fingerprint Laboratories. Always begin testing with manufacturers recommended test kit (see Section 1010.8(d) Nark® II Tests list).*

Amend Section 1010.5(d) as follows:

(d) a statement of the scientific principals and validity of the testing materials and procedures used (for the Public Safety, Inc. NIK® System, see section 1010.8[c] of this Part 'for the NARK® II system, see section 1010.89(d); and

Amend Section 1010.7 as follows:

A positive test for suspected contraband drugs must be reported as an Unusual Incident in accordance with Directive #4004, "Unusual Incident Report," when any one of the following conditions apply:- A positive test result for cocaine, heroin, or marijuana, even if no perpetrator is identified.- Any positive test result in which an inmate has been identified as a perpetrator of the incident.- Any positive test result which results in the arrest of any individual, i.e., visitor, volunteer, contractor, employee, etc., by the department's [Inspector General's] [o]Office of Special Investigations or any outside police agency. Note: If the substance is tested by an outside agency, the Unusual Incident Report will be updated with the test results from an outside agency when the report is received by the facility.

Amend Section 1010.8(b) by replacing with new Form #2081 as follows:

(b) Form 2081, *Contraband Test Procedure*. See Appendix in this issue of the State Register.

Add a new Section 1010.8(d) as follows:

(d) "Sirchie NARK® II Statement of Scientific Principles"

SIRCHIE NARK® II SYSTEM OF NARCOTICS IDENTIFICATION

Sirchie's NARK® II Progressive System for Drug Identification has the capability of presumptively identifying several families of substances suspected of being abused drugs. Designed to function as a transportable narcotics laboratory, it is available for use wherever the need for its capability might arise. Each of the tests is comprised of one or more chemical reagents based on National Institute of Justice Standard 0604.01 and/or UN Standard ST/NR/13RE V1. When a predictable color or series of colors occur within a specific testing sequence, a positive identification may be presumed.

COLORIMETRIC CHEMICAL TESTING

The NARK® II System employs chemical colorimetric comparison as the means by which narcotics and other controlled substances are screened and presumptively identified. Each test pack contains one or more chemical reagents which will predictably develop a color or a series of colors in the presence of the most commonly known narcotics and dangerous drugs. When the predicted color reaction occurs while following the recommended test sequence, a positive identification is presumed. A positive identification is considered a component of probable cause and generally recognized within our legal system as being presumptive in nature.

Interpretation of Generated Colors

For purposes of colorimetric confirmation, it is not required that you obtain an exact color match. Your colors, however, must fall within a general area of the targeted family of color(s) referenced for that particular substance. Continue to keep in mind three important factors when reviewing your generated colors:

- (1) The basic color or lack of color.
- (2) Any color shift or change: e.g., orange to brown.
- (3) The location of colors within the test pouch.

NARK® II POLYTESTING SYSTEM

The NARK® II System of Narcotics Identification is based upon a poly testing procedure whereby a suspect material is subjected to a series of progressively discriminating screening tests. The results of a single test may or may not yield a valid result. However, the sequential results of several tests, if they all indicate a positive reaction for a particular substance, provides a high degree of certainty that the suspect material is in fact what the NARK® II testing indicates it to be.

Experiments have been and continue to be conducted with hundreds of licit and illicit chemical compounds in a continuing effort to eliminate false positive results. No chemical reagent system, adaptable to field use exists, that will completely eliminate the occurrence of an occasional invalid test result. A complete forensic laboratory would be required to qualitatively identify an unknown suspect substance. In absence of such a laboratory facility, the NARK® II testing, utilizing the recommended procedure, is your best assurance that the presumptive results of a positive identification are what they appear to be.

NARK® II TESTING CAPABILITY

NARK® II provides for presumptive identification of the following groups of drugs:

- A. Cannabis Sativa L.
- B. Hallucinogens
- C. Stimulants
- D. Depressants
- E. Narcotics

Material or Substance Classification

Hard Materials or Tablets	If unidentifiable, crush into powder form and begin testing with NARK2001 Marquis Reagent
Capsules	If unidentifiable, carefully remove a portion of powder from the capsule and begin testing with NARK2001 Marquis Reagent
Powders	Begin with NARK2001 Marquis Reagent
Plant Material	Use several at least 1/4" long particles and place into NARK2005 Duquenois-Levine or NARK20023 Synthetic Cannabinoid Reagent
Brown or Black Tar Heroin	Place into NARK20011 Mecke's Modified Reagent a size similar to the top of a pinhead

Buprenorphine

Place a size similar to the top of a pinhead, into NARK20010 Special Opiates Reagent, confirm with NARK20011 Mecke's Modified Reagent.

Liquid Samples should not be placed directly into the test pouch. Instead, wet a piece of sterile paper approximately 1/2" x 1/2" or sterile swab, with two or three drops of the suspect liquid, permit the paper or swab to briefly air dry and then insert the paper or swab into the pouch. A sterile swab is ideal for this transfer.

Storage

Ideally field tests should be stored at room temperature (70°F +/- 10° or 21°C +/- 3°). NEVER allow these tests to be exposed to direct ultraviolet rays (either direct sunlight or fluorescent lighting). Examples of incorrect storage; desk tops, window sills, vehicle seats and the front and back decks of vehicles. If tests are frozen, DO NOT USE, dispose and replace. Note: If tests are cold, the color reactions will appear slower. If tests are hot, the color reactions will appear faster than listed.

NARK® II NARCOTICS IDENTIFICATION SYSTEM - NARK® II TESTS

NARK2001: Marquis Reagent – general screening test designed as the start of the Progressive Testing System

NARK2002: Nitric Acid Reagent – designed to differentiate between Heroin and Morphine

NARK2003: Dille-Koppanyi Reagent – designed to presumptively identify the presence of Barbiturates

NARK2004: Ehrlich's Reagent – designed to presumptively identify the presence of LSD

NARK2005: Duquenois-Levine Reagent – designed to presumptively identify the presence of THC is substances like Marijuana, Hashish, Hash Oil and other THC concentrates (DAB, Wax, BHO)

NARK2006: Acid Neutralizer – designed to neutralizer chemistry prior to disposal of the field test

NARK2007: Scott Reagent Modified – designed to presumptively identify the presence of Cocaine HCl (powder) and Cocaine Base (crack/freebase)

NARK2008: Methadone Reagent – designed to presumptively identify the presence of Methadone

NARK2009: PCP/Methaqualone Reagent – designed to presumptively identify the presence of PCP/Methaqualone

NARK20010: Special Opiates Reagent – designed to presumptively identify the presence of fully synthetic opiates (Oxycodone, Hydrocodone, Fentanyl, Buprenorphine, Desomorphine and Zohydro) as well as semi-synthetic opiates (Heroin and Morphine)

NARK20011: Mecke's Reagent Modified – designed to presumptively identify the presence of Heroin and Morphine

NARK20012: Talwin Reagent – designed to presumptively identify the presence of Talwin (Pentazocine)

NARK20013: Ephedrine Reagent – designed to presumptively identify the presence of Ephedrine and Pseudoephedrine

NARK20014: Valium Reagent – designed to presumptively identify the presence of Valium and Ketamine

NARK20015: Sodium Nitroprusside Reagent – designed to presumptively identify the secondary amines present in MDMA (Ecstasy) and Methamphetamine

NARK20019: Mayers – general screening test only

NARK20020: KN (Fast Blue Salts) Reagent – designed to presumptively identify the presence of trace THC found on seeds or green plant material

NARK20021: GHB Reagent – designed to presumptively identify the presence of GHB

NARK® II NARCOTICS IDENTIFICATION SYSTEM - NARK® II TESTS

NARK20022: Mandelin Reagent – designed to presumptively identify the presence of Methadone and as a general screening reagent

NARK20023: Synthetic Cannabinoid Reagent – designed to presumptively identify the presence of indole formulations of Synthetic Cannabinoids

NARK20024: MDPV Reagent – designed to presumptively identify the presence of MDPV (synthetic cathinone)

NARK20025: Mephedrone Reagent – designed to presumptively identify the presence of Mephedrone (synthetic cathinone)

NARK20026: A-PVP Reagent – designed to presumptively identify the presence of A-PVP (synthetic cathinone)

NARK20029: 2C Reagent – designed to presumptively identify the presence of 2C substances and the analog N-BOMe substances derived from 2C substances

NARK20030: Psilocybin Reagent – designed to presumptively identify the presence of Psilocybin

NARK20031: Liebermann Reagent – general screening test only

NAK20032: Mollies Reagent – designed to direct identification of substances suspected of being a “mollie” to the specific field for final identification

This notice is intended: to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire March 8, 2016.

Text of rule and any required statements and analyses may be obtained from: Kevin P. Bruen, Deputy Commissioner and Counsel, NYS Department of Corrections and Community Supervision, 1220 Washington Avenue - Harriman State Campus - Building 2, Albany, NY 12226-2050, (518) 457-4951, email: Rules@Doccs.ny.gov

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

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

Regulatory Impact Statement

Statutory Authority
Correction Law Section 112 gives the Commissioner superintendence, management and control of the inmates confined in correctional facilities, and of all matters relating to the discipline thereof.

Legislative Objective
By vesting the commissioner with this rulemaking authority, the legislature intended the commissioner to promulgate such rules, regulations and disciplinary standards so as to provide for the safe, secure and orderly operation of correctional facilities for both staff and inmates and to help ensure public safety.

Needs and Benefits
There has been a dramatic increase in the use by inmates of synthetic cannabinoids (also known as synthetic marijuana). Synthetic cannabinoids pose a grave threat in correctional facilities. It has caused inmates to engage in violent and erratic behavior. It has led to a major increase in medical emergencies, landing far too many inmates in outside hospitals, some in intensive care units for treatment.

Synthetic cannabinoids are man-made compounds that are often applied to dried leaves and plants to give a natural appearance, similar to marijuana, but in reality the plants have nothing to do with marijuana. For that reason, referring to them as synthetic marijuana is very misleading and has lead inmates to believe that these drugs are far less harmful than they really are.

Synthetic cannabinoids are extremely dangerous and addictive. These substances can be life-threatening with intense hallucinations and psychotic episodes. Inmates may have suicidal man-made substances. Effects of use can range from irregularities in blood pressure, agitation, irritability, nausea/vomiting, confusion, drowsiness, headache, electrolyte abnormalities, seizures, anxiety, paranoia, aggressive behavior, loss of consciousness, kidney failure, hypertension and even death.

Due to the imminent threat to the public safety, the Drug Enforcement Administration (DEA) used its emergency powers to render these substances illegal for sale by making them Schedule I controlled substances. The sale and possession of these substances in New York had been banned under emergency Health Department regulations.

The emergency adoption of the regulation changes is needed in order to test substances found in correctional facilities for the presence of synthetic cannabinoids and other drugs.

Costs
a. To agency, the state and local governments: None.
b. Cost to private regulated parties: None. The proposed amendment does not apply to private parties.
c. This cost analysis is based upon the fact that the testing of substances found in correctional facilities is already occurring. The regulation change simply enhances the ability to identify the substances tested.

Local Government Mandates
This proposal imposes no program, service, duty or responsibility upon any county, city, town, village, school district or other special district. It applies only to the internal management of correctional facilities and the inmates located therein.

Paperwork
The proposal would not add any new reporting requirements, including forms and other paperwork.

Duplication
There is no overlap or conflict with any other legal requirements of the state or federal government.

Alternatives
There are no significant alternatives to be considered.
Federal Standards
There are no federal government standards applicable to this proposal.
Compliance Schedule
Compliance with this proposal is expected upon adoption.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not required for this proposal since it will not impose any adverse economic impact or reporting, recordkeeping

or other compliance requirements on small businesses or local governments. This proposal introduces a second testing system that may be utilized when testing for suspected contraband drugs.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not required for this proposal since it will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on rural areas. This proposal introduces a second testing system that may be utilized when testing for suspected contraband drugs.

Job Impact Statement

A job impact statement is not submitted because this proposed rule will have no adverse impact on jobs or employment opportunities. This proposal introduces a second testing system that may be utilized when testing for suspected contraband drugs.

NOTICE OF ADOPTION

Rochester Correctional Facility

I.D. No. CCS-08-15-00002-A

Filing No. 1089

Filing Date: 2015-12-15

Effective Date: 2015-12-30

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

Action taken: Amendment of section 100.92(a) of Title 7 NYCRR.

Statutory authority: Correction Law, section 70

Subject: Rochester Correctional Facility.

Purpose: To correct the address for Rochester Correctional Facility.

Text or summary was published in the February 25, 2015 issue of the Register, I.D. No. CCS-08-15-00002-P.

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

Text of rule and any required statements and analyses may be obtained from: Kevin P. Bruen, Deputy Commissioner and Counsel, NYS Department of Corrections and Community Supervision, 1220 Washington Avenue - Harriman State Campus - Building 2, Albany NY 12226-2050, (518) 457-4951, email: Rules@Doccs.ny.gov

Assessment of Public Comment

The agency received no public comment.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Washington Correctional Facility

I.D. No. CCS-52-15-00003-P

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

Proposed Action: This is a consensus rule making to amend section 100.116(b) of Title 7 NYCRR.

Statutory authority: Correctional Law, section 70

Subject: Washington Correctional Facility.

Purpose: Amend the age for general confinement to 18 years and older.

Text of proposed rule: Amend section 100.116 of 7(b) NYCRR, as follows:

100.116 Washington Correctional Facility.

(b) Washington Correctional Facility shall be a correctional facility for males 18[16] years of age or older.

Text of proposed rule and any required statements and analyses may be obtained from: Kevin P. Bruen, Deputy Commissioner and Counsel, NYS Department of Corrections and Community Supervision, 1220 Washington Avenue - Harriman State Campus - Building 2, Albany, NY 12226-2050, (518) 457-4951, email: Rules@Doccs.ny.gov

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

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

Consensus Rule Making Determination

The Department of Corrections and Community Supervision (DOCCS) has determined that no person is likely to object to the proposed action. The amendment of this section changes the age for general confinement to be consistent with the current functions of Washington Correctional Facility. See SAPA Section 102(11)(a).

The Department's authority resides in section 70 of Correction Law, which mandates that each correctional facility must be designated in the rules and regulations of the Department and assigns the Commissioner the duty to classify each facility with respect to the type of security maintained and the function as specified. See Correction Law § 70(6).

Job Impact Statement

A job impact statement is not submitted because this proposed rulemaking will merely amend the regulation to be consistent with the current functions of Washington Correctional Facility; therefore it has no adverse impact on jobs or employment opportunities.

Division of Criminal Justice Services

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Basic Course for Correction Officers

I.D. No. CJS-52-15-00018-P

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

Proposed Action: Amendment of sections 6018.3, 6018.6, 6018.7 and 6018.9 of Title 9 NYCRR.

Statutory authority: Executive Law, sections 837-a(9) and 840(2-a)

Subject: Basic Course for Correction Officers.

Purpose: Set forth minimum standards/clear and specific requirements of a basic course for correction officers.

Text of proposed rule: 1. Subdivision (a) of section 6018.3 of Title 9 NYCRR is amended to read as follows:

(a) No basic course shall be approved by the commissioner that does not follow [a curriculum of at least 196 hours] *the minimum curriculum as prescribed by the council.*

2. Subdivisions (b) and (c) of Section 6018.3 of Title 9 NYCRR are re-numbered (c) and (d) and a new subdivision (b) is added to read as follows:

(b) *No employer shall allow any correction officer it employs to carry or use a weapon during any phase of the officer's official duties, which constitutes on-duty employment, unless the officer has satisfactorily completed a course of training approved by the council in the use of deadly physical force and firearms and other weapons, and annually thereafter receives instruction in deadly physical force and the use of firearms and other weapons as approved by the council.*

3. Subdivision (a) of Section 6018.6 of Title 9 NYCRR is amended to read as follows:

(a) All basic course requirements [, including firearms training,] must be completed as a single and cohesive unit.

4. Section 6018.7 of Title 9 NYCRR is amended to read as follows:

(a) No person appointed as a correction officer shall exercise the powers of a correction officer unless, within 12 months after appointment, such correction officer is certified as having completed a basic course approved by the commissioner.

(b) *A correction officer who, because of exigent circumstances, is unable to complete a basic course within the one-year time period prescribed in subdivision (a) of this section may apply through his or her employer for an extension of this period by the commissioner. Such applications shall be made in writing and must describe the circumstances which necessitate the application. Illustrative of exigent circumstances are: the correction officer's inability to complete a basic course for health reasons or the temporary unavailability of a training program within a reasonable distance from the officer's place of employment. If the commissioner determines that the circumstances warrant extension of the one-year period, he or she may grant approval of such extension. In no instance shall this period be extended beyond a total of two years from the initial date of appointment as a correction officer, except as otherwise required by law.*

5. Section 6018.9 of Title 9 NYCRR is amended to read as follows:

Each employer of correction officers shall annually report to the commissioner, on behalf of the council, the names and addresses of all correction officers employed by it *who have*, during the course of the preceding year, satisfactorily completed annual instruction in deadly physical force and the use of firearms and other weapons approved by the council in satisfaction of the annual firearms and weapons training requirement imposed by article 2 of the Criminal Procedure Law. Since correction officers are

peace officers as defined in article 2 of the Criminal Procedure Law, such report shall be included in the annual validation of peace officer registry data to be completed by the employer and submitted to the commissioner by January 15th of each year.

Text of proposed rule and any required statements and analyses may be obtained from: Natasha M. Harvin, Esq., NYS Division of Criminal Justice Services, Alfred E. Smith Building, 80 South Swan Street, Albany, New York 12210, (518) 457-8413, email: natasha.harvin@dcs.ny.gov

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

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

Regulatory Impact Statement

1. Statutory authority: Executive Law § 837-a(9) and 840(2-a).

2. Legislative objectives: Executive Law § 837-a(9) authorizes the Commissioner of the Division of Criminal Justice Services (DCJS), in consultation with the State Commission of Correction (SCOC) and the Municipal Police Training Council (MPTC), to establish and maintain basic and other correctional training programs. Executive Law § 840(2-a) empowers the MPTC, in consultation with SCOC, to promulgate regulations regarding the approval, or revocation thereof, of basic correctional training programs administered by municipalities; minimum courses of study, attendance requirements, and equipment and facilities to be required at approved basic correctional training programs; minimum qualifications for instructors at approved basic correctional training programs; and the requirements of a minimum basic correctional training program required by Executive Law § 837-a(9).

3. Needs and benefits: Chapter 491 of the Laws of 2010 amended Criminal Procedure Law § 2.30 to eliminate language mandating initial firearms training for unarmed designations of peace officers, including correction officers. The proposed rule removes firearms training hours in instances where the correction officer is not permitted by the employer to carry or use a firearm on-duty. In addition, the proposal allows an employer to request a one-year extension for completion of the Basic Course for Correction Officers based on exigent circumstances. Illustrative of exigent circumstances are: the correction officer's inability to complete a basic course for health reasons; or the temporary unavailability of a training program within a reasonable distance from the officer's place of employment. These amendments are modeled after MPTC training regulations pertaining to the Basic Course for Police Officers (see, 9 NYCRR Part 6020) and the Basic Course for Peace Officers (see, 9 NYCRR Part 6025). These amendments will provide consistency.

4. Costs:

a. There are no expected costs to regulated parties for the implementation of and continuing compliance with the rule.

b. There are no expected costs to the agency or State and local governments for the implementation of and continuing compliance with the rule.

c. The cost analysis is based on the fact that there will be fiscal relief associated with the elimination of firearms training for correction officers who are not authorized to carry or use a firearm on-duty.

5. Local government mandates: There are no new mandates.

6. Paperwork: A correction officer who, because of exigent circumstances, is unable to complete a basic course within the one-year time period may apply through his or her employer for an extension of this period by the Commissioner of DCJS. Such applications shall be made in writing and must describe the circumstances which necessitate the application.

7. Duplication: There are no other federal or State legal requirements that duplicate the proposed rule.

8. Alternatives: There are no alternatives. The rule conforms to legislation and existing regulations.

9. Federal standards: There are no federal standards.

10. Compliance schedule: Regulated parties are expected to be able to achieve compliance with the proposed rule immediately.

Regulatory Flexibility Analysis

Pursuant to Executive Law § 837-a(9), the Commissioner of the Division of Criminal Justice Services (DCJS), in consultation with the State Commission of Correction (SCOC) and the Municipal Police Training Council (MPTC), is authorized to establish and maintain basic and other correctional training programs. Pursuant to Executive Law § 840(2-a), the MPTC, in consultation with SCOC, is empowered to promulgate rules and regulations regarding the approval, or revocation thereof, of basic correctional training programs; minimum courses of study, and attendance requirements, to be required at approved basic correctional training programs; minimum qualifications for instructors at approved basic correctional training programs; and the requirements of a minimum basic correctional training program required by Executive Law § 837-a(9).

A RFASBLG is not being submitted because the rule will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on small businesses or local governments. For instance, there will be fiscal relief. Chapter 491 of the Laws of 2010 amended Crim-

inal Procedure Law § 2.30 to eliminate language mandating initial firearms training for unarmed designations of peace officers, including correction officers. The proposed rule removes firearms training hours in instances where the correction officer is not permitted by the employer to carry or use a firearm on-duty.

Rural Area Flexibility Analysis

Pursuant to Executive Law § 837-a(9), the Commissioner of the Division of Criminal Justice Services (DCJS), in consultation with the State Commission of Correction (SCOC) and the Municipal Police Training Council (MPTC), is authorized to establish and maintain basic and other correctional training programs. Pursuant to Executive Law § 840(2-a), the MPTC, in consultation with SCOC, is empowered to promulgate rules and regulations regarding the approval, or revocation thereof, of basic correctional training programs; minimum courses of study, and attendance requirements, to be required at approved basic correctional training programs; minimum qualifications for instructors at approved basic correctional training programs; and the requirements of a minimum basic correctional training program required by Executive Law § 837-a(9).

A RAFA is not being submitted because the rule will not impose any adverse impact on rural areas or reporting, recordkeeping or other compliance requirements on public or private entities in rural areas. For instance, there will be fiscal relief. Chapter 491 of the Laws of 2010 amended Criminal Procedure Law § 2.30 to eliminate language mandating initial firearms training for unarmed designations of peace officers, including correction officers. The proposed rule removes firearms training hours in instances where the correction officer is not permitted by the employer to carry or use a firearm on-duty.

Job Impact Statement

Pursuant to Executive Law § 837-a(9), the Commissioner of the Division of Criminal Justice Services (DCJS), in consultation with the State Commission of Correction (SCOC) and the Municipal Police Training Council (MPTC), is authorized to establish and maintain basic and other correctional training programs. Pursuant to Executive Law § 840(2-a), the MPTC, in consultation with SCOC, is empowered to promulgate rules and regulations regarding the approval, or revocation thereof, of basic correctional training programs; minimum courses of study, and attendance requirements, to be required at approved basic correctional training programs; minimum qualifications for instructors at approved basic correctional training programs; and the requirements of a minimum basic correctional training program required by Executive Law § 837-a(9).

A JIS is not being submitted because it is apparent from the nature and purpose of the rule that it will not have a substantial adverse impact on jobs and employment opportunities. For instance, there will be fiscal relief. Chapter 491 of the Laws of 2010 amended Criminal Procedure Law § 2.30 to eliminate language mandating initial firearms training for unarmed designations of peace officers, including correction officers. The proposed rule removes firearms training hours in instances where the correction officer is not permitted by the employer to carry or use a firearm on-duty.

Department of Economic Development

EMERGENCY RULE MAKING

Empire Zones Reform

I.D. No. EDV-52-15-00009-E

Filing No. 1076

Filing Date: 2015-12-14

Effective Date: 2015-12-14

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 12-14 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 March 12, 2016.

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 large 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

EMERGENCY RULE MAKING

Academic Intervention Services (AIS)

I.D. No. EDU-40-15-00004-E

Filing No. 1094

Filing Date: 2015-12-15

Effective Date: 2015-12-15

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

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

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

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

Specific reasons underlying the finding of necessity: The proposed amendment would extend certain of the provisions in section 100.2(ee) of the Commissioner's Regulations through the 2015-2016 school year, in order to provide continued flexibility to school districts in the provision of Academic Intervention Services (AIS) for those students who performed below Level 3 on the grade 3-8 ELA and Math assessments but at or above cut scores established by the Regents.

The proposed amendment was adopted as an emergency action at the September 16-17, 2015 Regents meeting, effective September 17, 2015. The proposed amendment has now been adopted as a permanent rule at the December 14-15, 2015 Regents meeting. Pursuant to SAPA § 203(1), the earliest effective date of the permanent rule is December 30, 2015, the date a Notice of Adoption will be published in the State Register. However, the September emergency rule will expire on December 15, 2015, 90 days after its filing with the Department of State on September 17, 2015. A lapse in the rule could disrupt the provision of AIS to eligible students during the 2015-2016 school year. Emergency action is therefore necessary for the preservation of the general welfare to ensure that the proposed amendment adopted by emergency action at the September 2015 Regents meeting and adopted as a permanent rule at the December 2015 Regents meeting, remains continuously in effect until the effective date of its permanent adoption.

Subject: Academic Intervention Services (AIS).

Purpose: To establish modified requirements for AIS during the 2015-2016 school year.

Text of emergency rule: Paragraph (2) of subdivision (ee) of section 100.2 of the Regulations of the Commissioner of Education is amended, effective December 16, 2015, as follows:

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

(i) score below:

(a) the State designated performance level on one or more of the State elementary assessments in English Language Arts, Mathematics or

Science, provided that for the [2014-2015] 2015-2016 school year only, the following shall apply:

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

(2) those students scoring at or above a scale score specified in subclause (3) of this clause but below level 3/proficient shall not be required to receive academic intervention instructional and/or student support services unless the school district, in its discretion, deems it necessary. Each school district shall develop and maintain on file a uniform process by which the district determines whether to offer AIS during the [2014-2015] 2015-2016 school year to students who scored above a scale score specified in subclause (3) of this clause but below level 3/proficient on a grade 3-8 English Language Arts or Mathematics State assessment in [2013-2014] 2014-2015, and shall no later than [November 1, 2014] November 1, 2015 either post to its website or distribute to parents in writing a description of such process;

- (3)
- (b)
- (ii) . . .
- (iii) . . .

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. EDU-40-15-00004-EP, Issue of October 7, 2015. The emergency rule will expire February 12, 2016.

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

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

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

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

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

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

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

2. LEGISLATIVE OBJECTIVES:

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

3. NEEDS AND BENEFITS:

In 2013, the Regents adopted amendments to Commissioner’s Regulations section 100.2(ee) [EDU-40-13-00005-EP, State Register October 2, 2013; EDU-40-13-00005-A, State Register December 31, 2013] that provided flexibility to districts in the provision of Academic Intervention Services (AIS) for the 2013-2014 school year, in recognition of the fact that the State assessments administered to New York students in Spring 2013 were the first that measured the progress of students in meeting the expectations of the Common Core Learning Standards (CCLS). A subsequent amendment in 2014 extended similar flexibility in the provision of AIS for the 2014-15 school year [EDU-39-14-00015-EP, State Register October 1, 2014; EDU-39-14-00015-A, State Register December 31, 2014].

Section 100.2(ee) of the Commissioner’s Regulations requires school districts to provide Academic Intervention Services (AIS) to students who score below the State designated performance level on State assessments for English Language Arts and Mathematics and/or who are at risk of not achieving the State learning standards. These requirements have been in place for more than 20 years.

The State assessments for grades 3-8 in ELA and Mathematics have four designated performance levels:

Level 1: Students performing at this level are well below proficient in standards for their grade.

Level 2: Students performing at this level are partially proficient in standards for their grade.

Level 3: Students performing at this level are proficient in standards for their grade.

Level 4: Students performing at this level excel in standards for their grade.

In the past, all students who scored at Levels 1 and/or 2 on the grades 3-8 ELA or Math assessments had been eligible to receive AIS. In 2013, the State Education Department, for the first time, administered assessments in grades 3-8 that were based on the Common Core Learning Standards (CCLS) and aligned to college- and career-readiness standards. As a consequence, there was a significant decline in the percentage of students who scored at or above proficiency on the grades 3-8 ELA and Math assessments.

In September 2013, the Board of Regents adopted emergency regulations that were designed to ensure that districts would not be required to significantly increase the percentage of students to whom they would be required to provide AIS as a consequence of the implementation of the more rigorous CCLS standards. Pursuant to the regulations, the Department established cut scores for grades 3-8 ELA and Math that resulted in districts being required to provide AIS to approximately the same percentages of students in the 2013-14 school year as received AIS in the 2012-13 school year. This was analogous to the action taken by the Regents in July 2010 to address the raising of the cut scores on the 2010 Grades 3-8 English Language Arts and Mathematics assessments.

In the 2013-14 school year, under the approved Commissioner’s Regulation § 100.2(ee), districts were required to establish a policy to determine what services, if any, to provide to students who scored above the transitional cut scores established by SED, but below proficiency levels on the 2013 assessments.

Specifically, section 100.2(ee) provided the following for the 2013-14 school year:

- Students who scored below the specified cut scores for Grades 3-8 English Language Arts and Mathematics must receive AIS;
- Students who scored at or above the specified cut scores, but below the 2013 Level 3/proficient cut scores, would not be required to receive AIS and/or student support services unless the school district deemed it necessary;
- Each school district must develop and maintain on file a uniform process by which the district determined whether to offer AIS to students who scored at or above the specified cut scores but below Level 3/proficient on grades 3-8 English Language Arts or Mathematics NYS assessments; and
- By November 1, 2013, each school was required to either post a description of this process to its website or distribute a written description of such process to parents.

In September 2014, the Regents took action to extend these provisions through the 2014-15 school year to continue flexibility in the provisions of AIS. The proposed amendment would extend the 2014-2015 amendment to the Commissioner’s Regulations through the 2015-16 school year to continue flexibility in the provision of Academic Intervention Services.

4. COSTS:

- (a) Costs to State government: None.
- (b) Costs to local government: None.
- (c) Costs to private regulated parties: None.
- (d) Costs to regulating agency for implementation and continued administration of this rule: None.

The proposed amendment extends to the 2015-2016 school year, the modified requirements for the provision of AIS previously implemented for the 2013-2014 and 2014-2015 school years. The proposed amendment will not impose any additional costs but instead will allow for continued flexibility and reduced costs to school districts in providing AIS.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment does not impose any additional program, service, duty or responsibility upon local governments but merely extends to the 2015-2016 school year, the modified requirements for the provision of AIS previously implemented for the 2013-2014 and 2014-2015 school years. The proposed amendment will not impose any additional compliance requirements but instead will allow for continued flexibility to school districts in providing AIS.

6. PAPERWORK:

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

7. DUPLICATION:

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

8. ALTERNATIVES:

There were no significant alternatives and none were considered. The proposed amendment is necessary to implement Regents policy to provide

flexibility to school districts in providing AIS during the 2015-2016 school year.

9. FEDERAL STANDARDS:

There are no related federal standards.

10. COMPLIANCE SCHEDULE:

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

Regulatory Flexibility Analysis

Small Businesses:

The proposed amendment extends to the 2015-2016 school year the modified requirements for the provision of Academic Intervention Services (AIS) previously implemented for the 2013-2014 and 2015-2016 school years, to allow for continued flexibility to school districts in providing AIS.

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

Local Government:

1. EFFECT OF RULE:

The proposed amendment applies to each of the 695 public school districts in the State.

2. COMPLIANCE REQUIREMENTS:

The proposed amendment does not impose any additional compliance requirements upon local governments but merely extends to the 2015-2016 school year, the modified requirements for the provision of AIS previously implemented for the 2013-2014 and 2014-2015 school years. The proposed amendment will not impose any additional compliance requirements but instead will allow for continued flexibility to school districts in providing AIS.

3. PROFESSIONAL SERVICES:

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

4. COMPLIANCE COSTS:

The proposed amendment extends to the 2015-2016 school year, the modified requirements for the provision of AIS previously implemented for the 2013-2014 and 2014-2015 school years. The proposed amendment will not impose any additional costs but instead will allow for flexibility and reduced costs to school districts in providing AIS.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

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

6. MINIMIZING ADVERSE IMPACT:

The proposed amendment is necessary to implement Regents policy to provide flexibility to school districts in providing AIS during the 2015-2016 school year. The proposed amendment does not impose any additional compliance requirements or costs on local governments but merely extends to the 2015-2016 school year, the modified requirements for the provision of AIS previously implemented for the 2013-2014 and 2014-2015 school years, to allow for continued flexibility to school districts in providing AIS.

7. LOCAL GOVERNMENT PARTICIPATION:

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

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

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

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

The proposed amendment does not impose any additional compliance requirements upon rural areas but merely extends to the 2015-2016 school year, the modified requirements for the provision of AIS previously implemented for the 2013-2014 and 2014-2015 school years. The proposed amendment will continue to provide flexibility to school districts in providing AIS services.

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

3. COMPLIANCE COSTS:

The proposed amendment extends to the 2015-2016 school year, the modified requirements for the provision of AIS previously implemented for the 2013-2014 and 2014-2015 school years. The proposed amendment

will not impose any additional costs but instead will allow for flexibility and reduced costs to school districts in providing AIS.

4. MINIMIZING ADVERSE IMPACT:

The proposed amendment does not impose any additional compliance requirements or costs on local governments but merely extends to the 2015-2016 school year, the modified requirements for the provision of AIS previously implemented for the 2013-2014 and 2014-2015 school years. The proposed amendment will continue to provide flexibility to school districts in providing AIS services.

The proposed amendment is necessary to implement Regents policy to provide flexibility to school districts in providing AIS during the 2015-2016 school year. Because the Regents policy upon which the proposed amendment is based uniformly applies to all school districts throughout the State, it is not possible to establish differing compliance or reporting requirements or timetables or to exempt school districts in rural areas from coverage by the proposed amendment.

5. RURAL AREA PARTICIPATION:

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

Job Impact Statement

The proposed amendment extends to the 2015-2016 school year the modified requirements for the provision of Academic Intervention Services (AIS) previously implemented for the 2013-2014 and 2014-2015 school years, to allow for continued flexibility to school districts in providing AIS. The proposed amendment does not impose any adverse economic impact, reporting, record keeping or any other compliance requirements on small businesses. Because it is evident from the nature of the proposed amendment that it does not affect small businesses, no further measures were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses is not required and one has not been prepared.

**EMERGENCY
RULE MAKING**

Administration of Vaccinations by Pharmacists, Including Immunizations to Prevent Tetanus, Diphtheria or Pertussis Disease

I.D. No. EDU-40-15-00005-E

Filing No. 1097

Filing Date: 2015-12-15

Effective Date: 2015-12-15

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

Action taken: Amendment of section 63.9 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207 (not subdivided), 6504 (not subdivided), 6507(2)(a), 6527(7), 6801(2), (4), 6802(22) and 6909(7); L. 2015, ch. 46

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

Specific reasons underlying the finding of necessity: The proposed amendment to the Regulations of the Commissioner of Education is necessary to implement Chapter 46 of the Laws of 2015, which amended Education Law sections 6527, 6801, 6802 and 6909, which include authorizing licensed pharmacists to administer immunizations to prevent tetanus, diphtheria or pertussis disease pursuant to a patient specific order or a non-patient specific order, and to administer immunizations to prevent acute herpes zoster (shingles) pursuant to a non-patient specific order in addition to their current immunization authority to administer immunizations to prevent acute herpes zoster pursuant to a patient specific order.

Since publication of the proposed rule in the State Register on October 7, 2015, a nonsubstantial revision has been made in order to clarify the text of the proposed regulation. Section 63.9(b)(4)(xiii)(b) was revised to add a citation to section "11.07 of the New York City Health Code" to clarify the requirement that pharmacists administering immunizations shall report such administration to the patient's attending primary health care practitioner or practitioners, or to the statewide immunization registry or the citywide immunization registry, as established pursuant to sections 2168 of the Public Health Law and 11.07 of the New York City Health Code, respectively.

The proposed amendment was adopted as an emergency rule at the September 16-17, 2015 meeting of the Board of Regents, effective September 17, 2015, and has now, as revised, been adopted as a perma-

nent rule at the December 14-15, 2015 Regents meeting. Pursuant to SAPA § 203(1), the earliest effective date of the permanent rule is December 30, 2015, the date a Notice of Adoption will be published in the State Register. However, the September emergency rule will expire on December 15, 2015, 90 days after its filing with the Department of State on September 17, 2015. Emergency action is therefore necessary for the preservation of the public health and general welfare to ensure that the proposed amendment adopted by emergency action at the September 2015 Regents meeting, as revised, remains continuously in effect until the effective date of its permanent adoption.

Subject: Administration of vaccinations by pharmacists, including immunizations to prevent tetanus, diphtheria or pertussis disease.

Purpose: To implement chapter 46 of the Laws of 2015 to authorize pharmacists to administer tetanus, diphtheria or pertussis vaccinations.

Text of emergency rule: 1. Paragraph (1) of subdivision (b) of section 63.9 of the Regulations of the Commissioner of Education is amended, effective December 16, 2015, as follows:

(b) Immunizations.

(1) Pursuant to section 6801 of the Education Law, a pharmacist with a certificate of administration issued by the department pursuant to paragraph (3) of this subdivision shall be authorized to administer immunization agents prescribed in paragraph (2) of this subdivision to patients therein specified, provided that:

(i) . . .

(ii) with respect to non-patient specific orders:

(a) the immunization is prescribed or ordered by a licensed physician or a certified nurse practitioner with a practice site in the county or adjoining county in which the immunization is administered; [or] and

(b) [if the immunization is administered in a county with a population of 75,000 or less, the immunization shall be prescribed or ordered by a licensed physician or certified nurse practitioner with a practice site in the county in which the immunization is administered or in an adjoining county.] *if the commissioner of health determines that there is an outbreak of disease, or that there is the imminent threat of an outbreak of disease, then the commissioner of health may issue a non-patient specific regimen applicable statewide.*

2. Paragraph (2) of subdivision (b) of section 63.9 of the Regulations of the Commissioner of Education is amended, effective December 16, 2015, as follows:

(2) Authorized immunization agents. A certified pharmacist who meets the requirements of this section shall be authorized to administer to patients 18 years of age or older,[:

(i)] immunizing agents to prevent influenza, pneumococcal, [disease or] *acute herpes zoster, meningococcal, tetanus, diphtheria or pertussis disease*, pursuant to a patient specific order or a non-patient specific order.[: and

(ii) immunizing agents to prevent acute herpes zoster, pursuant to a patient specific order.]:

3. Paragraph (4) of subdivision (b) of section 63.9 of the Regulations of the Commissioner of Education is amended, effective December 16, 2015, as follows:

(4) Standards, procedures and reporting requirements for the administration of immunization agents. Each certified pharmacist shall comply with the following requirements when administering an immunization agent pursuant to either a patient specific order or a non-patient specific order and protocol:

(i) . . .

(ii) . . .

(iii) a certified pharmacist shall inform each recipient, or the person legally responsible for the recipient when the patient is incapable of consenting to the immunization, of potential side effects and adverse reactions, orally and in writing, prior to immunization and shall administer the immunization or immunizations according to the most current recommendations by the advisory committee for immunization practices (ACIP), provided, however, that a pharmacist may administer any immunization authorized when specified by a patient specific prescription;

(iv) . . .

(v) . . .

(vi) a certified pharmacist, when administering an immunization in a pharmacy, shall provide for an area that provides for the patient's privacy, such area shall include a clearly visible posting of the most current "Recommended Adult Immunization Schedule" published by the advisory committee for immunization practices (ACIP) and the certified pharmacist shall provide a copy of the appropriate vaccine information statement to the recipient, or the person legally responsible for the recipient when the patient is incapable of consenting to the immunization, before administering the immunization;

(vii) . . .

(viii) . . .

(ix) . . .

(x) . . .

(xi) each certified pharmacist shall provide information to recipients on the importance of having a primary health care practitioner, in a form or format developed by the Commissioner of Health[:];

(xii) *each certified pharmacist shall, prior to administering the immunization or immunizations, inform the recipient, or the person legally responsible for the recipient when the patient is incapable of consenting to the immunization, of the total cost of the immunization or immunizations, subtracting any health insurance subsidization, if applicable. In the case where the immunization is not covered, the pharmacist shall inform the recipient, or other person legally responsible for the recipient when the patient is incapable of consenting to the immunization, that the immunization may be covered when administered by a primary care physician or health care practitioner; and*

(xiii) Reporting of administration of immunizing agent.

(a) For administrations prior to December 27, 2015, when a licensed pharmacist administers an immunizing agent, he or she shall report such administration to the patient's attending primary health care practitioner or practitioners, if any, unless the patient is unable to communicate the identity of his or her primary health care practitioner.

(b) For administrations on or after December 27, 2015, when a licensed pharmacist administers an immunizing agent, he or she shall report such administration by electronic transmission or facsimile to the patient's attending primary health care practitioner or practitioners, if any, unless the patient is unable to communicate the identity of his or her primary health care practitioner, and, to the extent practicable, make himself or herself available to discuss the outcome of such immunization, including any adverse reactions, with the attending primary health care practitioner, or to the statewide immunization registry or the citywide immunization registry, as established pursuant to sections 2168 of the Public Health Law and 11.07 of the New York City Health Code, respectively.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. EDU-40-15-00005-EP, Issue of October 7, 2015. The emergency rule will expire February 12, 2016.

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

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

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

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

Subdivision (7) of section 6527 of the Education Law, as amended, by Chapter 46 of the Laws of 2015, authorizes physicians to prescribe and order a patient specific order or non-patient specific regimen to a licensed pharmacist for administering immunizations to prevent influenza, pneumococcal, acute herpes zoster (shingles), meningococcal, tetanus, diphtheria or pertussis disease and medications required for emergency treatment of anaphylaxis.

Subdivisions (2) and (4) of section 6801 of the Education Law, as amended, by Chapter 46 of the Laws of 2015, establishes requirements in relation to notifying a patient's attending primary care practitioners when the patient has received an immunization or immunization from a certified pharmacist, and establishes requirements for certified pharmacists to inform the patient prior to administering an immunization of the cost of the immunization and that it may be covered when administered by a primary care physician or practitioner, to administer immunizations according to recommendations by the advisory committee for immunization practices (ACIP), and to provide an area for the patient's privacy which includes a clearly visible posting of the most current "Recommended Adult Immunization Schedule" published by ACIP.

Subdivision (22) of section 6802 of the Education Law, as amended by Chapter 46 of the Laws of 2015, adds immunizations to prevent tetanus, diphtheria or pertussis disease to the list of immunizations certified pharmacists may administer, adds acute herpes zoster (shingles) to the list of immunizations certified pharmacists may administer pursuant to a patient specific order or non-patient specific regimen, and adds authority to permit administration pursuant to orders by a physician or certified nurse practitioner in an adjoining county.

Subdivision (7) of section 6909 of the Education Law, as amended by

Chapter 46 of the Laws of 2015, authorizes nurse practitioners to prescribe and order a patient specific order or non-patient specific regimen to a licensed pharmacist for administering immunizations to prevent influenza, pneumococcal, acute herpes zoster (shingles), meningococcal, tetanus, diphtheria or pertussis disease and medications required for emergency treatment of anaphylaxis.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment carries out the intent of the aforementioned statutes that the Department shall supervise the regulation of the practice of the professions for the benefit of the public. The proposed amendment will conform Regulations of the Commissioner of Education to Chapter 46 of the Laws of 2015, which includes authorizing certain qualified pharmacists to administer vaccinations to prevent tetanus, diphtheria or pertussis disease pursuant to patient-specific or non-patient specific orders, and to administer immunizations to prevent acute herpes zoster (shingles) pursuant to non-patient specific orders, in addition to their current authority to administer this vaccination pursuant to patient-specific orders.

3. NEEDS AND BENEFITS:

The proposed amendment is necessary to conform the Regulations of the Commissioner of Education to Chapter 46 of the Laws of 2015. Authorizing qualified pharmacists to administer immunizations to prevent tetanus, diphtheria or pertussis disease and extend their current authority to administer acute herpes zoster (shingles), will expand the availability of such immunizations, which will improve the public health in New York State.

The proposed amendment also includes a revision to allow physicians and nurse practitioners in adjoining counties to where a pharmacist is practicing to issue non-patient specific orders for immunizations, removes the requirement for patient-specific prescriptions for acute herpes zoster vaccinations, and clarifies what information pharmacists must provide to patients.

4. COSTS:

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

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

(c) Cost to private regulated parties: The proposed amendments will not increase costs, and may provide cost-savings to patients and the health-care system. Therefore, there will be no additional costs to private regulated parties.

(d) Cost to regulating agency for implementation and continued administration of this rule: There are no additional costs to the regulating agency.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment relates solely to regulations governing the administration of immunizations to prevent influenza, pneumococcal disease, acute herpes zoster (shingles), meningococcal, and tetanus, diphtheria or pertussis disease, and does not impose any program, service, duty, or responsibility upon local governments.

6. PAPERWORK:

The proposed amendment imposes no new reporting or other paperwork requirements.

7. DUPLICATION:

The proposed amendment does not duplicate other existing state or federal requirements, and is necessary to implement Chapter 46 of the Laws of 2015.

8. ALTERNATIVES:

The proposed amendment is necessary to conform the Regulations of the Commissioner of Education to Chapter 46 of the Laws of 2015. There are no significant alternatives to the proposed amendments, and none were considered.

9. FEDERAL STANDARDS:

Since there are no applicable federal standards, the proposed amendment does not exceed any minimum federal standards for the same or similar subject areas.

10. COMPLIANCE SCHEDULE:

The proposed amendment is necessary to conform the Regulations of the Commissioner of Education to Chapter 46 of the Laws of 2015. The proposed amendment will become effective on September 17, 2015. It is anticipated that licensees certified to administer immunizations will be able to comply with the proposed amendments by the effective date.

Regulatory Flexibility Analysis

The proposed amendment to the Regulations of the Commissioner of Education authorizes pharmacists who are certified to administer immunizations against influenza, pneumococcal disease, acute herpes zoster (shingles), and meningococcal disease to also administer vaccinations to prevent tetanus, diphtheria or pertussis disease. The amendment clarifies that all such vaccinations may be administered pursuant to patient-specific prescriptions or pursuant to non-patient-specific prescriptions issued by a

physician or nurse practitioner in the same county, or an adjoining county and stipulates that pharmacists post the most current "Recommended Adult Immunization Schedule". The amendment will not impose any new reporting, recordkeeping, or other compliance requirements, or have any adverse economic impact, on small businesses or local governments. Because it is evident from the nature of the proposed amendment that it will not adversely affect small businesses or local governments, no affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses and local governments is not required, and one has not been prepared.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed amendment will apply to the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square mile or less. Of the approximately 25,535 pharmacists registered by the State Education Department, approximately 3,025 pharmacists report that their permanent address of record is in a rural county.

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

The proposed amendment is necessary to conform the Commissioner's Regulations to Education Law sections 6527, 6801, 6802 and 6909, as amended by Chapter 46 of the Laws of 2015. These provisions include authorizing certified pharmacists to administer immunizations to prevent tetanus, diphtheria or pertussis disease pursuant to a patient specific order or a non-patient specific order and to administer immunizations to prevent acute herpes zoster (shingles) pursuant to a non-patient specific order, in addition to their current immunization authority to administer immunizations to prevent acute herpes zoster pursuant to a patient specific order.

The proposed amendment to paragraph (1) of subdivision (b) of section 63.9 of the Regulations of the Commissioner of Education amends the requirement that non-patient specific orders be issued by a physician or nurse practitioner practicing in the same county in which the immunization is administered to allow orders to be issued by a physician or nurse practitioner in an adjoining county as well. The proposed amendment also provides that if the Commissioner of Health determines that there is an outbreak of disease, or that there is the imminent threat of an outbreak of disease, then the Commissioner of Health may issue a non-patient specific order applicable statewide.

The proposed amendment to paragraph (2) of subdivision (b) of section 63.9 of the Regulations of the Commissioner of Education authorizes certified pharmacists to administer immunizations to prevent tetanus, diphtheria or pertussis disease pursuant to a patient specific order or a non-patient specific order and to administer immunizations to prevent acute herpes zoster (shingles) pursuant to a non-patient specific order, in addition to their current immunization authority to administer immunizations to prevent acute herpes zoster pursuant to a patient specific order.

The proposed amendment to paragraph (4) of subdivision (b) of section 63.9 of the Regulations of the Commissioner of Education establishes several compliance requirements for certified pharmacists who administer immunizations to prevent influenza, pneumococcal, acute herpes zoster (herpes), meningococcal, tetanus, diphtheria or pertussis disease. The proposed amendment to paragraph (4) of subdivision (b) of section 63.9 of the Regulations of the Commissioner of Education requires a certified pharmacist to inform the person legally responsible for the recipient when the patient is incapable of consenting to the immunization or immunizations, of the potential side effects and adverse reactions, orally and in writing, prior to immunization. It also requires the certified pharmacist to administer the immunization or immunizations according to the most current recommendations by ACIP, provided, however, that a pharmacist may administer any immunization authorized when specified in a patient specific prescription. The proposed amendment further requires a certified pharmacist, when administering an immunization in a pharmacy, to provide for an area that provides for the patient's privacy, which includes a clearly visible posting of the most current "Recommended Adult Immunization Schedule" published by ACIP. The proposed amendment further requires each certified pharmacist, prior to administering the immunization or immunizations, to inform the recipient, or the person legally responsible for the recipient when the patient is incapable of consenting to the immunization, of the total cost of the immunization or immunizations, subtracting any health insurance, if applicable. It also requires each certified pharmacist, in the case where the immunization is not covered, to inform the recipient, or the person legally responsible for the recipient when the patient is incapable of consenting to the immunization, that the immunization may be covered when administered by a primary care physician or health care practitioner.

3. COSTS:

The proposed amendment will not require any licensed pharmacists to administer immunizations to prevent influenza, pneumococcal, acute

herpes zoster (herpes), meningococcal, tetanus, diphtheria or pertussis disease. With respect to licensed pharmacists seeking to administer the aforementioned immunizations, including those in rural areas, the proposed amendment does not impose any additional costs beyond those imposed required by statute. There may be minimal costs to the licensed pharmacists in complying with the compliance requirements in the proposed amendment to paragraph (4) of subdivision (b) of section 63.9 of the Regulations of the Commissioner of Education.

4. MINIMIZING ADVERSE IMPACT:

The proposed amendment is necessary to conform the Commissioner's Regulations with Education Law sections 6527, 6801, 6802 and 6909, as amended by Chapter 46 of the Laws of 2015. Following discussions, including obtaining input from practicing professionals, the State Board of Pharmacy has considered the terms of the proposed amendment to Regulations of the Commissioner of Education and has recommended the change. Additionally, the measures have been shared with educational institutions, professional associations, and practitioners representing the profession of pharmacy. The amendment is supported by representatives of these sectors. The proposals make no exception for individuals who live in rural areas. The Department has determined that such requirements should apply to all pharmacists, no matter their geographic location, to ensure a uniform standard of practice across the State. Because of the nature of the proposed amendment, alternative approaches for rural areas were not considered.

5. RURAL AREA PARTICIPATION:

Comments on the proposed amendment were solicited from statewide organizations representing all parties having an interest in the practice of pharmacy. Included in this group were members of the State Board of Pharmacy, educational institutions and professional associations representing the pharmacy profession, such as the Pharmacists Society of the State of New York and the New York State Council of Health System Pharmacists. These groups, which have representation in rural areas, have been provided notice of the proposed rule making and opportunity to comment on the proposed amendment.

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

Pursuant to State Administrative Procedure Act section 207(1)(b), the State Education Department proposes that the initial review of this rule shall occur in the fifth calendar year after the year in which the rule is adopted, instead of in the third calendar year. The justification for a five year review period is that the proposed amendment is necessary to implement statutory requirements in Chapter 46 of the Laws of 2015 and therefore the substantive provisions of the proposed amendment cannot be repealed or modified unless there is a further statutory change. Accordingly, there is no need for a shorter review period. The Department invites public comment on the proposed five year review period for this rule. Comments should be sent to the agency contact listed in item 16. of the Notice of Emergency Adoption and Proposed Rule Making published herewith, and must be received within 45 days of the State Register publication date of the Notice.

Job Impact Statement

The proposed amendment to the Regulations of the Commissioner of Education implements Chapter 46 of the Laws of 2015, which amended Education Law sections 6527, 6801, 6802 and 6909, to authorize pharmacists who are certified to administer immunizations to prevent influenza, pneumococcal disease, acute herpes zoster (shingles), and meningococcal disease, to also administer vaccinations to prevent tetanus, diphtheria or pertussis disease.

The proposed amendment to paragraph (1) of subdivision (b) of section 63.9 of the Regulations of the Commissioner of Education amends the requirement that non-patient specific orders be issued by a physician or nurse practitioner practicing in the same county in which the immunization is administered to allow orders to be issued by a physician or nurse practitioner in an adjoining county as well. The proposed amendment also provides that if the Commissioner of Health determines that there is an outbreak of disease, or that there is the imminent threat of an outbreak of disease, then the Commissioner of Health may issue a non-patient specific order applicable statewide.

The proposed amendment to paragraph (2) of subdivision (b) of section 63.9 of the Regulations of the Commissioner of Education authorizes certified pharmacists to administer immunizations to prevent tetanus, diphtheria or pertussis disease pursuant to a patient specific order or a non-patient specific order and to administer immunizations to prevent acute herpes zoster (shingles) pursuant to a non-patient specific order, in addition to their current immunization authority to administer immunizations to prevent acute herpes zoster pursuant to a patient specific order.

The proposed amendment to paragraph (4) of subdivision (b) of section 63.9 of the Regulations of the Commissioner of Education requires a certified pharmacist to inform the person legally responsible for the recipient when the patient is incapable of consenting to the immunization or immunizations, of the potential side effects and adverse reactions, orally and

in writing, prior to immunization. It also requires the certified pharmacist to administer the immunization or immunizations according to the most current recommendations by ACIP, provided, however, that a pharmacist may administer any immunization authorized when specified in a patient specific prescription. The proposed amendment further requires a certified pharmacist, when administering an immunization in a pharmacy, to provide for an area that provides for the patient's privacy, which includes a clearly visible posting of the most current "Recommended Adult Immunization Schedule" published by ACIP. The proposed amendment further requires each certified pharmacist, prior to administering the immunization or immunizations, to inform the recipient, or the person legally responsible for the recipient when the patient is incapable of consenting to the immunization, of the total cost of the immunization or immunizations, subtracting any health insurance subsidization, if applicable. It also requires each certified pharmacist, in the case where the immunization is not covered, to inform the recipient, or the person legally responsible for the recipient when the patient is incapable of consenting to the immunization, that the immunization may be covered when administered by a primary care physician or health care practitioner.

The proposed amendment to paragraphs (1), (2) and (4) of subdivision (b) of section 63.9 of the Regulations of the Commissioner of Education implement specific statutory requirements and directives. Therefore, any impact on jobs or employment opportunities created by establishing the requirements for authorizing pharmacists who are certified to administer immunizations to prevent influenza, pneumococcal disease, acute herpes zoster (shingles), and meningococcal disease, to administer immunizations to prevent tetanus, diphtheria or pertussis disease is attributable to the statutory requirement, not the proposed amendment, which simply establishes standards to conform with the requirements of the statute.

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

Assessment of Public Comment

Since publication of a Notice of Emergency Adoption and Proposed Rule Making in the October 7, 2015 State Register, the State Education Department received the following comment:

COMMENT:

The New York City Department of Health and Mental Hygiene requested an additional citation for the reporting requirement to the citywide immunization registry, by pharmacists, to reflect section 11.07 of the New York City Health Code.

DEPARTMENT RESPONSE:

The Department concurs with this nonsubstantial change, which is consistent with regulation and practice, and has amended the proposed rule accordingly.

EMERGENCY RULE MAKING

Graduate-Level Teacher and Educational Leadership Programs

I.D. No. EDU-40-15-00009-E

Filing No. 1100

Filing Date: 2015-12-15

Effective Date: 2015-12-20

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

Action taken: Amendment of section 52.21 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207 (not subdivided), 210 (not subdivided), 210-a, 210-b, 305(1), (2), 3001(2), 3004(1), 3006(1)(b) and 3009(1)

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

Specific reasons underlying the finding of necessity: The proposed rule is necessary to implement Education Law sections 210-a and 210-b, as added by Subpart B of Part EE of Chapter 56 of the Laws of 2015, regarding admission requirements for graduate-level teacher and educational leadership programs and the suspension and deregistration of certain registered programs with certain passage rates on the certification examinations.

The proposed rule was adopted by emergency action at the September 16-17, 2015 Regents meeting, effective September 21, 2015. A Notice of Emergency Adoption and Proposed Rule Making was published in the State Register on October 7, 2015. Additional time is needed for the

Department to further review the proposed rule's provisions before presenting the rule for permanent adoption. However, the September emergency rule will expire on December 19, 2015, 90 days after its filing with the Department of State on September 17, 2015. A lapse in the rule could disrupt the administration of registered graduate-level teacher and educational leadership programs provided pursuant to Education Law sections 210-a and 210-b. Therefore, emergency action is necessary for the preservation of the general welfare at the December 14-15, 2015 Regents meeting in order to ensure that the emergency rule adopted at the September 16-17, 2015 Regents meeting remains continuously in effect until it can take effect as a permanent rule.

Subject: Graduate-level teacher and educational leadership programs.

Purpose: To establish minimum admission standards for graduate level teacher and leader preparation programs and requirements for the suspension and/or deregistration of certain programs with completers who fail to achieve a minimum pass rate on certification examinations for three consecutive years.

Text of emergency rule: 1. A new clause (l) shall be added to subparagraph (i) of paragraph (2) of subdivision (b) of section 52.21 of the Regulations of the Commissioner of Education, effective December 20, 2015, to read as follows:

(l) *Minimum Selection Criteria by Graduate-Level Teacher and Educational Leadership Programs Commencing Instruction on or after July 1, 2016.*

(1) *Institutions with registered graduate level teacher and educational leadership programs shall adopt rigorous selection criteria geared to predicting a candidate's academic success in its program. These rigorous selection criteria shall include, but not be limited to, a minimum score on the Graduate Record Examination or a substantially equivalent admission examination, as determined by the institution, and achievement of a cumulative grade point average of 3.0, or its equivalent, in the candidate's undergraduate program.*

(2) *Each program may exempt no more than 15 percent of any incoming class of students from such selection criteria described in this subclause based on such student's demonstration of potential to positively contribute to the teaching and/or educational leadership professions, as applicable. A program shall report to the Department the number of students admitted pursuant to such exemption and the selection criteria used for such exemptions.*

2. Subclause (3) of clause (b) of subparagraph (iv) of paragraph (2) of subdivision (b) of section 52.21 of the Regulations of the Commissioner of Education shall be renumbered as subclause (4) and a new subclause (3) shall be added, effective December 20, 2015, to read as follows:

(3) *Requirements for Suspension and/or Deregistration of Graduate-Level Teacher and Educational Leadership Program.*

(i) *The authority of a graduate-level teacher and educational leadership program to admit new students shall be suspended if, for three consecutive academic years, fewer than fifty percent of its students who have satisfactorily completed the program pass each examination that they have taken that is required for such student's first initial certification, or certification examinations associated with the program leading to a student's additional certification. The pass rate calculation shall include students who have taken one of the certification examinations and used a safety net pursuant to section 80-1.5(c) of this Title. Notwithstanding such suspension, the program shall be permitted to continue operations for the length of time it would take all currently admitted and/or enrolled students, if such students were to attend classes on a full-time basis, to complete the requirements for their degrees. Upon such suspension, the graduate program shall promptly notify each admitted and/or enrolled student of such suspension and in the case of students attending classes on a part-time basis, the institution shall notify these students that they will not be able to complete the program. If, during this time period, the Commissioner determines that student and/or program performance has significantly improved, the Commissioner may reinstate the program's ability to admit new students. If the Commissioner does not affirmatively reinstate the program's authority to admit new students during such time period, the program shall be deregistered.*

(a) *For purposes of this subclause, students who have satisfactorily completed the graduate program shall mean students who have met each educational requirement of the program, without regard to whether such students have been awarded a degree, and excluding any requirement that the student pass each required certification examination for such student's first initial certificate, or each required certification examination for such student's school building leader certificate in order to complete the program.*

(b) *Following suspension of a program pursuant to the subclause, the institution may submit an appeal, on a form prescribed by the Commissioner, to the Commissioner within 30 days of such suspension. The Office of College and University Evaluation shall then have 10 days*

to submit a written reply to the Commissioner. The Commissioner shall then review the written papers submitted and issue a written decision on the appeal within 30 days of either the Office of College and University Evaluation's reply or if such office does not submit a reply, within 30 days of receipt of the appeal, whichever occurs later. However, a program that has had its ability to admit students suspended shall not admit new students while awaiting the Commissioner's decision on any appeal. An institution with a deregistered program shall not admit any new students in such program while awaiting the Commissioner's decision on its application for registration.

[(3)] (4) By January 15, 2000 and annually by January 15th thereafter, each institution with programs registered pursuant to this section shall provide the department with a list of all students who satisfactorily complete each of its teacher education programs in the preceding year, July 1st through June 30th.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. EDU-40-15-00009-EP, Issue of October 7, 2015. The emergency rule will expire February 12, 2016.

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

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

Section 210 of the Education Law authorizes the Department to fix the value of degrees, diplomas and certificates issued by institutions of other states or countries as presented for entrance to schools, colleges and the professions of the state.

Section 210-a of the Education Law, added by Chapter 56 of the Laws of 2015, requires all institutions with graduate level teacher and leader preparation programs registered by the Department to adopt rigorous selection criteria geared to predicting a candidate's academic success in its program.

Section 210-b of the Education Law, added by Chapter 56 of the Laws of 2015 requires that, if fewer than 50 percent of the program completers in a graduate teacher or educational leadership program pass each examination required for certification for three consecutive academic years, the Department must suspend the program's authority to admit new students. This provision in the new law became effective July 1, 2015.

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

Subdivision (2) of section 305 of the Education Law authorizes the Commissioner of Education to have general supervision over all schools subject to the Education Law.

Subdivision (2) of section 3001 of the Education Law establishes certification by the State Education Department as a qualification to teach in the public schools of New York State.

Subdivision (1) of section 3004 of the Education Law authorizes the Commissioner of Education to prescribe, subject to the approval of the Regents, regulations governing the examination and certification of teachers employed in all public schools in the State.

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

Paragraph (b) of Subdivision (1) of the Education Law provides that no part of school moneys apportioned to a district shall be applied to the payment of the salary of an unqualified teacher.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment will carry out the objectives of the above referenced statutes by requiring all institutions with graduate level teacher and leader preparation programs registered by the Department to adopt rigorous selection criteria geared to predicting a candidate's academic success in its program. The proposed amendment also implements Chapter 56 of the Laws of 2015 by requiring the Department to suspend a graduate level teacher or leader preparation program's authority to admit new students if, for three consecutive academic years, fewer than fifty percent of its students who have completed the program, pass each of the certification assessments required for their first initial certificate, and deregister the program if it does not significantly improve.

3. NEEDS AND BENEFITS:

Admission Requirements

The Department, consistent with the requirements of 210-a, will require registered programs with graduate level teacher and educational leader programs commencing instruction on or after July 1, 2016, to establish rigorous minimum selection criteria geared to predicting a candidate's academic success in the program. The law requires candidates who are seeking their first initial certificate admitted to such programs to have a minimum cumulative undergraduate grade point average of 3.0 or higher in the candidate's undergraduate program, and to have achieved a minimum score, to be set by the institution, on the Graduate Record Examination (GRE), or a substantially equivalent admission assessment. Pursuant to the law, each program is entitled to exempt up to fifteen percent of its incoming class from these admission requirements based on the exempted student's demonstrated "potential to positively contribute to the teacher profession" or for "other extenuating circumstances pursuant to the regulations of the commissioner. The Department has clarified this exemption to also extend to a student's ability to positively contribute to the educational leadership profession for students in a graduate-level educational leadership program. However, the Department did not list any other extenuating circumstances in the regulation because it believes that an exemption should only be permitted where a student is able to demonstrate the potential to positively contribute to the teaching and/or educational leadership profession and if a student cannot demonstrate such potential, an exemption should not be granted. Further, adding extenuating circumstances does not increase the percentage of students exempted from the admission criteria set forth in the statute.

Minimum Program Completer Certification Assessment Pass Rate, Suspension and Deregistration

Section 210-b requires that, if fewer than fifty percent of the program completers in a graduate teacher or leader preparation program pass each examination required for certification for three consecutive academic years, the Department must suspend the program's authority to admit new students. This provision in the new law became effective July 1, 2015. The law provides that the program shall be permitted to continue operations for the length of time it would take all students currently admitted and/or enrolled students to complete the program based on a full-time course schedule. If, during that time, the Commissioner determines that student and/or program performance has significantly improved, the Commissioner may reinstate the program's ability to admit new students. In making this determination, the statute instructs the Department to consider performance on each certification examination of the cohort of students completing an examination not more than five years before the end of the academic year in which the program is completed or not later than the September 30 following the end such academic year, where such academic year is defined as July 1 through June 30th, and shall consider only the highest score of individuals taking a test more than once. The Department will seek input from the field and, at a future date, recommend to the Board of Regents how it will define significant improvement.

A program that has been suspended would be permitted to continue operations for the length of time it would take all currently admitted and/or enrolled students, if such students were to attend classes on a full-time basis, to complete the requirements for their degrees. The institution would be required to notify all admitted and/or enrolled students of the suspension and, in the case of students attending classes on a part-time basis, the institution would be required to notify these students that they may not be able to complete the program.

The program may also appeal the suspension during this time, in a manner and timeframe prescribed by the Commissioner. The law further provides authority to the Commissioner to affirmatively reinstate the program's ability to admit new students if: (i) student or program performance improves; or (ii) the Department's suspension is successfully overturned on appeal. If the program's ability to admit new students is not affirmatively reinstated by the Commissioner, the law requires the program to be deregistered.

Education Law § 210-b also authorizes the Commissioner to conduct expedited suspension and registration reviews for graduate programs pursuant to the Commissioner's regulations. The Department will be discussing this provision of the new law with stakeholders and the State Professional and Practices Board to determine what situations should trigger expedited reviews and will come back to the Board sometime this winter to discuss their recommendations.

4. COSTS:

(a) Cost to State government. The amendment will not impose any additional cost on State government, including the State Education Department.

(b) Cost to local government. The amendment does not impose additional costs upon local governments, including schools districts and BOCES.

(c) Cost to private regulated parties. The amendment will not impose additional costs on private regulated parties.

(d) Costs to the regulatory agency. As stated above in Costs to State

Government, the amendment will not impose any additional costs on the State Education Department.

5. LOCAL GOVERNMENT MANDATES:

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

6. PAPERWORK:

The proposed amendment will not increase reporting or recordkeeping requirements beyond existing requirements, except that the proposed amendment establishes an appeal process for institutions who choose to challenge the suspension of their program. Following suspension of a program, the institution may submit an appeal, on a form prescribed by the Commissioner, to the Commissioner within 30 days of such suspension. The Office of College and University Evaluation shall then have 10 days to submit a written reply to the Commissioner. The Commissioner shall then review the written papers submitted and issue a written decision on the appeal within 30 days of either the Office of College and University Evaluation' reply or if such office does not submit a reply, within 30 days of receipt of the appeal, whichever occurs later. However, a program that has had its ability to admit students suspended shall not admit new students while awaiting the Commissioner's decision on any appeal.

7. DUPLICATION:

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

8. ALTERNATIVES:

No alternatives were considered because the proposed amendment implements the statutory requirements in Education Law §§ 210-a and 210-b, as added by Chapter 56 of the Laws of 2015.

9. FEDERAL STANDARDS:

There are no Federal standards that deal with the subject matter of this amendment.

10. COMPLIANCE SCHEDULE:

Regulated parties must comply with the proposed amendment on its effective date. Because of the nature of the proposed amendment, no additional period of time is necessary to enable regulated parties to comply.

Regulatory Flexibility Analysis

The purpose of the proposed amendment is to implement Education Law §§ 210-a and 210-b, as added by Chapter 56 of the Laws of 2015, by requiring all institutions with graduate level teacher and leader preparation programs registered by the Department to adopt rigorous selection criteria geared to predicting a candidate's academic success in its program and to authorize the Department to suspend a graduate level teacher or leader preparation program's authority to admit new students if, for three consecutive academic years, fewer than fifty percent of its students who have completed the program, pass each of the certification assessments required for their first initial certificate, and deregister the program if it does not significantly improve. Since the proposed amendment has no impact on small businesses or local governments, no regulatory flexibility analysis for small businesses and local governments has been prepared.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed amendment will affect teacher and leader graduate-level candidates in all parts of the State and institutions offering graduate level teacher and educational leader programs in all parts of this State, including those located in the 44 rural counties with fewer than 200,000 inhabitants and the 71 towns and urban counties with a population density of 150 square miles or less.

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

Admission Requirements

The Department, consistent with the requirements of 210-a, will require registered programs with graduate level teacher and educational leader programs commencing instruction on or after July 1, 2016, to establish rigorous minimum selection criteria geared to predicting a candidate's academic success in the program. The law requires candidates who are seeking their first initial certificate admitted to such programs to have a minimum cumulative undergraduate grade point average of 3.0 or higher in the candidate's undergraduate program, and to have achieved a minimum score, to be set by the institution, on the Graduate Record Examination (GRE), or a substantially equivalent admission assessment. Pursuant to the law, each program is entitled to exempt up to fifteen percent of its incoming class from these admission requirements based on the exempted student's demonstrated "potential to positively contribute to the teacher profession" or for "other extenuating circumstances pursuant to the regulations of the commissioner. The Department has clarified this exemption to also extend to a student's ability to positively contribute to the educational leadership profession for students in a graduate-level educational leadership program. However, the Department did not list any other extenuating circumstances in the regulation because it believes that an exemption

should only be permitted where a student is able to demonstrate the potential to positively contribute to the teaching and/or educational leadership profession and if a student cannot demonstrate such potential, an exemption should not be granted. Further, adding extenuating circumstances does not increase the percentage of students exempted from the admission criteria set forth in the statute.

Minimum Program Completer Certification Assessment Pass Rate, Suspension and Deregistration

Section 210-b requires that, if fewer than fifty percent of the program completers in a graduate teacher or leader preparation program pass each examination required for certification for three consecutive academic years, the Department must suspend the program's authority to admit new students. This provision in the new law became effective July 1, 2015. The law provides that the program shall be permitted to continue operations for the length of time it would take all students currently admitted and/or enrolled students to complete the program based on a full-time course schedule. If, during that time, the Commissioner determines that student and/or program performance has significantly improved, the Commissioner may reinstate the program's ability to admit new students. In making this determination, the statute instructs the Department to consider performance on each certification examination of the cohort of students completing an examination not more than five years before the end of the academic year in which the program is completed or not later than the September 30 following the end such academic year, where such academic year is defined as July 1 through June 30th, and shall consider only the highest score of individuals taking a test more than once. The Department will seek input from the field and, at a future date, recommend to the Board of Regents how it will define significant improvement.

A program that has been suspended would be permitted to continue operations for the length of time it would take all currently admitted and/or enrolled students, if such students were to attend classes on a full-time basis, to complete the requirements for their degrees. The institution would be required to notify all admitted and/or enrolled students of the suspension and, in the case of students attending classes on a part-time basis, the institution would be required to notify these students that they may not be able to complete the program.

The program may also appeal the suspension during this time, in a manner and timeframe prescribed by the Commissioner. The law further provides authority to the Commissioner to affirmatively reinstate the program's ability to admit new students if: (i) student or program performance improves; or (ii) the Department's suspension is successfully overturned on appeal. If the program's ability to admit new students is not affirmatively reinstated by the Commissioner, the law requires the program to be deregistered.

Education Law § 210-b also authorizes the Commissioner to conduct expedited suspension and registration reviews for graduate programs pursuant to the Commissioner's regulations. The Department will be discussing this provision of the new law with stakeholders and the State Professional and Practices Board to determine what situations should trigger expedited reviews and will come back to the Board sometime this winter to discuss their recommendations.

3. COSTS:

There are no additional costs imposed by the proposed amendment.

4. MINIMIZING ADVERSE IMPACT:

Subpart B of Part EE of the Laws of 2015 does not make any exceptions for teacher/leader candidates or institutions in rural areas of the State, except pursuant to the law, each program is entitled to exempt up to fifteen percent of its incoming class from the admission requirements based on the exempted student's demonstrated "potential to positively contribute to the teacher profession" or for "other extenuating circumstances pursuant to the regulations of the commissioner". The Department has clarified this exemption to also extend to a student's ability to positively contribute to the educational leadership profession for students in a graduate-level educational leadership program. This exemption may apply to student's who meet this requirement, and who live or work in rural areas of this State.

5. RURAL AREA PARTICIPATION:

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

Job Impact Statement

The purpose of the proposed amendment is to conform regulations to the requirements of the new sections 210-a and 210-b to the Education Law, as added by Subpart B of Part EE of Chapter 56 of the Laws of 2015, to adopt rigorous admission requirements and to establish the requirements for the suspension and deregistration of graduate-level teacher and educational leader programs. The proposed rule does not impose any reporting, recordkeeping or other compliance requirements, and will not have an adverse economic impact, on small businesses or local

governments. Because it is evident from the nature of the proposed rule that it will have no impact on the number of jobs or employment opportunities in New York State, no further steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

Assessment of Public Comment

Since publication of a Notice of Emergency Adoption and Proposed Rule Making in the State Register on October 7, 2015, the State Education Department (SED) received the following comments:

1. COMMENT:

The language in the item itself states that the GRE and 3.0 are only for candidates seeking their first, initial certification (last paragraph on page 2). However, the actual regulation change included doesn't have that qualification and just states that the new standards are for graduate teacher and school building leader programs (third paragraph on page 5). As such, it is unclear if this applies to traditional initial cert candidates, or to all candidates (including Trans B candidates and candidates seeking additional certifications). Clarification around this issue would be greatly appreciated.

DEPARTMENT RESPONSE: The underlying statute does not limit the new admissions requirements to only students who are seeking their initial certification. The reference to an initial certificate in the Regents item was an inadvertent error. Therefore, the Department will revise the Regents item accordingly. However, since the reference to the initial certificate is not in the regulation, no regulatory changes are needed.

2. COMMENT:

Does this regulation specify that the revised general test (GRE) is required i.e., verbal reasoning, quantitative reasoning, and analytical writing but not GRE subject tests?

DEPARTMENT RESPONSE: Although the underlying statute does not specify the GRE general test, the Department believes that that is what is meant. It should also be noted that the statute includes the option for an institution to identify a substantially equivalent admission examination to the GRE.

3. COMMENT:

Does this regulation (GRE) also apply to programs that lead to additional certification, i.e., advanced certificate programs?

DEPARTMENT RESPONSE: Yes, the admissions requirements apply to all graduate-level teacher and educational leader programs. As stated in the response to Comment No. 1, the Department will remove the reference in the Regents item to initial certification.

4. COMMENT:

Currently, Teachers College has entrance examination requirement for admission across all teacher education programs. Applications for admission to Teachers College's 2016 summer and fall programs have already been printed and disseminated. As such, given the ability of students admitted for 2016 to have flexibility on when they "commence" instruction, we would suggest a 1-year exemption to allow for a transition to the new mandate. This limited flexibility will permit Teachers College (and possibly other programs) to establish the appropriate "substantially equivalent" entrance exam or other relevant assessments to be aligned with the law.

A one year exemption would also allow Teachers Collee the time to prepare for admissions and provide accurate information at recruiting events as well as in admissions and application materials.

DEPARTMENT RESPONSE: Adding a 1-year effective date as requested by the commenter would necessitate an amendment to the underlying statute and is not something that the Department can accomplish through regulation. However, the statute and proposed regulation permit institutions to exempt up to 15% of any incoming class from the selection criteria upon a determination by the institution that a student has demonstrated the potential to positively contribute to the teaching profession.

5. COMMENT:

Teachers College allows students to defer admission for one year. Students admitted to either Spring, Summer or Fall 2015, for example, have already been approved to defer their admission to Fall 2016. The new state regulations directly affect these students because they were not required to have a GRE score when TC first offered them admission in 2015. At the time that they deferred their admission to 2016, they were informed that no additional application materials are required prior to enrollment in 2016. A transition year would allow us to enroll such students under our current guidelines.

DEPARTMENT RESPONSE: Adding a transition year as requested by the commenter would necessitate an amendment to the underlying statute and is not something that the Department can accomplish through regulation. However, the statute and proposed regulation permit institutions to exempt up to 15% of any incoming class from the selection criteria upon a determination by the institution that a student has demonstrated the potential to positively contribute to the teaching profession.

6. COMMENT:

I am deeply troubled by and opposed to the implementation of a GRE requirement for our programs in teacher certification for the following reasons:

1) based on research on such high stakes tests and their disparate effect on specific populations, such a requirement will accelerate the “whitening” of the teaching force;

2) given the new requirement of a 3.0 GPA, it is unclear why we need this additional test that doesn’t correlate any better with later academic success;

3) there is absolutely no evidence that particular scores on the GRE correlate well with success as a teacher and there are too many variables to even begin to determine a meaningful correlation;

4) this will penalize students who wish to teach subjects other than math, because they will have had no recent educational experience that allows them to succeed on those standardized questions;

5) this will of course make a tidy profit for those selling preparation guides and test prep programs and thus throw up another block to aspiring teachers who do not have the means to pay for such tutoring;

6) this adds to the already astronomical expense to pursue certification;

7) it does little but intensify the emphasis on testing that has caused so much anger and disgust among teachers, parents, and teacher educators in NY State;

8) it confuses particular test taking skills with teaching ability;

9) such a requirement further strips autonomy from teacher education programs who best can determine who should be admitted, because it requires another standardized admission requirement that ignores differences in background, resources and context.

DEPARTMENT RESPONSE: Most of the comments are really about the underlying statute and are not something that the Department can address through regulation. However, the statute includes the option for an institution to identify a substantially equivalent admission examination to the GRE. In addition, the statute and regulation provide for an exemption of up to 15% of any incoming class from the selection criteria upon a determination by the institution that a student has demonstrated the potential to positively contribute to the teaching profession.

7. COMMENT:

The legitimate authority of the local independent college and university is eroded by the action both of the law and the concomitant amendments. Local faculty and administrators are in a better position to make judgments about the “prediction of success as leaders” and the impact of rigorous classroom success. It is inappropriate for the SED to replace this judgment with a system that is dramatically flawed.

DEPARTMENT RESPONSE: See Response to Comment No. 6.

8. COMMENT:

The amendments propose that Educational Leadership programs create “rigorous selection criteria”. This provision presumes that there is not a “rigorous selective criteria with predictive success” in place. Most Graduate Schools have in their Educational Leadership criteria for admission, a need for a Master’s degree successfully completed along with permanent certification as a teacher or pupil personnel services in New York State. Advanced Certificate programs also require a Master’s degree and a minimum of 45 graduate credits. To intimate that a “rigorous selection criteria” may not be in existence is a false assumption. They already exist in most programs.

DEPARTMENT RESPONSE: This comment is about the underlying statute and is not something that the Department can address through regulation.

9. COMMENT:

This requirement is at the essence of these amendments and is replete with numerous psychometric and statistical issues which I will list and describe. The limitations of this testing, particularly, in the School Building Leader exam is extraordinary. First, there has been a lack of appropriate field testing by Pearson. This limitation has been delineated by the Metropolitan Council of Educational Administration (MCEAP). The letter sent by the organization to the SED, indicates, in detail, numerous issues of validity, reliability and fairness to those preparing for school building leadership positions upon program completion. Numerous problems were found in validity, reliability, and fairness. In terms of the test’s validity, MCEAP said “that the items do not actually discriminate leadership candidate readiness, as other choices appear plausible and the correct answers would not be problematic if done as second choice. In terms of reliability, there was a great concern that bias issues may make the test question dilemmas more difficult based on lack of exposure to the test question dilemmas(urban, suburban, rural)”. Also, MCEAP believes that the “versions of the various tests may not be measuring the same set of skills and proficiencies”. Additionally, “test is biased against individuals who do not read quickly and memorize information readily”. In terms of fairness, the state assessments require knowledge and skill of resources that are not readably available or easily available. “ Given testing limita-

tions and documented by MCEAP, to suspend and end an Education Leadership Program based on these results is inadvisable, inaccurate and unfair at best. Additionally, for many of the components of both exams, there are questionable responses (which I and others as practitioners for many years) believe could be accepted as correct but are rejected by the examiners since they require a forced choice response.

DEPARTMENT RESPONSE: The comments related to the validity of the school building leader examination are outside the scope of the proposed amendment. Nevertheless, the Department believes the examination is valid and properly assesses the minimum knowledge, skills and abilities required of a school building leader.

Moreover, the Department believes that if fewer than 50 percent of the program completers in a graduate teacher or educational leadership program pass each examination required for certification for three consecutive academic years, the Department should be able to suspend the program’s authority to admit new students. Programs need to properly prepare candidates to ensure that they are able to enter the building on day 1 and be successful. Therefore, the Department believes that programs should be held accountable for the performance of their students on these exams, particularly in instances where fewer than 50 percent of their students are passing an examination required for certification.

10. COMMENT:

The criteria describing annual “cohort” referenced in the amendments could have graduate students from previous cohorts or from students many years previous who have completed their program, and then, decide to take the state exam some significant years after their courses have ended. Colleges have no control over when these teachers or administrators who are graduate students take the state exams, even if it is many years after their course work has ended. Obviously, they will count toward the potential passage/failure rate for the particular year. This fact contaminates the results from year to year.

DEPARTMENT RESPONSE: The proposed amendment implements the provisions of the statute and, therefore, a statutory change would be needed.

11. COMMENT:

The small number of program completers who take the SBL and/or SDL exams can have the impact of inflating the passage/failure rate which in turn, will provide a distorted picture of the annual cohort rate and could lead to possible suspension of the program over a three year period. Obviously, these results will have a potentially detrimental impact.

DEPARTMENT RESPONSE: Education Law § 210-b allows the Department to adjust its methodology for determining examination passage rates for one or more certification examinations to account for sample size and accuracy. The Department has done this and has decided to use a sample size of at least 10 test scores.

12. COMMENT:

Several commenters did not support the program requirement of a minimum score on the GRE as research on the predictive ability of GRE tests and other similar assessments is not entirely certain, may create a negative disproportionate impact with the policy, would likely exclude the very teachers we need to recruit to serve the diverse populations in our schools today, and are even less predictive for graduate study than they are for undergraduate study. Further, the GRE poorly predicts STEM success among females and students of color. Finally, these scores have demonstrated a weak predictive capacity for only the first year of graduate study, not for overall graduate school success. Given that a more important indicator of interest for the public welfare might be candidates’ performance after having graduated from our programs, weak predictors of first-year success in program seem ill advised as admission standards.

Given no definitive predictive data, setting cut scores at the State level would not be defensible. Thus, it is appropriate that the emergency regulation recognized that individual institutions would need to set the bar for entry scores according to their own understandings of such tests’ ability to provide useful information about admitted candidates. However, such varying standards will in the end offer little evidence of the State’s commitment to the general welfare, as the bar in some programs could be so low as to be meaningless. Over time, collecting these data might provide more insight into whether GRE scores offer any actionable information for teacher candidate admissions, and those data might be of interest to the State. However, this hypothetical future benefit of the proposed regulation seems far outweighed by the challenges in equity, defensibility, and added cost to prospective teachers, who already spend nearly \$1000 to take exams for their certification.

DEPARTMENT RESPONSE: The proposed amendment implements Education Law § 210-a and therefore any comments relating to the underlying statute must be pursued through a legislative change. However, the statute does provide the option for an institution to identify a substantially equivalent admission examination to the GRE. The statute and proposed regulation also permit institutions to exempt up to 15% of any incoming class from the selection criteria upon a determination by the

institution that a student has demonstrated the potential to positively contribute to the teaching profession.

13. COMMENT:

To ensure potential teachers have the knowledge and skills they need, teacher candidates in New York already have more hours of examinations than do doctors, lawyers, and engineers in order to receive their initial certificates. It is reasonable to believe that the requirements for content knowledge such as that tested on the GRE will be amply assessed through standardized testing by the time candidates seek licensure. Requiring candidates to pay for yet another exam seems a meaningless excess—especially since the exam offers virtually no predictive validity.

DEPARTMENT RESPONSE: The proposed amendment implements Education Law § 210-a. Therefore, a legislative change would be needed to address this comment.

14. COMMENT:

Another way to regulate admissions concerns is to have institutions of higher education participate in knowledge-building activities around performance-based assessments for candidate selection. Incentivizing programs to develop meaningful, rigorous performance-based intake processes could help the State better understand what qualities future educators should be screened for. Alternatively, having admission candidates succeed on content knowledge tests the State has designed for certification could discourage individuals who might not take the education profession seriously from applying in the first instance.

Accordingly, language along the lines of the following might be more appropriate for the admissions regulation: "...establish rigorous minimum selection criteria geared to predicting a candidate's academic success in the program. The law requires candidates who are seeking their first initial certificate admitted to such programs to have a minimum cumulative undergraduate grade point average of 3.0 or higher in the candidate's undergraduate program. Additionally, candidates must either 1) have achieved a minimum score, to be set by the institution, on the Graduate Record Examination (GRE), 2) have achieved passing scores on the ALST and on the Multi-Subjects exams appropriate for the level of licensure, or 3) have succeeded in an intensive multi-stage admissions assessment process with defensible criteria, reliable scoring approaches, and longitudinal assessment of admissions criteria correlations with program outcomes."

DEPARTMENT RESPONSE: The proposed amendment implements Education Law § 210-a. This comment is related to the underlying statute and is not something that the Department can address through regulation. However, the statute includes the option for an institution to identify a substantially equivalent admission examination to the GRE. The statute and proposed regulation also permit institutions to exempt up to 15% of any incoming class from the selection criteria upon a determination by the institution that a student has demonstrated the potential to positively contribute to the teaching profession.

15. COMMENT:

The requirement for programs to submit to the State candidates who have graduated in the preceding year is defined as July 1 through June 30. Federal accountability and CAEP accreditation requirements use the reporting timeframe of September 1 through August 31. To reduce paperwork and reporting burdens and to align data analyses, I urge the Regents to change the reporting definition of "preceding year" to September 1 through August 31.

DEPARTMENT RESPONSE: Education Law § 210-b defines the academic year for this purpose as July 1 through June 30. The proposed amendment merely implements the statutory definition of the academic year. To change this definition, a statutory change is needed.

16. COMMENT:

We are opposed to having the Board of Regents mandate particular selection criteria for all colleges. Although the stated intent is "predicting a candidate's academic success in its program," there is absolutely no evidence that requiring a minimum GPA of 3.0 or a minimum score on a standardized assessment will predict success.

Equally important, these new criteria will thwart critical efforts to diversify the teaching force by recruiting more men and women from under-represented populations. Many of the individuals from these groups fall into what appears to be an intractable achievement gap. As a group their grades and standardized test scores are below the level of the majority, and may well be below the minimum requirements set by the State.

Implementation of the proposed minimum requirements will keep candidates who have the potential to succeed from entering our program. Like all teacher preparation programs across New York State, the number of students in our programs has declined in recent years. Further decreases will threaten the viability of what has been for many years a highly successful program. In a small program such as ours the ability to exempt up to 15% of an incoming class from these requirements could mean as few as 2-3 students.

DEPARTMENT RESPONSE: The proposed amendment implements Education Law § 210-a. This comment is related to the underlying statute

and is not something that the Department can address through regulation. However, the statute includes the option for an institution to identify a substantially equivalent admission examination to the GRE. The statute and proposed regulation also permit institutions to exempt up to 15% of any incoming class from the selection criteria upon a determination by the institution that a student has demonstrated the potential to positively contribute to the teaching profession.

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

Annual Professional Performance Reviews (APPR) of Classroom Teachers and Building Principals

I.D. No. EDU-52-15-00017-EP

Filing No. 1099

Filing Date: 2015-12-15

Effective Date: 2015-12-15

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

Proposed Action: Addition of sections 30-2.14 and 30-3.17 to Title 8 NYCRR.

Statutory authority: Education Law, sections 101(not subdivided), 207(not subdivided), 215(not subdivided), 305(1), (2), 3009(1), 3012-c and 3012-d; L. 2015, ch. 20, subpart C, section 3; L. 2015, ch. 56, part EE, subpart E, sections 1 and 2

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

Specific reasons underlying the finding of necessity: The proposed rule is necessary to implement the recommendations of the Common Core Task Force which were released on December 10, 2015. The Task Force recommended that until the new Learning Standards and State assessments are fully phased in, the results from the State assessments (Grades 3-8 English language arts and mathematics) and the use of any State-provided growth model based on these tests or other State assessments shall not have evaluative consequence for teachers or students.

A Notice of Proposed Rule Making will be published in the State Register on December 30, 2015. Since the Board of Regents meets at fixed intervals, the earliest the proposed rule can be presented for regular (non-emergency) adoption, after expiration of the required 45-day public comment period provided for in the State Administrative Procedure Act (SAPA) would be the March Regents meeting. Furthermore, pursuant to SAPA section 203(1), the earliest effective date of the proposed rule, if adopted at the December meeting, would be March 9, 2016, the date a Notice of Adoption would be published in the State Register.

Emergency action is therefore necessary for the preservation of the general welfare to ensure that the proposed amendment is adopted by emergency action to ensure that teachers and principals receive transition scores and ratings for the 2015-2016 school year in accordance with the proposed amendment and that the results of the State assessments (grades 3-8 English language arts and mathematics) and State-provided growth scores based on Regents examinations are not used for evaluative purposes in the 2015-2016 school year through the 2018-2019 school year and so school districts are able to complete their negotiations for annual professional performance reviews conducted under Education Law § 3012-d, which for State aid purposes must be completed by September 1, 2016.

Subject: Annual Professional Performance Reviews (APPR) of classroom teachers and building principals.

Purpose: To implement the recommendations of the New York Common Core Task Force Report by establishing transition ratings for teachers and building principals during a four-year transition period for APPRs, while the State completes the transition to higher learning standards through new State assessments aligned to the higher learning standards, and a revised State-provided growth model.

Text of emergency/proposed rule: 1. A new section 30-2.14 of the Rules of the Board of Regents is added, effective December 15, 2015, to read as follows:

§ 30-2.14. *Annual Professional Performance Review Scores and Ratings for the 2015-16 School Year During a Transition to Higher Learning Standards.*

(a) *For purposes of this section, State assessments shall mean the grades 3-8 English language arts and mathematics State assessments.*

(b) *Notwithstanding any other provision of this Part to the contrary, the Commissioner shall establish procedures in guidance for transition scores and ratings for teachers and principals whose annual professional perfor-*

mance review conducted pursuant to Education Law § 3012-c and this Subpart for the 2015-2016 school year is based, in whole or in part, on State assessments and/or on State-provided growth scores on Regents examinations during a transition period while the State completes the transition to higher learning standards through new State assessments aligned to the higher learning standards, and a revised State-provided growth model.

(1) State-provided growth scores will continue to be calculated pursuant to this Subpart for advisory purposes only during this transition period and teachers and principals will continue to receive an overall score and rating calculated pursuant to this Subpart.

(2) For the transition period, an overall composite transition score and rating shall be generated based on the scores and ratings on the remaining subcomponents of the annual professional performance review that are not based on State assessments and/or a State-provided growth score on Regents examinations. The overall composite transition score shall include the use of any back-up SLOs developed by the district/BOCES in lieu of the State-provided growth score on State assessments; provided that such back-up SLOs shall not be based on State assessments.

(c) Except as otherwise provided in subdivision (d) of this section, a teacher's or principal's final composite score and rating, for all purposes under section 3012-c of the Education Law or this Subpart as well as for purposes of tenure determinations and other employment decisions and proceedings pursuant to Education Law §§ 3020-a and 3020-b, shall be the transition composite score and rating. The requirement for a teacher or principal improvement plan shall be based on the teacher's or principal's transition composite score and rating.

(d) For purposes of public reporting of aggregate data and disclosure to parents pursuant to paragraph b of subdivision 10 of section 3012-c of the Education Law, the original composite score and rating pursuant to section 3012-c of the Education Law of this Subpart shall be reported with (i) the transition composite score and rating and (ii) an explanation of such transition composite score and rating.

2. A new section 30-3.17 of the Rules of the Board of Regents is added, effective December 15, 2015, to read as follows:

§ 30-3.17. Annual Professional Performance Review Ratings for the 2015-2016 through the 2018-2019 school years for Annual Professional Performance Reviews Conducted Pursuant to Education Law § 3012-d and this Subpart, During a Transition to Higher Learning Standards.

(a) For purposes of this section, State assessments shall mean the grades 3-8 English language arts and mathematics State assessments.

(b) Notwithstanding any other provision of this Subpart to the contrary, the Commissioner shall establish procedures in guidance for determining transition scores and ratings for teachers and principals whose annual professional performance reviews conducted pursuant to Education Law § 3012-d and this Subpart for the 2015-2016 through the 2018-2019 school years are based, in whole or in part, on State assessments and/or State-provided growth scores on Regents examinations, while the State completes the transition to higher learning standards through new State assessments aligned to higher learning standards, and a revised State-provided growth model.

(1) State-provided growth scores will continue to be calculated for advisory purposes only pursuant to this Part during this transition period and teachers and principals will continue to receive an overall rating calculated pursuant to this Subpart.

(2) In addition, during this transition period, the Commissioner may also authorize the use of one or more State-provided growth model(s) that take into consideration multiple years of student growth on State assessments to compute scores in the required subcomponent of the student performance category, for advisory purposes only under this section.

(3) During the transition period, a transition score and rating on the student performance category, and a transition rating that incorporates the student performance category rating shall be generated based on:

(i) the scores/ratings in the subcomponents of the student performance category that are not based on State assessments and/or a State-provided growth score on Regents assessments; or

(ii) in instances where no scores/ratings in the subcomponents of the student performance category can be generated, a back-up SLO shall be developed by the district/BOCES consistent with guidelines prescribed by the Commissioner using assessments approved by the Department that are not State assessments.

(b) Except as otherwise provided in subdivision (c) of this section, a teacher's or principal's final composite rating for all purposes under section 3012-d of the Education Law or under this Subpart, as well as for purposes of tenure determinations and other employment decisions and proceedings pursuant to Education Law § 3020-b, shall be the overall transition rating. The requirement for a teacher or principal improvement plan shall be based on the teacher's or principal's overall transition composite rating.

(c) For purposes of public reporting of aggregate data and disclosure

to parents pursuant to paragraph b of subdivision 10 of section 3012-c of the Education Law as made applicable to this Subpart, the original composite rating pursuant to section 3012-d of the Education Law and this Subpart shall be reported with (i) the overall transition rating and (ii) an explanation of such overall transition rating.

This notice is intended: to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire March 13, 2016.

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

Data, views or arguments may be submitted to: Peg Rivers, State Education Department, Office of Higher Education, Room 979 EBA, 89 Washington Ave., Albany, NY 12234, (518) 486-3633, email: regcomments@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 101 charges the Department with the general management and supervision of the educational work of the State and establishes the Regents as head of the Department.

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

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

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

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

Education Law 3012-c establishes requirements for the conduct of annual professional performance reviews (APPR) of classroom teachers and building principals employed by school districts and boards of cooperative educational services (BOCES).

Education Law 3012-d, as added by Section 2 of Subpart E of Part EE of Chapter 56 of the Laws of 2015 establishes a new evaluation system for classroom teachers and building principals employed by school districts and BOCES for the 2015-16 school year and thereafter.

2. LEGISLATIVE OBJECTIVES:

The proposed rule is consistent with the above authority vested in the Regents and Commissioner to carry into effect State educational laws and policies and Ch.56, L.2015, as amended by Ch.20, L.2015, and is necessary to support the commitment made by the Legislature, the Governor, the Regents and Commissioner to ensure effective evaluation of classroom teachers and building principals. The proposed rule is necessary to implement the recommendations of the Common Core Task Force which were released on December 10, 2015. The Task Force recommended that until the new Learning Standards and State assessments are fully phased in, the results from the State assessments (Grades 3-8 English language arts and mathematics) and the use of any State-provided growth model based on these tests or other State assessments shall not have evaluative consequence for teachers or students.

3. NEEDS AND BENEFITS:

In September 2015, Governor Andrew Cuomo formed the Common Core Task Force to undertake a comprehensive review of the current status and use of the Common Core State Standards and assessments in New York and to recommend potential reforms to the system. Following multiple meetings, the Task Force reviewed and discussed information presented at public sessions and submitted through the website, and has made a number of recommendations regarding the implementation of the Common Core Standards.

On December 10, 2015, the Task Force released their report, affirming that New York must have rigorous, high quality education standards to improve the education of all of our students and hold our schools and districts accountable for students' success but recommended that the Common Core standards be thoroughly reviewed and revised consistent as reflected in the report and that the State assessments be amended to reflect such revisions. In addition, the Task Force recommended that until the new system is fully phased in, the results from the grades 3-8 English language arts and mathematics State assessments and the use of any State-provided growth model based on these tests or other State assessments

shall not have consequence for teachers or students. Specifically, Recommendation 21 from the Task Force's Final Report ("Report") provides as follows:

"...State-administered standardized ELA and Mathematics assessments for grades three through eight aligned to the Common Core or updated standards shall not have consequences for individual students or teachers. Further, any growth model based on these Common Core tests or other state assessments shall not have consequences and shall only be used on an advisory basis for teachers. The transition phase shall last until the start of the 2019-2020 school year".

Proposed amendment

In an effort to implement the Task Force's recommendation, the proposed amendment makes the following changes:

- Two new sections 30-2.14 and 30-3.17 are added to provide for a four year transition period for annual professional performance reviews (APPRs) while the State completes the transition to higher learning standards through new State assessments aligned to the higher learning standards, and a revised State-provided growth model. During the transition period, the Commissioner will determine transition scores and ratings that will replace the original scores and HEDI ratings computed under the existing provisions of Subpart 30-2 and 30-3 of the Regents Rules for evaluation of teachers and principals whose APPRs are based, in whole or in part, on State assessments in grades 3-8 ELA and mathematics assessments and State-provided growth scores on Regents examinations. The transition period will end with the 2018-2019 school year.

- Section 30-2.14 relates to evaluations under Education Law § 3012-c and Subpart 30-2 of the Regents Rules and applies to evaluations for the 2015-2016 school year only, as school districts conduct the negotiations necessary to come into compliance with new Education Law § 3012-d. Section 30-3.17 relates to evaluations under Education Law § 3012-d, and applies to evaluations for the 2015-2016 through the 2018-2019 school year.

- During the transition period, transition scores and HEDI ratings will replace the scores and HEDI ratings for teachers and principals whose HEDI scores are based, in whole or in part, on State assessments in grades 3-8 ELA or mathematics (including where State-provided growth scores are used) or on State-provided growth scores on Regents examinations.

- In the case of evaluations conducted pursuant to Education Law § 3012-c and new § 30-2.14, the overall transition scores and ratings will be determined based upon the remaining subcomponents of the annual professional performance review that are not based on the grade 3-8 ELA or mathematics State assessments and/or a State-provided growth score on Regents examinations.

- In the case of evaluations pursuant to Education Law § 3012-d and new § 30-3.17, transition scores and ratings for the student performance category and the overall transition rating will be determined using the scores/ratings in the subcomponents of the student performance category that are not based on the grade 3-8 ELA or mathematics State assessments and/or a State-provided growth score on Regents examinations or, in instances where no scores/ratings in the subcomponents of the student performance category can be generated, a back-up SLO shall be developed by the district/BOCES consistent with guidelines prescribed by the Commissioner using assessments approved by the Department that are not State assessments.

- State provided growth scores will continue to be computed for advisory purposes only and overall HEDI ratings will continue to be provided to teachers and principals based on such growth scores. However, during the transition period, only the transition score and rating will be used for purposes of Education Law §§ 3012-c and 3012-d and Subparts 30-2 and 30-3, and for purposes of employment decisions, including tenure determinations and for purposes of proceedings under Education Law §§ 3020-a and 3020-b and teacher and principal improvement plans.

- However, for purposes of public reporting of aggregate data and disclosure to parents pursuant to subdivision 10 of section 3012-c of the Education Law, the original composite score and rating and the transition composite score and rating must be reported with an explanation of such transition composite score and rating.

4. COSTS:

a. Costs to State government: The amendment provides for a four-year transition period for the implementation of Education Law section 3012-d and does not impose any costs on State government, including the State Education Department, beyond those costs imposed by the statute.

b. Costs to local government: Education Law section 3012-d, as added by Chapter 56 of the Laws of 2015, establishes requirements for the conduct of annual professional performance reviews (APPR) of classroom teachers and building principals employed by school districts and boards of cooperative educational services (BOCES) for the 2015-2016 school year and thereafter. The amendment provides for a four-year transition period for the implementation of Education Law section 3012-d and does not impose any costs on local government, beyond those costs imposed by the statute.

5. LOCAL GOVERNMENT MANDATES:

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

6. PAPERWORK:

The proposed amendment will not increase reporting or recordkeeping requirements beyond existing requirements.

7. DUPLICATION:

The rule does not duplicate existing State or Federal requirements.

8. ALTERNATIVES:

The proposed amendment is necessary to implement the recommendations of the Common Core Task Force which were released on December 10, 2015 and, therefore, no alternatives were considered.

9. FEDERAL STANDARDS:

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

10. COMPLIANCE SCHEDULE:

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

Regulatory Flexibility Analysis

(a) Small businesses:

The proposed amendment implements the recommendations of the Common Core Task Force which recommended that until the new Learning Standards and State assessments are fully phased in, the results from the State assessments (Grades 3-8 English language arts and mathematics) and the use of any State-provided growth model based on these tests or other State assessments shall not have evaluative consequence for teachers or students. The rule does not impose any reporting, recordkeeping or other compliance requirements, and will not have an adverse economic impact, on small business. Because it is evident from the nature of the rule that it does not affect small businesses, no further steps were needed to ascertain that fact and one were taken. Accordingly, a regulatory flexibility analysis for small businesses is not required and one has not been prepared.

(b) Local governments:

1. EFFECT OF RULE:

The rule applies to each of the approximately 695 school districts and 37 boards of cooperative educational services (BOCES) in the State.

2. COMPLIANCE REQUIREMENTS:

In September 2015, Governor Andrew Cuomo formed the Common Core Task Force to undertake a comprehensive review of the current status and use of the Common Core State Standards and assessments in New York and to recommend potential reforms to the system. Following multiple meetings, the Task Force reviewed and discussed information presented at public sessions and submitted through the website, and has made a number of recommendations regarding the implementation of the Common Core Standards.

On December 10, 2015, the Task Force released their report, affirming that New York must have rigorous, high quality education standards to improve the education of all of our students and hold our schools and districts accountable for students' success but recommended that the Common Core standards be thoroughly reviewed and revised consistent as reflected in the report and that the State assessments be amended to reflect such revisions. In addition, the Task Force recommended that until the new system is fully phased in, the results from the grades 3-8 English language arts and mathematics State assessments and the use of any State-provided growth model based on these tests or other State assessments shall not have consequence for teachers or students. Specifically, Recommendation 21 from the Task Force's Final Report ("Report") provides as follows:

"...State-administered standardized ELA and Mathematics assessments for grades three through eight aligned to the Common Core or updated standards shall not have consequences for individual students or teachers. Further, any growth model based on these Common Core tests or other state assessments shall not have consequences and shall only be used on an advisory basis for teachers. The transition phase shall last until the start of the 2019-2020 school year".

Proposed amendment

In an effort to implement the Task Force's recommendation, the proposed amendment makes the following changes:

- Two new sections 30-2.14 and 30-3.17 are added to provide for a four year transition period for annual professional performance reviews (APPRs) while the State completes the transition to higher learning standards through new State assessments aligned to the higher learning standards, and a revised State-provided growth model. During the transition period, the Commissioner will determine transition scores and ratings that will replace the original scores and HEDI ratings computed under the existing provisions of Subpart 30-2 and 30-3 of the Regents Rules for evaluation of teachers and principals whose APPRs are based, in whole or in part, on

State assessments in grades 3-8 ELA and mathematics assessments and State-provided growth scores on Regents examinations. The transition period will end with the 2018-2019 school year.

- Section 30-2.14 relates to evaluations under Education Law § 3012-c and Subpart 30-2 of the Regents Rules and applies to evaluations for the 2015-2016 school year only, as school districts conduct the negotiations necessary to come into compliance with new Education Law § 3012-d. Section 30-3.17 relates to evaluations under Education Law § 3012-d, and applies to evaluations for the 2015-2016 through the 2018-2019 school year.

- During the transition period, transition scores and HEDI ratings will replace the scores and HEDI ratings for teachers and principals whose HEDI scores are based, in whole or in part, on State assessments in grades 3-8 ELA or mathematics (including where State-provided growth scores are used) or on State-provided growth scores on Regents examinations.

- In the case of evaluations conducted pursuant to Education Law § 3012-c and new § 30-2.14, the overall transition scores and ratings will be determined based upon the remaining subcomponents of the annual professional performance review that are not based on the grade 3-8 ELA or mathematics State assessments and/or a State-provided growth score on Regents examinations.

- In the case of evaluations pursuant to Education Law § 3012-d and new § 30-3.17, transition scores and ratings for the student performance category and the overall transition rating will be determined using the scores/ratings in the subcomponents of the student performance category that are not based on the grade 3-8 ELA or mathematics State assessments and/or a State-provided growth score on Regents examinations or, in instances where no scores/ratings in the subcomponents of the student performance category can be generated, a back-up SLO shall be developed by the district/BOCES consistent with guidelines prescribed by the Commissioner using assessments approved by the Department that are not State assessments.

- State provided growth scores will continue to be computed for advisory purposes only and overall HEDI ratings will continue to be provided to teachers and principals based on such growth scores. However, during the transition period, only the transition score and rating will be used for purposes of Education Law §§ 3012-c and 3012-d and Subparts 30-2 and 30-3, and for purposes of employment decisions, including tenure determinations and for purposes of proceedings under Education Law §§ 3020-a and 3020-b and teacher and principal improvement plans.

- However, for purposes of public reporting of aggregate data and disclosure to parents pursuant to subdivision 10 of section 3012-c of the Education Law, the original composite score and rating and the transition composite score and rating must be reported with an explanation of such transition composite score and rating.

3. PROFESSIONAL SERVICES:

The proposed rule does not impose any additional professional services requirements on local governments beyond those imposed by, or inherent in, the statute.

4. COMPLIANCE COSTS:

See the Costs section of the Summary of the Regulatory Impact Statement submitted herewith for an analysis of the costs of the proposed rule to school districts and BOCES.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The rule does not impose any additional technological requirements on school districts or BOCES. Economic feasibility is addressed in the Costs section of the Summary of the Regulatory Impact Statement submitted herewith.

6. MINIMIZING ADVERSE IMPACT:

The rule is necessary to implement the recommendations of the Common Core Task Force. Because Education Law §§ 3012-c and 3012-d apply 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.

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.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

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

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

In September 2015, Governor Andrew Cuomo formed the Common Core Task Force to undertake a comprehensive review of the current status

and use of the Common Core State Standards and assessments in New York and to recommend potential reforms to the system. Following multiple meetings, the Task Force reviewed and discussed information presented at public sessions and submitted through the website, and has made a number of recommendations regarding the implementation of the Common Core Standards.

On December 10, 2015, the Task Force released their report, affirming that New York must have rigorous, high quality education standards to improve the education of all of our students and hold our schools and districts accountable for students' success but recommended that the Common Core standards be thoroughly reviewed and revised consistent as reflected in the report and that the State assessments be amended to reflect such revisions. In addition, the Task Force recommended that until the new system is fully phased in, the results from the grades 3-8 English language arts and mathematics State assessments and the use of any State-provided growth model based on these tests or other State assessments shall not have consequence for teachers or students. Specifically, Recommendation 21 from the Task Force's Final Report ("Report") provides as follows:

"...State-administered standardized ELA and Mathematics assessments for grades three through eight aligned to the Common Core or updated standards shall not have consequences for individual students or teachers. Further, any growth model based on these Common Core tests or other state assessments shall not have consequences and shall only be used on an advisory basis for teachers. The transition phase shall last until the start of the 2019-2020 school year".

Proposed amendment

In an effort to implement the Task Force's recommendation, the proposed amendment makes the following changes:

- Two new sections 30-2.14 and 30-3.17 are added to provide for a four year transition period for annual professional performance reviews (APPRs) while the State completes the transition to higher learning standards through new State assessments aligned to the higher learning standards, and a revised State-provided growth model. During the transition period, the Commissioner will determine transition scores and ratings that will replace the original scores and HEDI ratings computed under the existing provisions of Subpart 30-2 and 30-3 of the Regents Rules for evaluation of teachers and principals whose APPRs are based, in whole or in part, on State assessments in grades 3-8 ELA and mathematics assessments and State-provided growth scores on Regents examinations. The transition period will end with the 2018-2019 school year.

- Section 30-2.14 relates to evaluations under Education Law § 3012-c and Subpart 30-2 of the Regents Rules and applies to evaluations for the 2015-2016 school year only, as school districts conduct the negotiations necessary to come into compliance with new Education Law § 3012-d. Section 30-3.17 relates to evaluations under Education Law § 3012-d, and applies to evaluations for the 2015-2016 through the 2018-2019 school year.

- During the transition period, transition scores and HEDI ratings will replace the scores and HEDI ratings for teachers and principals whose HEDI scores are based, in whole or in part, on State assessments in grades 3-8 ELA or mathematics (including where State-provided growth scores are used) or on State-provided growth scores on Regents examinations.

- In the case of evaluations conducted pursuant to Education Law § 3012-c and new § 30-2.14, the overall transition scores and ratings will be determined based upon the remaining subcomponents of the annual professional performance review that are not based on the grade 3-8 ELA or mathematics State assessments and/or a State-provided growth score on Regents examinations.

- In the case of evaluations pursuant to Education Law § 3012-d and new § 30-3.17, transition scores and ratings for the student performance category and the overall transition rating will be determined using the scores/ratings in the subcomponents of the student performance category that are not based on the grade 3-8 ELA or mathematics State assessments and/or a State-provided growth score on Regents examinations or, in instances where no scores/ratings in the subcomponents of the student performance category can be generated, a back-up SLO shall be developed by the district/BOCES consistent with guidelines prescribed by the Commissioner using assessments approved by the Department that are not State assessments.

- State provided growth scores will continue to be computed for advisory purposes only and overall HEDI ratings will continue to be provided to teachers and principals based on such growth scores. However, during the transition period, only the transition score and rating will be used for purposes of Education Law §§ 3012-c and 3012-d and Subparts 30-2 and 30-3, and for purposes of employment decisions, including tenure determinations and for purposes of proceedings under Education Law §§ 3020-a and 3020-b and teacher and principal improvement plans.

- However, for purposes of public reporting of aggregate data and disclosure to parents pursuant to subdivision 10 of section 3012-c of the

Education Law, the original composite score and rating and the transition composite score and rating must be reported with an explanation of such transition composite score and rating.

3. COSTS:

The proposed amendment will not impose any additional costs beyond those imposed by, or inherent in, the statute.

4. MINIMIZING ADVERSE IMPACT:

The rule is necessary to implement the recommendations of the Common Core Task Force. Because Education Law §§ 3012-c and 3012-d apply 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 implements the recommendations of the Common Core Task Force, formed in September 2015, by Governor Andrew Cuomo to undertake a comprehensive review of the current status and use of the Common Core State Standards and assessments in New York and to recommend potential reforms to the system. Comments on the proposed amendment were also solicited from the Rural Advisory Committee, whose members live and work in rural areas of the State.

Job Impact Statement

The purpose of proposed rule is necessary to implement the recommendations of the Common Core Task Force which were released on December 10, 2015. The Task Force recommended that until the new Learning Standards and State assessments are fully phased in, the results from the State assessments (Grades 3-8 English language arts and mathematics) and the use of any State-provided growth model based on these tests or other State assessments shall not have evaluative consequence for teachers or students. 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.

NOTICE OF ADOPTION

Academic Intervention Services (AIS)

I.D. No. EDU-40-15-00004-A

Filing No. 1093

Filing Date: 2015-12-15

Effective Date: 2015-12-30

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

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

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

Subject: Academic Intervention Services (AIS).

Purpose: To establish modified requirements for AIS during the 2015-2016 school year.

Text or summary was published in the October 7, 2015 issue of the Register, I.D. No. EDU-40-15-00004-EP.

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

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

Initial Review of Rule

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Administration of Vaccinations by Pharmacists, Including Immunizations to Prevent Tetanus, Diphtheria or Pertussis Disease

I.D. No. EDU-40-15-00005-A

Filing No. 1098

Filing Date: 2015-12-15

Effective Date: 2015-12-30

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

Action taken: Amendment of section 63.9 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207 (not subdivided), 6504 (not subdivided), 6507(2)(a), 6527(7), 6801(2), (4), 6802(22) and 6909(7); L. 2015, ch. 46

Subject: Administration of vaccinations by pharmacists, including immunizations to prevent tetanus, diphtheria or pertussis disease.

Purpose: To implement chapter 46 of the Laws of 2015 to authorize pharmacists to administer tetanus, diphtheria or pertussis vaccinations.

Text of final rule: 1. Paragraph (1) of subdivision (b) of section 63.9 of the Regulations of the Commissioner of Education is amended, effective December 30, 2015, as follows:

(b) Immunizations.

(1) Pursuant to section 6801 of the Education Law, a pharmacist with a certificate of administration issued by the department pursuant to paragraph (3) of this subdivision shall be authorized to administer immunization agents prescribed in paragraph (2) of this subdivision to patients therein specified, provided that:

(i) . . .

(ii) with respect to non-patient specific orders:

(a) the immunization is prescribed or ordered by a licensed physician or a certified nurse practitioner with a practice site in the county or adjoining county in which the immunization is administered; [or] and

(b) [if the immunization is administered in a county with a population of 75,000 or less, the immunization shall be prescribed or ordered by a licensed physician or certified nurse practitioner with a practice site in the county in which the immunization is administered or in an adjoining county.] *if the commissioner of health determines that there is an outbreak of disease, or that there is the imminent threat of an outbreak of disease, then the commissioner of health may issue a non-patient specific regimen applicable statewide.*

2. Paragraph (2) of subdivision (b) of section 63.9 of the Regulations of the Commissioner of Education is amended, effective December 30, 2015, as follows:

(2) Authorized immunization agents. A certified pharmacist who meets the requirements of this section shall be authorized to administer to patients 18 years of age or older,[:

(i)] immunizing agents to prevent influenza, pneumococcal, [disease or] *acute herpes zoster*, meningococcal, *tetanus*, *diphtheria* or *pertussis* disease, pursuant to a patient specific order or a non-patient specific order.[: and

(ii) immunizing agents to prevent acute herpes zoster, pursuant to a patient specific order.]

3. Paragraph (4) of subdivision (b) of section 63.9 of the Regulations of the Commissioner of Education is amended, effective December 30, 2015, as follows:

(4) Standards, procedures and reporting requirements for the administration of immunization agents. Each certified pharmacist shall comply with the following requirements when administering an immunization agent pursuant to either a patient specific order or a non-patient specific order and protocol:

(i) . . .

(ii) . . .

(iii) a certified pharmacist shall inform each recipient, or the person legally responsible for the recipient when the patient is incapable of consenting to the immunization, of potential side effects and adverse reactions, orally and in writing, prior to immunization and shall administer the immunization or immunizations according to the most current recommendations by the advisory committee for immunization practices (ACIP), provided, however, that a pharmacist may administer any immunization authorized when specified by a patient specific prescription;

(iv) . . .

(v) . . .

(vi) a certified pharmacist, when administering an immunization in a pharmacy, shall provide for an area that provides for the patient's

privacy, such area shall include a clearly visible posting of the most current "Recommended Adult Immunization Schedule" published by the advisory committee for immunization practices (ACIP) and the certified pharmacist shall provide a copy of the appropriate vaccine information statement to the recipient, or the person legally responsible for the recipient when the patient is incapable of consenting to the immunization, before administering the immunization;

- (vii) . . .
- (viii) . . .
- (ix) . . .
- (x) . . .

(xi) each certified pharmacist shall provide information to recipients on the importance of having a primary health care practitioner, in a form or format developed by the Commissioner of Health[.];

(xii) each certified pharmacist shall, prior to administering the immunization or immunizations, inform the recipient, or the person legally responsible for the recipient when the patient is incapable of consenting to the immunization, of the total cost of the immunization or immunizations, subtracting any health insurance subsidization, if applicable. In the case where the immunization is not covered, the pharmacist shall inform the recipient, or other person legally responsible for the recipient when the patient is incapable of consenting to the immunization, that the immunization may be covered when administered by a primary care physician or health care practitioner; and

(xiii) Reporting of administration of immunizing agent.

(a) For administrations prior to December 27, 2015, when a licensed pharmacist administers an immunizing agent, he or she shall report such administration to the patient's attending primary health care practitioner or practitioners, if any, unless the patient is unable to communicate the identity of his or her primary health care practitioner.

(b) For administrations on or after December 27, 2015, when a licensed pharmacist administers an immunizing agent, he or she shall report such administration by electronic transmission or facsimile to the patient's attending primary health care practitioner or practitioners, if any, unless the patient is unable to communicate the identity of his or her primary health care practitioner, and, to the extent practicable, make himself or herself available to discuss the outcome of such immunization, including any adverse reactions, with the attending primary health care practitioner, or to the statewide immunization registry or the citywide immunization registry, as established pursuant to sections 2168 of the Public Health Law and 11.07 of the New York City Health Code, respectively.

Final rule as compared with last published rule: Nonsubstantive changes were made in section 63.9(b)(4)(xiii)(b).

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

Revised Regulatory Impact Statement

Since the publication of a Notice of Emergency Adoption and Proposed Rule Making in the State Register on October 7, 2015, a nonsubstantial revision was made in order to clarify the text of the proposed regulation as follows:

Clause (b) of subparagraph (xiii) of paragraph (4) of subdivision (b) of section 63.9, was revised to add a citation to section "11.07 of the New York City Health Code" to clarify the requirement that pharmacists administering immunizations shall report such administration to the patient's attending primary health care practitioner or practitioners, or to the statewide immunization registry or the citywide immunization registry, as established pursuant to sections 2168 of the Public Health Law and 11.07 of the New York City Health Code, respectively.

The above nonsubstantial revision does not require any changes to the previously published Regulatory Impact Statement.

Revised Regulatory Flexibility Analysis

Since the publication of a Notice of Emergency Adoption and Proposed Rule Making in the State Register on October 7, 2015, a nonsubstantial revision was made to the proposed regulation as set forth in the Statement Concerning the Regulatory Impact Statement submitted herewith.

The above nonsubstantial revision does not require any changes to the previously published Statement in Lieu of Regulatory Flexibility Analysis for Small Businesses and Local Governments.

Revised Rural Area Flexibility Analysis

Since the publication of a Notice of Emergency Adoption and Proposed Rule Making in the State Register on October 7, 2015, a nonsubstantial revision was made to the proposed regulation as set forth in the Statement Concerning the Regulatory Impact Statement submitted herewith.

The above nonsubstantial revision does not require any changes to the previously published Rural Area Flexibility Analysis.

Revised Job Impact Statement

Since the publication of a Notice of Emergency Adoption and Proposed Rule Making in the State Register on October 7, 2015, a nonsubstantial

revision was made to the proposed regulation as set forth in the Statement Concerning the Regulatory Impact Statement submitted herewith.

The revised proposed amendment is necessary to implement Chapter 46 of the Laws of 2015 relating to the administration of immunizations by certified pharmacists.

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

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2020, which is the 4th or 5th year after the year in which this rule is being adopted. This review period, justification for proposing same, and invitation for public comment thereon, were contained in a RFA, RAFA or JIS.

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

Assessment of Public Comment

Since publication of a Notice of Emergency Adoption and Proposed Rule Making in the October 7, 2015 State Register, the State Education Department received the following comment:

COMMENT:

The New York City Department of Health and Mental Hygiene requested an additional citation for the reporting requirement to the citywide immunization registry, by pharmacists, to reflect section 11.07 of the New York City Health Code.

DEPARTMENT RESPONSE:

The Department concurs with this nonsubstantial change, which is consistent with regulation and practice, and has amended the proposed rule accordingly.

NOTICE OF ADOPTION

Students with Disabilities Diploma Requirements

I.D. No. EDU-40-15-00007-A

Filing No. 1095

Filing Date: 2015-12-15

Effective Date: 2015-12-30

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

Action taken: Amendment of section 100.5(d)(7) of Title 8 NYCRR.

Statutory authority: Education Law, sections 101 (not subdivided), 207 (not subdivided), 208 (not subdivided), 209 (not subdivided), 215 (not subdivided), 305(1), (2), 308 (not subdivided) and 309 (not subdivided)

Subject: Students with Disabilities Diploma Requirements.

Purpose: To extend to students with disabilities the option to graduate with a Local Diploma via an Appeals Process on Regents examination passing scores.

Text or summary was published in the October 7, 2015 issue of the Register, I.D. No. EDU-40-15-00007-P.

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

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

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2020, which is the 4th or 5th year after the year in which this rule is being adopted. This review period, justification for proposing same, and invitation for public comment thereon, were contained in a RFA, RAFA or JIS.

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

Assessment of Public Comment

Since publication of a Notice of Proposed Rule Making in the State Register on October 7, 2015, the State Education Department (SED) received the following comments on the proposed amendment.

1. COMMENT:

Majority of commenters supported proposed amendment. Reasons for support included: proposal strengthens diploma safety net proposal will help students struggling to pass Regents exams obtain a high school diploma within four years; proposal conveys understanding of challenges

many students with disabilities face regarding State assessments that most students with disabilities have cognitive ability to earn a diploma but, due to disability factors, may be challenged in demonstrating their knowledge and skills through standardized Regents exams; proposal will assist in making local diploma available to students with disabilities since there are currently no alternative ways for them to demonstrate competence; reluctantly support while Regents consider better solutions that do not hinge on high-stake tests; proposal affords students chance to move forward and pursue post-secondary educational opportunities and career options in line with their interests and capabilities; students giving all in light of their limitations have earned some flexibility in policy for meeting graduation requirements; proposal is step towards providing students with disabilities an additional opportunity to receive a local diploma; proposal is extension of equality for all students and congruent with existing appeal process for Regents exam scores of 62-64; allowing appeal for scores of 52-54 can be viewed as nondiscrimination and fair equivalent to a general education student appealing a score of 62-64; and students may dropout if they feel they are never going to pass and not worthy of a diploma because of one point on an exam.

DEPARTMENT RESPONSE:

Comments are supportive in nature; no response necessary.

2. COMMENTS:

The education all children receive in New York is “a joke” and proposal will make it worse; students with disabilities should not be required to take Regents exams if they are not getting a Regents diploma; instead of playing with Regents Exam scores as a way of increasing standards for students with disabilities, provide students with free, appropriate education to which they are entitled; schools are no longer able to teach students things they need to know (e.g., how to get a job, keep a job, pay bills, balance a budget, and live independently) and without a local diploma, capable, hard-working individuals will be unable to support themselves and condemned to a life of poverty and dependence on others.

DEPARTMENT RESPONSE:

The Department disagrees amendment will lower education standards for New York students. It is essential that any graduation policy developed by SED ensures high expectations for students with disabilities and that standards for a regular high school diploma are rigorous and represent readiness for employment or postsecondary education. The proposal recognizes particular challenges faced by students with disabilities in passing Regents exams, while representing a rigorous standard indicating the district has appropriately and sufficiently prepared a student for readiness for post-school education or employment. Restoration of a local diploma option is beyond the scope of the current rulemaking.

To graduate with a regular diploma, students with disabilities must be provided meaningful access to participate and progress in general curriculum to assist the student to meet State’s learning standards. Further, it is the schools’ responsibility to prepare students with disabilities for post-school living, learning and working and provide appropriate transition activities for such students, in accordance with their Individualized Education Programs (IEPs), to meet students’ post-secondary goals in the areas of education, training, employment and, as appropriate, independent living.

3. COMMENT:

Concerned that students earn passing grades, not based on knowledge or ability but on compliance (e.g., doing homework- often with significant help, following rules in class and not being a problem) and may not have ability to pass a summative assessment. Prefer tiered graduation platform and bringing back RCTs for students with disabilities to allow them to earn a local diploma. Going back to a local and Regents diploma provides a safety net for students and assures a minimum competency level rather compliance.

DEPARTMENT RESPONSE:

Assessments used to determine if a student with a disability meets graduation requirements must measure student’s achievement of the same learning standards as all students. RCTs are not aligned with Regents coursework and use of these assessments was always intended to be an interim measure of student achievement to provide districts adequate time to revise their instructional programs to provide full access to the general education curriculum. The policy allowing use of RCTs was extended several times and finally repealed after extensive public comment. Restoration of a local diploma option is beyond the scope of the current rulemaking.

4. COMMENT:

Consider allowing five-point range (i.e., score of 50 or higher) for appeal. Allow students with disabilities to appeal English Language Arts (ELA) or Math exam scores between 45-54 if he/she meets the rest of the stipulations.

DEPARTMENT RESPONSE:

Proposed rule, which allows students with disabilities who score within three points of 55 on up to two of the Regents exams required for gradua-

tion, including ELA and mathematics exam, after at least two attempts to be eligible to receive Local Diploma via appeal, is consistent with appeals criteria already in place for students who score 62-64 on two Regents exams. Proposed rule merely expands eligibility for existing appeals process to qualifying students with disabilities.

5. COMMENT:

Disagree with condition that if a student with a disability uses compensatory rule they are ineligible to appeal score of 52-54 on ELA or Math exams. Recommend students be afforded every safety net, compensatory strategy and appeal process available.

DEPARTMENT RESPONSE:

Compensatory option allows students to compensate for a low score on a Regents exam with a high score on another Regents exam. In approving Compensatory Safety Net, the Regents determined a local diploma must represent a rigorous standard indicating the school district has appropriately and sufficiently prepared a student with a disability for post-school education and/or employment. Compensatory option was adopted in support of premise that students with disabilities must demonstrate an appropriate level of knowledge in foundation skills (literacy/ELA and math) which are fundamental to career or postsecondary education or training.

6. COMMENT:

Clarify how many exams a student can appeal and if it is the same as general education appeal process with a maximum of two appeals. Reduce number of required attempts to attain 55 or above from two to one. Multiple attempts causes students and schools to spend time and resources on test preparation instead of learning and mastering new material and may result in students giving up on school.

DEPARTMENT RESPONSE:

Proposal allows a student with a disability to appeal a score of 52-54, after at least two attempts, on up to two of the required Regents examinations for graduation, consistent with the appeals process and criteria already in place for students who score 65+ on three Regents exam and score 62-64 on two Regents exams.

7. COMMENT:

Reduce attendance requirement to 90% as 95% attendance rate is unduly onerous and does not take into account illness or other life circumstances that may prevent students from maintaining 95% in a given year.

DEPARTMENT RESPONSE:

The required attendance rate of at least 95 is consistent with the appeals process and criteria already in place for students who score 65+ on three Regents exams and score 62-64 on two Regents exams and is necessary to ensure that student’s score is due to disability related factors rather than lack of attendance. Proposal merely expands eligibility to this same appeals process to qualifying students with disabilities who score within 3 points below a score of 55 and who meet all other existing conditions for appeal.

8. COMMENT:

Clarify that final average for waived Regents exam may be excluded in calculation for final class average if it will bring that score below a passing grade.

DEPARTMENT RESPONSE:

SED neither requires nor encourages practice of using scores from Regents exams to calculate a student’s final course average. Whether a school uses Regents exam scores in determining final course grades is a local district decision. When developing grading practices and policies, districts should consider extent to which Regents examination scores are used to calculate final course averages and impact it has on students passing that course.

9. COMMENT:

SED should turn suggestion of exploring feasibility of other State assessment option(s) (e.g., use of Project-Based Assessments) into an actual proposal. Proposal regarding other State assessment option(s) will help students earn a high school diploma. Many students with disabilities have challenges in reading/writing and math and these exams can keep them from getting a diploma. For some students, real-world hands-on performance assessments is a much better indicator of attainment and mastery. Support proposal for exploring other options allowing students with disabilities to demonstrate proficiency other than through standardized testing. Support Project-Based Assessment option for students who have difficulty with testing. Standardized testing geared toward average neurotypical student, not challenged or gifted students. The Regents need to realize each student is unique and learns and tests differently. Clarify if Regents will pursue alternative options and still allow for appeal or if proposals are mutually exclusive.

DEPARTMENT RESPONSE:

SED is in the process of exploring feasibility of other State assessment option(s) (e.g., the use of Project-Based Assessments) to ensure students are held to same standards, but are provided more than one means to demonstrate proficiency in same State standards assessed through Regents

exams. These comments will be considered as the Regents continue to discuss broader policy on alternate graduation pathways for all students. The proposal allowing student with a disability to appeal of score of 55 is not mutually exclusive of any future State assessment options adopted by the Regents.

10. COMMENT

Clarify data on 2010 cohort indicating there were only 258 students with disabilities who did not graduate who received a score between 52-54 as students still had the RCT option available.

DEPARTMENT RESPONSE: The 258 students include students who did not have a passing score on the RCT. These 258 students either took Regents exams only or did not pass the RCT. For students in 2010 cohort who turn 21 on or before June 30, there would be no option to take the RCT after the school year ends.

11. COMMENT:

Grandfather students in and continue to put out Algebra Regents for students who were not instructed in the common core.

DEPARTMENT RESPONSE:

Comment is beyond scope of proposed regulations.

12. COMMENT:

Support a wider "safety net" for students with disabilities to obtain a local diploma. Compensatory Option has not been an adequate replacement for Regents Competency Tests (RCTs). However, the proposal is isolated action indicative of disjointed policy decision-making. Address impact of Regents' College and Career Readiness agenda on students with disabilities in a comprehensive, systemic and responsible fashion with coordinated set of proposals. Establish range of comparable alternatives providing multiple pathways to a diploma and adequate Safety Net for students with disabilities, as well as demonstrate attainment of learning standards at commencement level. Examine implications of aspirational benchmarks for students with disabilities, as narrowly defined proxy measures for determining college/career readiness could potentially affect access to post-secondary opportunities for students. Proposal would not be necessary if Regents heeded call of stakeholders for diverse and differentiated assessments that reflect what students should know and be able to do to transition from high school to college/work.

DEPARTMENT RESPONSE:

Compensatory option has provided many students with disabilities the opportunity to graduate with a regular diploma and the rate of graduation of students with disabilities with a regular high school diploma has been steadily increasing. In the 2006 cohort, 46% of students with disabilities graduated with a regular high school diploma; in the 2010 cohort, 53% graduated with a regular diploma. After five years, this rate increased to 57%. The Regents continue to discuss multiple pathways to a diploma for all students and alternative ways to assess students' proficiency toward the State's learning standards for purposes of graduation with a regular diploma.

NOTICE OF ADOPTION

Mathematics Graduation Requirements

I.D. No. EDU-40-15-00008-A

Filing No. 1096

Filing Date: 2015-12-15

Effective Date: 2015-12-30

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

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

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

Subject: Mathematics graduation requirements.

Purpose: To provide flexibility in the transition to Common Core-aligned Regents Examinations in Mathematics by allowing, at the discretion of the applicable school district, students receiving Algebra II (Common Core) instruction to take the Regents Examination in Algebra 2/Trigonometry aligned to the 2005 Learning Standards in addition to the Regents Examination in Algebra II (Common Core), and meet the mathematics requirement for graduation by passing either examination.

Text or summary was published in the October 7, 2015 issue of the Register, I.D. No. EDU-40-15-00008-P.

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

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

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2020, which is the 4th or 5th year after the year in which this rule is being adopted. This review period, justification for proposing same, and invitation for public comment thereon, were contained in a RFA, RAFA or JIS.

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

Assessment of Public Comment

The agency received no public comment.

Department of Environmental Conservation

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Procedures for Modifying or Extinguishing a Conservation Easement Held by the NYSDEC

I.D. No. ENV-52-15-00010-P

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

Proposed Action: Addition of Part 592 to Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 3-0301(2)(m), (v), 49-0301, 49-0303(1), 49-0305(7), 49-0307, 49-0307(2), (2)(a), (3), (3)(a) and (d)

Subject: Procedures for modifying or extinguishing a conservation easement held by the NYSDEC.

Purpose: Establish standards for the DEC to follow when modifying or extinguishing a CE and provide for a formal public review process.

Text of proposed rule: A new 6 NYCRR Part 592 is added to Subchapter D (formerly Subchapter C) of Chapter V, Real Property and Land Acquisition, to read as follows:

6 NYCRR Part 592

Procedure for the modification or extinguishment of a conservation easement held by the New York State Department of Environmental Conservation (Statutory authority: Environmental Conservation Law sections 3-0301,49-0305 and 49-0307).

Section 592.1 Purpose and applicability

(a) The purpose of this Part is to set forth in regulation a procedure to be followed by the department when modifying or extinguishing a DEC conservation easement, as that term is defined in section 592.2(c) below.

(b) This Part will not apply to conservation easements which are owned or held by not-for-profit conservation organizations or public bodies other than the department.

Section 592.2 Definitions

(a) "Commissioner" means the Commissioner of the New York State Department of Environmental Conservation, or the Commissioner's designated agent.

(b) "Department" means the New York State Department of Environmental Conservation.

(c) "DEC conservation easement" means an easement, covenant, restriction or other interest in real property which is owned and held by the People of the State of New York under the jurisdiction of the department, which limits or restricts development, management or use of such real property for the purpose of preserving or maintaining the scenic, open, historic, archaeological, architectural, or natural condition, character, significance or amenities of the real property in a manner which provides for the maintenance, enhancement and improvement of recreational opportunities, tourism, community attractiveness, balanced economic growth and the quality of life in all areas of the state.

(d) "ECL" means the New York State Environmental Conservation Law.

(e) "Environmental Notice Bulletin" or "ENB" means the weekly publication of the department that is published pursuant to section 3-0306 of the Environmental Conservation Law, and accessible on the department's website.

(f) "Grantee" means the department, as owner and holder of a DEC conservation easement.

(g) "Grantor" means the person or entity which is the owner of the underlying fee lands subject to the DEC conservation easement at the time

of the grant of the DEC conservation easement or, as applicable, the grantor's respective successors, heirs and assigns.

(h) "Modification" means a change, addition, deletion, correction or amendment to a DEC conservation easement.

(i) "Property" means the underlying fee lands subject to the DEC conservation easement.

(j) "Purpose(s)" means the conservation objectives and goals set forth in the express language of a DEC conservation easement, or in the absence of such express language, as provided in ECL section 49-0303(1).

(k) "Third party enforcement right" means a right which may be granted in a DEC conservation easement which empowers a public body or a not-for-profit conservation organization which is not a holder of the DEC conservation easement to enforce any of the terms of the DEC conservation easement.

Section 592.3 Standards.

(a) The standards for the modification of a DEC conservation easement include:

1. A modification of a DEC conservation easement, other than a modification to the stated purpose(s) as set forth in a DEC conservation easement, must not alter, and must be consistent with, the stated purpose(s) of the DEC conservation easement; and

2. A modification of a DEC conservation easement must not affect the perpetual nature of the DEC conservation easement; and

3. The modification must comply with all other existing policies, laws or regulations, including the specific requirements of the provisions of ECL section 49-0307, in effect at the time of the modification; and

4. The proposed modification of a DEC conservation easement shall not result in any net loss of benefits to the state, as determined by the department in its sole discretion, including: consideration of any change in the level of public recreational opportunities or any change to the limitations or restrictions on the development, management or use of the property, or any other real property owned by or under the control of the grantor, for the purpose of preserving or maintaining the scenic, open, historic, archaeological, architectural, or natural condition, character, significance or amenities of the area where the property is located in a manner consistent with the public policy and purpose set forth in ECL section 49-0301.

(b) The standard for the modification of the purpose(s) or the extinguishment of a DEC conservation easement shall require a finding by the department that the DEC conservation easement can no longer substantially accomplish its original purpose(s) or any of the purposes set forth in the ECL section 49-0301.

Section 592.4 Procedures

The Department must comply with the following procedures for the modification or the extinguishment of a DEC conservation easement.

(a) Written notice to grantor and entities entitled to third party enforcement rights. The department must provide written notice of the proposed modification or extinguishment of a DEC conservation easement to the grantor and entities designated in the DEC conservation easement as having third party enforcement rights by certified mail, return receipt requested to the address on file with the department for the respective entities; and

(b) Public notice, comment period, non-adjudicatory hearing.

1. Public Notice.

i. For modification only of DEC conservation easement. The department must publish public notice in the ENB of the department's intent to modify a DEC conservation easement including a general summary of the proposed modification(s) and the opportunity for the public to submit written public comments to the department. The public comment period shall begin on the date the notice of the public comment period appears in the ENB; or

ii. For modification to the purpose(s) or extinguishment of DEC conservation easement. The department must publish public notice of its intent to modify the purpose(s) or extinguish a DEC conservation easement in the State Register, the ENB and in a newspaper having a general circulation in the county where the property is located. The public notice shall include the facts supporting a finding that the DEC conservation easement can no longer substantially accomplish its original purpose(s) or any of the purposes set forth in the ECL section 49-0301 and the date of a non-adjudicatory hearing to be held at least thirty (30) calendar days after the date of the publication.

2. Public comment period. The department must provide for a public comment period for thirty (30) calendar days to accept public comments related to the proposed modification to, or extinguishment of, a DEC conservation easement. The department may provide for the receipt of public comment through the use of meetings, exchanges of written material, or other means during the public comment period.

3. Non-adjudicatory public hearing. For proposals which include the modification of the purpose(s) or extinguishment of a DEC conservation easement, the department must conduct a non-adjudicatory public hear-

ing to be held during the public comment period to provide the public with an opportunity to be heard on the modification of the purpose(s) or the extinguishment of a DEC conservation easement.

(c) Commissioner's determination only for modification to the purpose(s) or extinguishment of DEC conservation easement.

1. For any proposed modification to the purpose(s) or the extinguishment of a DEC conservation easement, the Commissioner must make a written determination that the conservation easement can no longer substantially accomplish its original purposes. The proposed modification to the purpose(s) or extinguishment of a DEC conservation easement following closure of the public comment period, shall consider the following reasons in support of the determination: (1) why the DEC conservation easement can no longer substantially accomplish its original purpose(s) or any of the purposes set forth in ECL section 49-0301, and determine if it should therefore be extinguished or modified; (2) if modified, the proposed modification to the purpose(s) set forth in the DEC conservation easement will comply with the requirements of section 592.3 of this Part and be consistent with the policies and objectives set forth in ECL section 49-0301; and (3) if a DEC conservation easement is modified or extinguished pursuant to this Part, it shall be set forth in an instrument which complies with the requirements of ECL section 49-0305.

2. The Commissioner must publish the determination and a summary of the determination in the ENB. The recording of a deed or other conveyance document in the county clerk's office where the DEC conservation easement is located must be filed no earlier than one hundred twenty (120) calendar days after the notice of the Commissioner's determination appears in the ENB.

Text of proposed rule and any required statements and analyses may be obtained from: James Sessions, NYS DEC, 625 Broadway, Albany, NY 12233, (518) 473-9518, email: jim.sessions@dec.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.

Additional matter required by statute: A Short EAF has been prepared in compliance with Article 8 of the ECL.

Regulatory Impact Statement

1. Statutory authority:

Environmental Conservation Law (ECL), Article 49, Title 3, is the State's conservation easement statute. Section 49-0305(7) of the Environmental Conservation Law provides, in part, the Department with the authority to promulgate regulations to establish standards and procedures for conservation easements created pursuant to this statute. Conservation easements conveyed prior to the enactment of Article 49 of the ECL are referred to as common law easements. Laws and case law related to the real property conveyances govern the conveyance, modification and extinguishment of a common law easement.

ECL section 49-0301 sets forth the State's policy and the purpose of the statute authorizing the use of conservation easements in the State. This purpose of the statute is to conserve, preserve and protect its environmental assets and natural and man-made resources, the preservation of open spaces, agricultural and forest lands, lands which are significant because of their scenic, natural beauty, wetland, shoreline, geological or ecological character, or their historical, archaeological, architectural or cultural amenities. This preservation is declared to be fundamental to the maintenance, enhancement and improvement of recreational opportunities, tourism, community attractiveness, balanced economic growth and the quality of life in all areas of the State.

Section 49-0303(1) of the Environmental Conservation Law provides, in part, that a "conservation easement" is an easement, covenant, restriction or other interest in real property, created pursuant to the provision in Title 3 of Article 49 of the ECL, which limits or restricts development, management or use of such real property for the purpose of preserving or maintaining the scenic, open, historic, archaeological, architectural, or natural condition, character, significance or amenities of the real property in a manner consistent with the public policy and purpose set forth in section 49-0301. Generally, common law conservation easements were also established for similar purposes.

ECL section 49-0307 provides the procedures for modifying or extinguishing conservation easements. ECL sections 49-0307(2) and 49-0307(3) provide, in part, for various procedures which a public body may choose from when modifying or extinguishing a conservation easement. Some of the options in these provisions rely on the procedures already established under law, such as New York State Real Property Actions and Proceedings law, Public Service law or Eminent Domain Procedure law. In addition to these provisions, a public body may modify or extinguish a conservation easement pursuant to ECL sections 49-0307(2)(a) and 49-0307(3)(a) in accordance with any written procedures provided in the instrument creating the conservation easement. ECL section 49-0307(3)(d) establishes a procedure which the State may follow when modifying or

extinguishing a conservation easement if the conservation easement can no longer substantially accomplish its original purposes or any of the purposes set forth in ECL section 49-0301. This procedure includes specific notification requirements and a non-adjudicatory public hearing to provide the public with an opportunity to be heard.

DEC is also empowered in ECL section 3-0301(2)(v) to administer and manage the real property under the jurisdiction of the Department for the purpose of preserving, protecting and enhancing the natural resource value for which the property was acquired or to which it is dedicated, employing all appropriate management activities. In conjunction with this broad authority, ECL section 3-0301(2)(m) empowers DEC to “[a]dopt such rules, regulations and procedures as may be necessary, convenient or desirable to effectuate the purposes of [the ECL].”

2. Legislative objectives:

This regulation is compatible with the public policy objectives the Legislature sought to advance when enacting the statutory authority by providing standards and procedures which the Department will implement when modifying or extinguishing DEC conservation easements pursuant to the authority set forth in ECL section 49-0307 and pursuant to the general powers granted to the Commissioner in ECL section 3-0301.

3. Needs and benefits:

Conservation easements are legal agreements between a landowner (grantor) and an organization (grantee), such as a government entity or non-profit organization that restricts future activities on the land to protect its conservation values. Essentially, both under common law and ECL article 49, a conservation easement is in part a contract and in part a real estate interest in land. A conservation easement is negotiated by the parties based upon information and known science and technology available to the parties at the time of the grant. The parties agree to a division of the rights associated with real property ownership by identifying restricted uses of the property, rights reserved by the landowner, or rights, often referred to as “affirmative rights,” which are granted to the grantee to use the property for its own purposes, such as the right to provide public recreational opportunities on the property. The grantee also has the right and obligation to monitor the property and enforce the conservation easement.

Title 3 of Article 49 of the ECL is the statutory authority recognizing the validity of conservation easements in New York State. It limits the holder of a conservation easement to public bodies and not-for-profit conservation organizations. Additionally, it also limits the purpose of a conservation easement to specified conservation purposes which benefits the public. Generally, the identified statutory purposes include: preserving natural, scenic or open-space values of real property; protecting natural resources; maintaining or enhancing the quality of the air or water quality; preserving architectural, archaeological or cultural aspects of real property; and assuring the property’s availability for agricultural, forest, recreational or open space use.

Furthermore, ECL article 49 established certain defenses against a challenge to the validity of a conservation easement created pursuant to ECL article 49 that was not available under common law. Finally, ECL section 49-0307 provides the parties to a conservation easement with procedures to follow when modifying or extinguishing a conservation easement. Several of the options cited in ECL section 49-0307 which are available to the parties when seeking to modify or extinguish a conservation easement rely on other laws which include some form of public participation such as Eminent Domain Procedure Law, Real Property Actions and Proceedings Law or Public Service Law. However, two other provisions which the Department may rely on, specifically ECL sections 49-0307(2)(a) and 49-0307(3)(a), authorize the modification or extinguishment of a conservation easement “as provided in the instrument creating the easement”, but do not specifically mandate a process to provide the public with an opportunity to participate in the modification or extinguishment of a conservation easement. Since these provisions do not include a specific procedure for public participation, this regulation is necessary to provide standards and a procedure for the department to utilize when modifying or extinguishing a DEC conservation easement.

The idea that a landowner can convey certain rights on his or her land while retaining other rights is rooted in hundreds of years of English common law, on which the U.S. legal system is based. Conservation easements, however, are a more recent creation. As early as 1963, the Department acquired its first conservation easement. At present, the Department holds nearly 900,000 acres of land encumbered by conservation easements including both common law conservation easements and those created pursuant to ECL article 49 (“DEC conservation easements”). A majority of the acreage subject to DEC conservation easements are known as “working forest conservation easements” located in the Adirondack and Tug Hill regions. These types of conservation easements evolved over time to provide for economic utilization of the land as well as permanent conservation. A working forest conservation easement protects not only the open space values of the property, such as wildlife habitat, water qual-

ity, and recreational access, but also the economic and community benefits that arise from the continued use of the land for forest production of goods and services. The Department has also acquired approximately 50,000 acres of conservation easements which restrict development of the respective properties, and 1,000 acres of conservation easements which promote the protection of scenic views and vistas. Many of these conservation easements, known as scenic easements, are agreements which restrict the development of small parcels of land located along the entrance or exit ramps to State-owned highways. Due to the large volume of acreage subject to DEC conservation easements, and the ongoing need to address changing conditions, natural disasters, new information not available when the conservation easement was drafted; development of new technologies; or new understandings in conservation science, the Department is anticipating an increase to the number of requests to modify DEC conservation easements in the future.

The modification of an existing DEC conservation easement may lead to greater opportunities for public recreational activities that will also serve to promote the original purposes of the DEC conservation easement. Since ECL article 49 was first enacted in 1985, the Department has modified four¹ DEC conservation easements in accordance with the authority set forth in ECL section 49-0307. Two of these modifications were completed primarily to provide the public with additional recreational opportunities, such as the establishment of additional campsites on the property or the right to provide the public with access to the property to ice fish. The Department has also modified two other DEC conservation easements to further limit the permissible uses of the property by the landowner such as requiring the use of sustainable forestry practices on the property or to restrict the subdivision of the property from four (4) lots to only two (2) lots.

The Department has never, and is not proposing to extinguish a DEC conservation easement, or to modify the purposes of a DEC conservation easement, however, in the event that extenuating circumstances in the future may cause the Department to modify the purposes of, or extinguish, a DEC conservation easement, this regulation will establish standards and procedures for public notification and a non-adjudicatory public hearing in order to provide the public with an opportunity to be heard.

This new regulation is necessary to provide the public with specific standards, notification and a process for public participation which the Department will utilize when seeking to modify or extinguish a DEC conservation easement in accordance with common law principles or the authority provided in ECL sections 49-0307(2)(a), 49-0307(3)(a) or 49-0307(3)(d). The public will benefit from this regulation since it provides the public with notification and an opportunity to participate in the process and will result in an improved conservation easement program.

The Department has conducted public outreach to gain insight from those who own land encumbered by a DEC conservation easement. A letter was distributed to affected parties explaining the intent of the proposed regulation. The distribution list included landowners whose land is encumbered by a DEC conservation easement, timber industry representatives, utility companies, non-profit organizations and environmental groups. In response to this outreach, only one inquiry was received from an affected party, but the inquiry requested the status of the proposed rulemaking and did not contain any substantive comments.

4. Costs:

There will be no costs projected for State or local governments or to private regulated persons as a result of this rulemaking, except for the nominal costs to the Department associated with the requirements for notification.

5. Local government mandate:

This regulation will not impose any program, service, duty or responsibility upon any county, city, town, village, school district or fire district other than the recording of the instrument modifying or extinguishing a DEC conservation in the county clerk’s office in the county where the property subject to the conservation easement is located.

6. Paperwork:

The proposed regulation will not impose any reporting requirements or other paperwork on any private or public entity.

7. Duplication:

There are no relevant rules, statutes or other legal requirements of the State or Federal government that duplicate, overlap or conflict with this regulation.

8. Alternatives:

The alternative of no action was considered, but will not accomplish the purpose of this regulation to provide for standards, notification and public involvement of the process to modify or extinguish a DEC conservation easement. If the no action alternative is selected, DEC conservation easements may be amended in a manner consistent with existing State law, and public participation and involvement would be limited to those opportunities already available to the public in relation to the Department’s land acquisition process.

9. Federal standard:

There is no federal standard for the modification or extinguishment of a State-owned conservation easement.

10. Compliance schedule:

The proposed regulation would be effective upon Notice of Adoption in the State Register. There is no time period required for regulated persons to achieve compliance with this regulation. The Department will educate the public about the regulation through information posted on the Department's web site.

¹ This number is based upon a review of department records by staff from the department's Division of Lands and Forests

Regulatory Flexibility Analysis

A Regulatory Flexibility Analysis for Small Businesses and Local Governments is not submitted with these regulations because the proposal will not impose any reporting, recordkeeping or other compliance requirements on small businesses or local governments. Since there are no identified cost impacts for compliance with the proposed regulations on the part of small businesses and local governments, they will bear no economic impact as a result of this proposal. The purpose of the proposed regulation is to establish standards, methods and procedures for the Department to follow when modifying or extinguishing a conservation easement held by the Department as well as providing for a public review process.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis is not submitted with this proposal because the proposal will not impose any reporting, recordkeeping or other compliance requirements on rural areas. The purpose of the proposed regulation is to establish standards, methods and procedures for the Department to follow when modifying or extinguishing a conservation easement held by the Department as well as providing for a public review process.

Job Impact Statement

A Job Impact Statement is not submitted with this notice since the proposed regulation is not expected to create an adverse impact on jobs and employment opportunities in New York State. The purpose of the proposed regulation is to establish standards, methods and procedures for the Department to follow when modifying or extinguishing a conservation easement held by the Department as well as provide for a public review process.

Department of Financial Services

ERRATUM

A Notice of Proposed Rule Making, I.D. No. DFS-50-15-00004-P, pertaining to Regulating Transaction Monitoring and Filtering Systems Maintained by Banks, Check Cashers and Money Transmitters, published in the December 16, 2015 issue of the *State Register* contained an incorrect purpose. Following is the correct purpose:

Purpose: To ensure that the financial system is not used for purposes of money laundering or other suspicious activities, terrorist financing, or sanctions violations.

**EMERGENCY
RULE MAKING****Assessment of Entities Regulated by the Banking Division of the Department of Financial Services**

I.D. No. DFS-52-15-00011-E

Filing No. 1085

Filing Date: 2015-12-14

Effective Date: 2015-12-16

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

Text of emergency rule: Part 501 Superintendent's Regulations

(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 March 12, 2016.

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 assess-

ment 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.

New York State Gaming Commission

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Lottery Subscription Program

I.D. No. SGC-52-15-00005-P

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

Proposed Action: This rule is proposed pursuant to 5-Year Review of Existing Rules. Amendment of sections 5005.1(b), (c), 5005.2(b), 5005.3(b), 5005.4, 5005.5, 5005.6, 5005.7 and 5005.8 of Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, section 104; Tax Law, sections 1601, 1604, 1612 and 1617

Subject: Lottery subscription program.

Purpose: To better serve customers needs and preferences.

Text of proposed rule: Subdivisions (b) and (c) of section 5005.1 are amended to read as follows:

§ 5005.1. Subscription program.

(b) Entry into a subscription program will require the completion and submission of either a paper or electronic version of

- (1) a subscription application form; or
- (2) a subscription renewal [application] form.

The subscriber may [be required to] provide the subscriber's social security number on the respective application form so that prizes requiring Federal reporting or withholding may be automatically sent to the winning subscriber. An application for a group subscription [may] must contain the names[,] and addresses[,] and social security numbers] of each group member.

(c) By providing the social security number, the subscriber is authorizing the commission to retain and use the number for the purpose of tax reporting and any other lawful purpose of the commission. No group may exceed 10 members if such group's application was made by mail.

Subdivisions (b), (e), (g), (h), (i), (k), (l), (n), (p) and (q) of section 5005.2 are amended to read as follows:

§ 5005.2. Subscription definitions.

(b) Confirmation [letter] means the paper or electronic correspondence sent to a subscriber from the commission confirming the game(s), game characters for each game panel played, the type of plan, the effective date and the expiration date.

(e) Game numbers means the numbers selected for each of the game panels played on an application [form].

(g) Group means two or more individuals sharing a game subscription whose [individual] combined qualifications meet that of an individual subscriber.

(h) Group representative means the individual designated on a group application [form] as the person selected by the group subscribers to act on behalf of the group in handling any communications and prize payments related to the subscription.

(i) Plan means the game(s) played, the number of consecutive [games] drawings played and the duration of the subscription as determined by the number of weeks selected by the subscriber.

(k) Subscriber means either the individual or the group identified on an application [form] as the person(s) entitled to [the winning] any prize the individual or group may win.

(l) Subscriber identifying information means the name, address, subscription number and, taxpayer identification number (if provided) of the subscriber or each member of a group.

(n) Subscription file means a file maintained by the commission or the commission's contractors containing subscription information and used in the [prize] determination [process] of sales and prizes.

(p) Valid Subscription Entry means one that includes the following: Subscriber identifying information (as defined herein), [selected payment option,] game characters entered on the appropriate commission or contractor computer [file] system that is the official record of subscription entry.

(q) Valid Group Subscription Entry means one that includes the following: Subscriber identifying information for each member of the group, [selected payment option,] game numbers entered on the appropriate commission or contractor computer [file] system, which is the official record of group subscription entry.

Subdivision (b) of section 5005.3 is amended to read as follows:

§ 5005.3. Subscription costs.

(b) A subscription may be for one[, two, or three] or more game panels[, or a greater number of game panels] as may be determined by the commission.

Subdivisions (a) and (b) of section 5005.4 are amended to read as follows:

§ 5005.4. Subscription application requirements.

(a) To be accepted for entry without changes, a subscription application must meet the following requirements:

(1) Each game panel must contain the required amount of unduplicated game numbers selected from the numbers available for the game that the applicant indicates on his or her application [form]. If a game panel submitted by an applicant contains no game numbers or fewer than the required amount of game numbers, the Quick Pick option may be used to randomly select game numbers. If an applicant submits an application with more than the required amount of game numbers circled in a game panel, the commission may select the required number of game numbers consecutively from among such selected numbers. All other numbers may be disregarded.

(b) An application may be rejected for any of the following reasons:

- (1) If the application is illegible in whole or in part;
- (2) If the application includes a form of payment that is not acceptable to the commission;
- (3) If the applicant is under the age of 18; or
- (4) If the applicant does not submit a New York State address for a subscription submitted through the U.S. Mail.

Subdivisions (a) and (b) of section 5005.5 is amended to read as follows:

§ 5005.5. Valid subscription entry.

To be a valid entry, a subscription must meet the following requirements:

(a) To be eligible to win a prize, an application [form], including the subscriber identification information, [lump sum option (if selected),] and the game numbers must be entered into the Division's subscription file to create the official record of subscription entry.

(b) A confirmation [letter] (paper or electronic) shall be issued by the commission to the subscriber confirming a valid subscription entry has been received.

Subdivisions (a), (b), (c), (d), and (e) of section 5005.6 are amended to read as follows:

§ 5005.6. Payment of subscription prizes.

(a) Prizes that [exceed \$1 and] are less than the threshold withholding amount for Federal tax reporting will be [remitted to an] placed into the player account created prior to purchase of the player's first subscription. Such prizes may be used to purchase additional subscriptions or the player may request a cash-out and receive payment for any unpaid prizes. Payment will be made to the individual subscriber or group representative whose name appears on the application.

(b) Prizes that meet or exceed the threshold amount for Federal withholding for an individual will be remitted to the individual subscriber whose name appears on the application [form] minus the required withholding amount.

(c) Prizes that are greater than \$1 will be remitted to an individual subscriber whose name appears on the application form. Prizes equal to or less than \$1 will be credited to the subscriber's account to reduce the cost of subscription renewal, or in the event the subscriber chooses not to renew

such subscriber's subscription, the prize winning(s) in the account will be remitted to the subscriber.

(d) For payment of a prize that does not meet the threshold amount for Federal tax reporting to a group subscriber, payment will be made in one payment in the name of the group and the group representative as indicated on the application form, and remitted to the group representative.]

([e]/c) For payment of a prize that meets or exceeds the threshold amount for Federal withholding to a group subscriber, a payment representing [an equal] *the designated* share of the prize will be remitted to each individual member of the group. If the subscription or renewal application does not show the taxpayer identification number (social security number or Federal employer identification number) of each group member, the division will withhold appropriate income taxes in accordance with the applicable back-up withholding rules.

Subdivisions (c) section 5005.7 are amended to read as follows:

§ 5005.7. Subscription disputes.

(c) If there is a discrepancy between the information set forth on an application [form] and the information set forth in a confirmation letter, the subscriber may ask the commission, by written or electronic communication, to resolve the discrepancy. After such a report is received by the commission, the commission shall resolve the discrepancy as soon as possible and issue a revised confirmation letter. Resolution may include, but is not limited to, cancellation of the subscription. No change in the subscription shall be effective until a revised confirmation letter is issued. No request to resolve a discrepancy shall be accepted after the effective date in the confirmation letter issued.

Subdivisions (a) and (b) of section 5005.8 are amended to read as follows:

§ 5005.8. Subscription miscellaneous.

(a) [Furthermore, the] *The* commission, pursuant to the commission's statutory authority, may from time to time add games to the commission's subscription program [(including but not limited to Mega-Millions)].

(b) A subscription renewal must be processed [at least 12 business days] prior to the expiration date of a current subscription in order to avoid a lapse in the subscription. A renewal application [form] containing current subscription number, games, game numbers, plan, effective date and expiration date will be sent to the subscriber either electronically or by mail. The commission will make reasonable efforts to process renewal applications to assure no interruptions; however, the commission shall not be responsible for an interruption if a renewal application is not processed in sufficient time.

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

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

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

Five-Year Review of Existing Rules An assessment of public comments is not attached because no comments were received. Not applicable.

Regulatory Impact Statement

1. Statutory authority: Pursuant to the authority conferred in New York State Tax Law Sections 1601, 1604, 1612, and Racing, Pari-Mutuel Wagering and Breeding Law Section 104, the following amendments shall take effect upon publication in the State Register. Section 1601 of the Tax Law states the purpose of Article 34 of the Tax Law is to carry out the constitutional mandate to establish a lottery operated by the State. Section 1604 of the Tax Law provides for the Lottery's authority to promulgate rules and regulations governing the Lottery. Subdivision 19 of Section 104 of the Racing, Pari-Mutuel Wagering and Breeding Law authorizes the Gaming Commission to promulgate rules and regulations necessary to carry out its responsibilities.

2. Legislative objectives: The Lottery's purpose is to generate revenue for the support of education in the State through the operation of Lottery games. Amendment of these regulations forwards such purpose by better reflecting player preferences and updating the regulations to reflect use of electronic mediums.

3. Needs and benefits: The Division of Lottery offers a subscription program, which permits a customer to play the same number selections for a period of consecutive drawings over a set period. The proposed revision to the regulations will better serve customer needs and preferences and reflect the use of electronic technology. The revisions include: paper or electronic applications; eliminate the requirement that a group application contain the names, addresses and social security numbers of each group member; make 10-member maximum group size apply only to mail applications; modify definition of group to mean two or more individuals

whose combined qualifications meet that of an individual subscriber; make requirement of NYS address applicable to applications sent by postal mail; make subscription prizes that are less than the threshold amount for Federal tax reporting payable to a credit account, which may be used to purchase additional wagers or may be cashed out; eliminate 12-day-lead time for renewals; and various technical changes.

4. Costs:

a. Costs to regulated parties for the implementation and continuing compliance with the rule: There are no costs to stakeholders.

b. Costs to the agency, the State, and local governments for the implementation and continuation of the rule: No additional operating costs are anticipated, since funds originally appropriated for the expenses of operating the existing subscription program are expected to be sufficient to support these amendments.

c. Sources of cost evaluations: The foregoing cost evaluations are based on the New York State Lottery's experience in operating State Lottery games for more than 40 years.

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

6. Paperwork: There are no changes in paperwork requirements.

7. Duplication: There are no relevant State programs or regulations which duplicate, overlap or conflict with the proposed amendment.

8. Alternatives: The alternative to amending the subscription regulations is to continue the currently effective subscription program regulations and prevent the Lottery from providing greater convenience to its players and updating the regulations to reflect use of electronic mediums.

9. Federal standards: The proposed amendment does not exceed any minimum standards imposed by the Federal government.

10. Compliance schedule: The proposed amendment will be effective upon publication of a Notice of Adoption in the New York State Register.

Regulatory Flexibility Analysis

A rural area flexibility analysis is not required for this proposal since it will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on rural areas. This proposal amends the subscription regulations in the interest of customer convenience and preferences; and to recognize electronic technology.

Rural Area Flexibility Analysis

A regulatory flexibility analysis is not required for this proposal since it will not impose any adverse economic impact or reporting, record keeping or other compliance requirements on small businesses or local governments. This proposal amends the subscription regulations in the interest of customer convenience and preferences; and to recognize electronic technology.

Job Impact Statement

A job impact statement is not submitted because this proposed rule will have no adverse impact on jobs or employment opportunities. This proposal amends the subscription regulations in the interest of customer convenience and preferences; and to recognize electronic technology.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Manner in Which Prize Payments Are Made

I.D. No. SGC-52-15-00006-P

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

Proposed Action: This rule is proposed pursuant to 5-Year Review of Existing Rules. Amendment of section 5002.5 of Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, section 104; Tax Law, sections 1601, 1604, 1612 and 1617

Subject: Manner in which prize payments are made.

Purpose: To better reflect customer and retailer preferences and the administrative needs of the Commission.

Text of proposed rule: Section 5002.5 is amended to read as follows:

§ 5002.5. Manner of payment.

(a) [Cash payment.]

[(1) A prize payable on a winning instant game ticket having a value of \$25 or less may be obtained in cash from the lottery sales agent who sold the ticket.]

[(2) A prize payable on a winning instant game ticket having a value of \$100 may be obtained in cash from any lottery sales agent.]

[(3) A prize payable on a winning computerized game ticket having a

value of up to and including \$600 may be obtained in cash from any lottery sales agent participating in the computer network from which such ticket was sold.]

[(b) Check payment.]

[(1) Any prize over \$600 shall be payable only by check.]

[(2)] Any prize may be claimed by mailing a completed prize claim form to the commission at the address announced by the commission for such purpose. [Any prize paid by mail shall be payable only by check.]

(b) [(3)] Any prize paid at an office of the commission, or by an agent designated by the commission to pay prizes of more than \$600 each on behalf of the commission, shall be [payable only] paid by check or by any alternative method of payment determined by the commission (such as a commission-issued debit card).

(c) Any prize of \$600 or less may be claimed at any lottery retailer location and the prize shall be paid in cash or by any alternative method of payment determined by the commission (such as a commission-issued debit card). Any prize of more than \$600 must be claimed directly from the commission or an agent designated by the commission, pursuant to subdivisions (a) or (b) of this Part.

(d) [(4)] Any [lotto subscription] prize won by a subscriber through a subscription pursuant to Part 5005 of this Chapter shall be payable [only by check] as follows:

(1) by check or alternative method of payment determined by the commission (such as a commission-issued debit card), if the prize is more than \$600; or

(2) the prize amount shall be made available in the subscriber's player account, if the prize is \$600 or less.

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

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

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

Five-Year Review of Existing Rules An assessment of public comments is not attached because no comments were received. Not applicable.

Regulatory Impact Statement

1. Statutory authority: Pursuant to the authority conferred in New York State Tax Law Sections 1601, 1604, 1612, and Racing, Pari-Mutuel Wagering and Breeding Law Section 104, the following amendments shall take effect upon publication in the State Register. Section 1601 of the Tax Law states the purpose of Article 34 of the Tax is to carry out the constitutional mandate to establish a lottery operated by the State. Section 1604 of the Tax Law provides for the Lottery's authority to promulgate rules and regulations governing the Lottery. Subdivision 19 of Section 104 of the Racing, Pari-Mutuel Wagering and Breeding Law authorizes the Gaming Commission to promulgate rules and regulations necessary to carry out its responsibilities.

2. Legislative objectives: The Lottery's purpose is to generate revenue for the support of education in the State through the operation of Lottery games. Amendment of these regulations forwards such purpose by offering alternative means of prize payment to players in the interest of player convenience.

3. Needs and benefits: The Division of Lottery proposes amendments to its regulations to add flexibility in the manner in which prize payments are made and to bring consistency to prize payments provisions for instant games and draw games. The amendments would simplify the rules and allow the Commission in the future to offer an alternative means of payment, such as debit card. Prizes won by those participating in the Lottery subscription program would be credited to the subscription account for future subscription purchases or remitted to the subscriber at his or her request, if the prize was less than the threshold withholding amount for Federal tax reporting.

4. Costs:

a. Costs to regulated parties for the implementation and continuing compliance with the rule: There are no costs to stakeholders.

b. Costs to the agency, the State, and local governments for the implementation and continuation of the rule: No additional operating costs are anticipated, since funds originally appropriated for the expenses of operating the Lottery and the manner in which prize payments are made are expected to be sufficient to support these amendments.

c. Sources of cost evaluations: The foregoing cost evaluations are based on the New York State Lottery's experience in operating State Lottery games for more than 40 years.

5. Local government mandates: The proposed amendment does not impose any new programs, services, duties or responsibilities upon any country, city, town, village school district, fire district or other special district.

6. Paperwork: There are no changes in paperwork requirements.

7. Duplication: There are no relevant State programs or regulations which duplicate, overlap or conflict with the proposed amendment.

8. Alternatives: The alternative to amending these prize payment regulations is to continue the current prize payment methods and prevent the Lottery from providing greater convenience to its players and better serve player needs and preferences.

9. Federal standards: The proposed amendment does not exceed any minimum standards imposed by Federal government.

10. Compliance schedule: The proposed amendment will be effective upon publication of a Notice of Adoption in the New York State Register.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not required for this proposal since it will not impose any adverse economic impact or reporting, record keeping or other compliance requirements on small businesses or local governments. This proposal amends prize payment regulations in the interest of customer convenience and preferences.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not required for this proposal since it will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on rural areas. This proposal amends prize payment regulations in the interest of customer convenience and preferences.

Job Impact Statement

A job impact statement is not submitted because this proposed rule will have no adverse impact on jobs or employment opportunities. This proposal amends prize payment regulations in the interest of customer convenience and preferences.

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

Prohibiting the Administration of Stanozolol to Racehorses

I.D. No. SGC-52-15-00007-P

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

Proposed Action: Amendment of sections 4043.15 and 4120.12 of Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 103(2), 104(1), (19), 301(1), (2) and 902(1)

Subject: Prohibiting the administration of stanozolol to racehorses.

Purpose: To preserve the safety and integrity of pari-mutuel racing while generating reasonable revenue for the support of government.

Text of proposed rule: Section 4043.15 of 9 NYCRR would be amended as follows:

§ 4043.15. Anabolic steroids.

(a) Anabolic steroids shall not be administered except [that the] as permitted by subdivision (d) of this section. A violation of this section may be established by a finding by the laboratory conducting tests for the commission that an anabolic steroid was present in a blood sample taken from such horse, except for the following substances [may be administered during permitted time frames and] at concentrations that [on race day] are less than these thresholds:

* * *

[(3) Stanozolol (Winstrol): All horses may have less than 100 pg/ml in plasma.]

[(4)] (3) Testosterone:

(i) Female horses and geldings may have less than 100 pg/ml in plasma; and

(ii) Intact male horses may have less than 2,000 pg/ml in plasma.

[(5)] (4) In addition, no anabolic steroid shall be administered by injection into a joint at any time.

* * *

(d) Any horse to which [a permissible] an anabolic steroid that is listed in subdivision (a) of this section has been administered in order to assist in the recovery from an illness or injury may be placed on the veterinarian's list in order to monitor the concentration of the drug. Once the concentration is below the designated plasma threshold the horse is eligible to be removed from the list.

* * *

Section 4120.12 of 9 NYCRR would be amended as follows:

§ 4120.12. Anabolic steroids.

(a) Anabolic steroids shall not be administered except [that the] as permitted by subdivision (d) of this section. A violation of this section may be established by a finding by the laboratory conducting tests for the com-

mission that an anabolic steroid was present in a blood sample taken from such horse, except for the following substances [may be administered during permitted time frames and] at concentrations that [on race day] are less than these thresholds:

 [(3) Stanozolol (Winstrol): All horses may have less than 100 pg/ml in plasma.]

[(4)] (3) Testosterone:
 (i) Female horses and geldings may have less than 100 pg/ml in plasma; and

(ii) Intact male horses may have less than 2,000 pg/ml in plasma.
 [(5)] (4) In addition, no anabolic steroid shall be administered by injection into a joint at any time.

 (d) Any horse to which [a permissible] an anabolic steroid that is listed in subdivision (a) of this section has been administered in order to assist in the recovery from an illness or injury may be placed on the veterinarian's list in order to monitor the concentration of the drug. Once the concentration is below the designated plasma threshold the horse is eligible to be removed from the list.

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

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

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

Regulatory Impact Statement

1. Statutory authority: The New York State Gaming Commission ("Commission") is authorized to promulgate these rules pursuant to Racing, Pari-Mutuel Wagering and Breeding Law ("Racing Law") Sections 103(2), 104(1, 19), 301(1, 2) and 902(1). Under Section 103(2), the Commission is responsible for supervising, regulating and administering all horse racing and pari-mutuel wagering activities in the State. Subdivision (1) of Section 104 confers upon the Commission general jurisdiction over all such gaming activities within the State and over the corporations, associations and persons engaged in such activities. Subdivision (19) of Section 104 authorizes the Commission to promulgate any rules and regulations that it deems necessary to carry out its responsibilities. Under Section 301, which applies to only harness racing, the Commission is authorized to supervise generally all harness race meetings and to adopt rules to prevent the circumvention or evasion of its regulatory purposes and provisions, and is directed to adopt rules to prevent horses from racing under the influence of substances affecting their speed. Section 902(1) authorizes the Commission to promulgate rules and regulations for an equine drug testing program that assures the public's confidence and continues the high degree of integrity in pari-mutuel racing and to impose administrative penalties for racing a drugged horse.

2. Legislative objectives: To preserve the safety and integrity of pari-mutuel racing while generating reasonable revenue for the support of government.

3. Needs and benefits. This rule making is necessary to prohibit the administration of the anabolic steroid stanozolol to race horses, such that the presence of only endogenous anabolic steroids will be permitted under the Commission's rules, in order to enhance the safety and integrity of horse racing.

The current rule that strictly regulates the presence of anabolic steroids in racehorses permits the presence of three endogenous substances, which occur naturally in horses, and one exogenous substance that is present only when administered to a horse. See 9 NYCRR §§ 4043.15 (thoroughbred) and 4120.12 (harness). This rule provides a threshold concentration for the three endogenous anabolic steroids, to distinguish the naturally occurring level of such substances from illegal supplemental administrations. This rule also provides a threshold concentration for stanozolol, an exogenous substance, with a threshold that was included originally in such rule because stanozolol persists in the horse's bodily system for several months. The Commission did not want to exclude from racing the racehorses that had been lawfully treated with stanozolol before the adoption of this regulation.

This proposal would discontinue the permissive presence at threshold amounts of stanozolol, the only anabolic steroid that is neither endogenous to a horse nor already banned by the Commission. The proposal would phase out the permissive threshold for stanozolol with an effective date of six months after the final adoption of this rule making proposal. As some horses may have been lawfully administered this drug well before racing, and in compliance with the current permissive threshold, staff recommends that the proposed ban on any amount of stanozolol be scheduled to take effect in this manner to avoid excluding horses whose owners and trainers had treated the horse in compliance with existing rules.

This proposal is consistent with national rulemaking proposals and with the Commission's intended prohibition of any administration of an anabolic steroid to a horse that is actively racing.

4. Costs:

(a) Costs to regulated parties for the implementation of and continuing compliance with the rule: These amendments will not add any new mandated costs to the existing rules. There is no cost caused to the regulated parties by not administering the anabolic steroid stanozolol.

(b) Costs to the agency, the state and local governments for the implementation and continuation of the rule: None. The amendments will not add any new costs. There will be no costs to local government because the Commission is the only governmental entity authorized to regulate pari-mutuel harness racing.

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

5. Local government mandates: None. The Commission is the only governmental entity authorized to regulate pari-mutuel thoroughbred racing activities.

6. Paperwork: There will be no additional paperwork.

7. Duplication: No relevant rules or other legal requirements of the state and/or federal government exist that duplicate, overlap or conflict with this rule.

8. Alternatives: The Commission considered not eliminating the permissive stanozolol threshold but rejected this because no purpose is served by not phasing out the undesirable practice of intentionally administering this drug.

9. Federal standards: There are no minimum standards of the Federal government for this or a similar subject area.

10. Compliance schedule: The Commission believes that regulated persons will be able to achieve compliance with the rule upon adoption of this rule.

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

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

This proposal would discontinue the permissive presence at threshold amounts of the drug stanozolol, the only anabolic steroid that is neither endogenous to a racehorse nor already banned by the Commission. There is no valid reason to administer this substance to a healthy racehorse, and there are better alternatives that are permitted for horses that are sick or injured. As some horses may have been lawfully administered this drug in compliance with the current permissive threshold, and the drug does not dissipate for several months, the proposed ban will take effect six months after the adoption of the rule change.

This rule will serve to enhance the health and safety of racehorses and the integrity of racing. This rule will not impose an adverse economic impact or reporting, record keeping, or other compliance requirements on small businesses in rural or urban areas or on employment opportunities. No local government activities are involved.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Suspension and Revocation of a Lottery Agent's License

I.D. No. SGC-52-15-00008-P

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

Proposed Action: Amendment of section 5001.19 of Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 103(2), 104(1) and (19); Tax Law, sections 1601, 1604, 1605 and 1607

Subject: Suspension and revocation of a lottery agent's license.

Purpose: To revise the rules for the procedure and grounds for suspension and revocation of a lottery license for sales agents.

Text of proposed rule: Section 5001.19 of Title 9 of the NYCRR is amended to read as follows:

§ 5001.19. Suspension and revocation of license.

(a) At the discretion of the commission, the agent's license may be suspended or revoked or have such license renewal rejected for any of the reasons set forth in section 1607 of the Tax Law or for any of the following reasons, or any combination thereof:

[(1) failure to account for lottery tickets received or the proceeds of lottery tickets or failure to comply with instructions of the commission concerning licensed activity;]

[(2) conviction of any offense as defined in the Penal Law;]

[(3)](1) failure to file any returns or reports or to keep records or to pay any fee or tax as may be required by this Part [in or pursuant to the acts];

[(4) fraud, deceit, misrepresentation or conduct prejudicial to public confidence in the Lottery;]

[(5) failure to furnish a surety or other bond in such amount as may be required by the commission;]

[(6) the number of lottery tickets sold by the lottery sales agent is insufficient to meet administrative costs, and public convenience is adequately served by other licensees;]

[(7)](2) a material change since issuance of the license with respect to any matter required to be considered by the commission as provided in [either the acts or] this Part;

(3) *failure to sell a sufficient number of lottery tickets required by the licensing agreement between the agent and the commission, when the commission has notified the agent of such insufficiency in writing and the agent fails to make satisfactory improvements, in the discretion of the commission, within the time set forth in the notice of insufficiency;*

[(8)](4) [when the agent violates] *violation of any of the provisions of the acts, rules and regulations of the [division] commission, the licensing agreement between the agent and the commission or any of the conditions of licensing set forth in section 5000.10 of this Part, or failure to follow procedures, policies or instructions of the commission;*

[(9)](5) [whenever] *failure of the agent [does not] to display commission point-of-sale material in a manner readily available to the public;*

[(10)](6) [whenever] *finding by the commission [finds] that the agent's experience, character[,] and general fitness are such that the agent's participation as a lottery sales agent is inconsistent with public interest or convenience or for any other reason within the discretion of the commission; [or]*

[(11)](7) *failure to notify the commission, in writing, within a reasonable time of any arrest, indictment, or service of a summons, or conviction for any felony whether within or without the State of New York, or within or without the United States, occurring during the term of the license or the renewal thereof; or*

(8) *failure to cooperate with an investigation of the commission, attempt to frustrate or obstruct such an investigation or provision of false or misleading information to the commission during the course of such an investigation.*

(b) *An agent may establish, as an affirmative defense to a suspension or revocation based upon insufficient sales, whether under paragraph (3) of subdivision (a) of this section or otherwise, that such agent's failure to sell a sufficient number of tickets was caused by factors outside the control of the agent that the agent has taken reasonable steps to mitigate, such as extreme weather, natural disaster, flood, earthquake, war, discharge of hazardous material, blackout or power interruption, civil unrest or other events or circumstances and that nevertheless, despite such mitigation, reasonably excuse such agent's sales performance.*

(c) *If the commission orders the temporary suspension of a sales agent's license pending any prosecution, investigation or hearing, the sales agent shall permit the commission to retrieve lottery equipment, tickets and other material provided by the commission that may be in the sales agent's possession. Failure to cooperate in the commission's retrieval effort shall constitute separate grounds for suspension or revocation of the sales agent's license. A sales agent under a temporary suspension shall continue to remit amounts owed to the commission when required during such temporary suspension.*

[(b)](d) Upon termination of an agent's license for any reason, the agent shall [go to the agent's assigned bank on a date designated by the commission for the purpose of rendering the agent's final lottery accounting. Surrender] *comply with the commission's instructions in regard to payment of remaining amounts owed by the agent and surrender of the agent's license, lottery equipment, tickets and other material provided by the commission [shall be as prescribed by the commission. Upon failure of any agent to settle such agent's accounts on or before the designated date,]. If the agent fails to comply with such instructions, the commission may take steps to impose such penalties and exercise such enforcement powers as may be provided for by law, including referral of the debt for collection or further action. The sales agent may be liable in the amount of the debt, plus any collection costs, penalties, interest and attorney fees to which the commission may be entitled.*

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

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

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

Regulatory Impact Statement

1. **Statutory authority:** The New York State Gaming Commission ("Commission") is authorized to promulgate this rule by Tax Law Sections 1601, 1604, 1605 and 1607, and by Racing, Pari-Mutuel Wagering and Breeding Law ("Racing Law") Sections 103(2) and 104(1, 19). Tax Law Section 1601 describes the purpose of the New York State Lottery for Education Law (Tax Law Article 34) as being to establish a lottery operated by the State, the net proceeds of which are applied exclusively to aid to education. Tax Law Section 1604 authorizes the promulgation of rules governing the establishment and operation of such lottery. Tax Law Section 1605 authorizes the licensing of lottery sales agents and sets forth criteria for licensing, while Tax Law Section 1607 establishes that a lottery license may be suspended or revoked.

Racing Law Section 103(2) provides that the Commission is responsible to operate and administer the state lottery for education, as prescribed by Article 34 of the Tax Law. Racing Law Section 104(1) provides the Commission with general jurisdiction over all gaming activities within the State and over any person, corporation or association engaged in such activities. Section 104(19) of such law authorizes the Commission to promulgate any rules it deems necessary to carry out its responsibilities.

2. **Legislative objectives:** To refine a current rule that sets forth grounds for suspension and revocation of a lottery sales agent license.

3. **Needs and benefits:** This rulemaking will refine 9 NYCRR Section 5001.19 of the Commission's regulations, which sets forth grounds for suspension and revocation of licenses issued to lottery sales agents. Amendments to Section 5001.19 are proposed to eliminate duplication of Tax Law Section 1607, to make non-substantive and stylistic corrections to the text of the rule and to make explicit additional grounds for suspension or revocation of a sales agent license. Overall, the rulemaking will benefit sales agents by providing a more complete and detailed description of the grounds for license suspension and revocation, which the Commission hopes will limit the instances in which agents engage in such conduct. By clarifying the Commission's authority to discipline agents under such circumstances, the Commission's ability to suspend or revoke the license of an unsuitable agent is also improved.

The amendments will revise Section 5001.19 of the Commission's regulations to provide that an agent's failure to meet minimally acceptable sales levels as determined by the Commission for that particular agent is grounds for suspension or revocation of the agent's license. Section 5001.10(a) of the Commission's current regulations requires a sales agent, as a condition of licensing, to comply with the licensing agreement and any rules, regulations, procedures, policies and instructions promulgated or issued by the Commission. The lottery sales agent licensing agreement contains an obligation of the agent to achieve the level of sales required by the Commission. Thus, maintaining sufficient sales is currently a condition of licensing. The proposed amendments would make explicit that failure to meet this condition is grounds for suspension or revocation of an agent license.

To protect the sales agent, the amendments would require the Commission to notify the sales agent of a sales deficiency in writing and set forth a time in which the sales agent could show satisfactory improvement. The amendment would also allow the sales agent to raise, as an affirmative defense to a suspension or revocation based on insufficient sales, that the agent's sales performance is reasonably excused by factors outside the control of the agent that the agent has taken reasonable steps to mitigate. Examples are extreme weather, natural disaster, flood, earthquake, war, discharge of hazardous material, blackout or power interruption, civil unrest or other events or circumstances.

The amendments also make explicit a rule that failure to cooperate with an investigation of the Gaming Commission, or any attempt to frustrate or obstruct an investigation by the Gaming Commission, is grounds for suspension or revocation. This amendment is necessary to ensure that sales agents cooperate with investigations conducted by the Commission to ensure the highest integrity of sales agents and lottery games.

New subdivision (c) of Section 5001.19 incorporates an existing provision of the sales agent licensing agreement requiring the agent to allow the Commission to retrieve lottery equipment, tickets and other material provided by the Commission that may be in the agent's possession if the Commission orders the temporary suspension of the sales agent's license pending any prosecution, investigation or hearing. The rule will require a sales agent under temporary suspension to continue to remit amounts owed to the Commission when required during such temporary suspension. Subdivision (c) will also provide that failure to cooperate in the Commission's retrieval effort shall constitute separate grounds for suspension or revocation of the agent's license. These provisions will limit loss of revenue resulting from the Commission's inability to recover amounts owed by the agent, lottery tickets, equipment or signage that can be used by other sales agents.

Revised subdivision (d) of Section 5001.19 updates procedures for winding up terminated sales agent licenses to align such procedures with

preferred practice. Upon termination of an agent's license for any reason, the rule will require the agent to comply with the commission's instructions in regard to payment of remaining amounts owed by the agent and surrender of the agent's license, lottery equipment, tickets and other material provided by the commission. Revised subdivision (d) will further state that the Commission may take steps to impose penalties and exercise enforcement powers as may be provided for by law, including referral of the debt for collection. The sales agent may be liable in the amount of the debt, plus any collection costs, penalties, interest and attorney fees to which the Commission may be entitled. Therefore, this rule decreases the risk of lost revenue when an agent's license is revoked.

4. Costs:

a. Costs to regulated parties for the implementation and continuing compliance with the rule: There are no costs to stakeholders. A lottery sales agent is already required, as a condition of licensing, to comply with the licensing agreement and the Commission's instructions regarding licensed activity. This rulemaking will make explicit the Commission's authority to suspend or revoke an agent that violates such conditions of licensing.

b. Costs to the agency, the State, and local governments for the implementation and continuation of the rule: No additional operating costs are anticipated.

c. Sources of cost evaluations: The foregoing cost evaluations are based on the Commission's experience operating State Lottery games for more than 40 years.

5. Local government mandates: The proposed amendment does not impose any new programs, services, duties or responsibilities upon any country, city, town, village school district, fire district or other special district.

6. Paperwork: There are no changes in paperwork requirements.

7. Duplication: There are no relevant State programs or regulations that duplicate, overlap or conflict with the proposed amendment.

8. Alternatives: No other alternatives were considered.

9. Federal standards: There are no relevant standards imposed by the federal government.

10. Compliance schedule: The Commission believes that regulated persons will be able to achieve compliance with the rule upon adoption of this rule.

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

A regulatory flexibility analysis for small business and local governments, a rural area flexibility analysis, and a job impact statement are not required for this rule making because it will have no adverse effect on small businesses, local governments, rural areas, or jobs.

This rulemaking will make explicit the Commission's authority to suspend or revoke the license of an agent that violates existing conditions of licensing. While an agent is required to achieve the level of sales required by the Commission for such agent, the amendments are helpful to small businesses that hold lottery licenses because the Commission will be required to notify an underperforming sales agent of any sales deficiency in writing and set forth a reasonable time in which the sales agent can show satisfactory improvement. The revised regulation will permit a small business facing possible disciplinary action for sales deficiency to argue that its performance is reasonably excused by factors outside the control of the agent that the agent has taken reasonable steps to mitigate. Overall, the rulemaking will benefit sales agents, including small businesses, by providing a more complete and detailed description of the grounds for license suspension and revocation, which the Commission hopes will limit the instances in which agents engage in such conduct. There will be no new reporting, record keeping or other compliance requirements imposed upon small businesses or local governments or rural areas. The proposed rulemaking will not adversely affect employment opportunities or jobs.

Based on the foregoing, no regulatory flexibility analysis for small businesses and local governments, rural area flexibility analysis, or a job impact statement is required for this proposed rule making.

Department of Health

EMERGENCY RULE MAKING

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

I.D. No. HLT-52-15-00004-E

Filing No. 1068

Filing Date: 2015-12-10

Effective Date: 2015-12-10

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

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

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

Finding of necessity for emergency rule: Preservation of public safety.

Specific reasons underlying the finding of necessity: Chapter 501 of the Laws of 2012 established the Justice Center for the Protection of People with Special Needs ("Justice Center"), in order to coordinate and improve the State's ability to protect those persons having various physical, developmental, or mental disabilities and who are receiving services from various facilities or provider agencies. The Department must promulgate regulations, as a "state oversight agency" of some of the covered facilities, in order to assure proper coordination with the efforts of the Justice Center Chapter 501 which took effect on June 30, 2013, and the Justice Center becomes operational.

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

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

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

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

- add definitions specific to facilities subject to the Justice Center of "abuse," "mistreatment," "neglect," "misappropriation of property," "reasonable cause," "reportable incident," "Justice Center," "significant incident," "custodian," "facility subject to the Justice Center," "psychological abuse," "Department," and "unlawful use or administration of a controlled substance" at sections 487.2(d)(1)-(13) and 488.2(c)(1)-13;

- amend sections 487.5 and 488.5 to add occurrences which would constitute a reportable incident to the list of occurrences which residents should not experience, and to require the operator of certain facilities to conspicuously post the telephone number of the Justice Center incident reporting hotline;

- amend sections 487.7 and 488.7 to clarify a facility's obligations regarding what incidents must be investigated, how they must be investigated and who must investigate them;

- amend sections 487.7 and 488.7 to replace outdated references to the State Commission on Quality of Care for the Mentally Disabled with references to the Justice Center;
- amend sections 487.7 and 488.7 to add a requirement addressing when reports must be provided to the Justice Center, and requiring such reports to conform to the requirements of the Justice Center;
- amend sections 487.9 and 488.9 to add a requirement for staff training in the identification of reportable incidents and facility reporting procedures, and to add a requirement for certain facilities regarding the provision of a code of conduct to employees, volunteers, and others providing services at the facility who could be expected to have resident contact;
- amend sections 487.9 and 488.9 to add a requirement that certain facilities consult the Justice Center's staff exclusion list with regard to prospective employees, volunteers, and others, and that when such person is not on the staff exclusion list, that such facilities also consult the State Central Registry, with regard to such persons. The facility must maintain documentation of such consultation. The amendments also address the hiring consequences associated with the outcome of those consultations;
- amend sections 487.9 and 488.9 to specifically include investigation of reportable incidents to the administrative obligations of facilities, and to the duties of a case manager;
- amend sections 487.9 and 488.9 to require the operator of a facility to designate an additional employee to be a designated reporter;
- amend sections 487.10 and 488.10 to add a new requirement that certain facilities provide certain information to the Justice Center, and make certain information public, at the request of the Justice Center, and to allow sharing of information between the Department and the Justice Center;
- add new sections 487.14 and 488.13 to address reporting of certain incidents; and
- add new sections 487.15 and 488.14 to address the investigation of reportable incidents involving facilities subject to the Justice Center.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire March 8, 2016.

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

Summary of Regulatory Impact Statement

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

Adult homes and enriched housing programs subject to the Justice Center will be required to consult the Justice Center's register of substantiated category one cases of abuse or neglect as established pursuant to section 495 of the Social Services Law prior to hiring certain employees, and where the person is not on that list, the facility will also be required to check the Office of Children and Family Services' Statewide Central Registry of Child Abuse and Maltreatment. The facility could not hire a person on the Justice Center's list, but would have the discretion to hire a person who was only on Office of Children and Family Services' list. Reporting and investigation obligations for all facilities would be expanded to cover "reportable incidents" which, are slightly more inclusive than what is covered by current reporting and investigation obligations. The amendments also add specific provisions addressing reporting and investigation procedures, to require the posting of the telephone number of the Justice Center's reporting hotline, and to require the case manager to be capable of reporting and investigating incidents. Those amendments should not require any significant change in current practice or impose anything beyond nominal additional expense to facilities. Requirements imposed on facilities generally are limited to an obligation to train staff in the identification and reporting of reportable incidents. With regard to facilities subject to the Justice Center, that obligation, as well as the others imposed by the regulations, are required by virtue of Chapter 501 of the Laws of 2012. The costs imposed by the amendments are expected to be minimal. In many cases, particularly with regard to the investigation requirements, the amendments generally reflect existing practice, so should neither impose any significant new costs or require any significant change in practice.

Regulatory Flexibility Analysis

Effect on Small Businesses and Local Governments:

This rule imposes some new obligations and administrative costs on regulated parties (adult homes and enriched housing programs). Some of the changes to Sections 487 and 488 apply to all adult home and enriched housing facilities; other only apply to those adult homes and enriched housing facilities which fall under the purview of the Justice Center. None of the requirements imposed by the amendments would impose different,

or unique, burdens on small businesses or local governments; the requirements apply equally statewide. The costs and obligations associated with the amendments are fully described in the "Costs to Regulated Parties" section of the Regulatory Impact Statement.

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

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

Compliance Requirements:

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

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

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

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

Professional Services:

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

Compliance Costs:

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

Economic and Technological Feasibility:

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

Minimizing Adverse Impact:

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

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

Consideration was given to including a cure period to afford adult home and enriched housing programs an opportunity to correct violations associated with this rule; however, this option was rejected because it is believed that lessening the Department's ability to enforce the regulations for violations could expose this already vulnerable population to greater risk to their health and safety.

Small Business and Local Government Participation:

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

Rural Area Flexibility Analysis

Types and Estimated Number of Rural Areas:

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

Reporting and Recordkeeping and Other Compliance Requirements:

Reporting and Recordkeeping:

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

Other Compliance Requirements:

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

Professional Services:

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

Compliance Costs:

Cost to Regulated Parties:

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

Economic and Technological Feasibility:

There are no changes requiring the use of technology. The proposal is believed to be economically feasible for impacted parties. The amendments impose additional reporting and investigation requirements that will use existing staff that already have similar job responsibilities. There are no requirements that that involve capital improvements.

Minimizing Adverse Impact on Rural Area:

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

Rural Area Participation:

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

Job Impact Statement

No Job Impact Statement is required pursuant to Section 201-a (2)(a) of the State Administrative Procedure Act. It is apparent, from the nature of the proposed amendment that it will have no impact on jobs and employment opportunities, because it does not result in an increase or decrease in current staffing level requirements. Tasks associated with reporting new incidents types, reporting to the Justice Center for the Protection of People with Special Needs (Justice Center), as opposed to the Commission on the Quality of Care and Advocacy for People with Disabilities, making public certain information as directed by the Justice Center and assisting with the investigation of new reportable incidents are expected to be completed by existing facility staff. Similarly, the need for a medical examination of the patient in the course of investigating reportable incidents is similarly not appreciably different from the current practice of obtaining such examination under such circumstances. Accordingly, the amendments should not have any appreciable effect on employment as compared to current requirements.

NOTICE OF ADOPTION**Prohibit Additional Synthetic Cannabinoids**

I.D. No. HLT-34-15-00005-A

Filing No. 1092

Filing Date: 2015-12-15

Effective Date: 2015-12-30

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

Action taken: Amendment of section 9.1 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 225

Subject: Prohibit Additional Synthetic Cannabinoids.

Purpose: To add additional chemicals to the list of explicitly prohibited synthetic cannabinoids.

Text or summary was published in the August 26, 2015 issue of the Register, I.D. No. HLT-34-15-00005-P.

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

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

Assessment of Public Comment

The agency received no public comment.

Higher Education Services Corporation

EMERGENCY RULE MAKING

New York State Science, Technology, Engineering and Mathematics Incentive Program

I.D. No. ESC-52-15-00012-E

Filing No. 1087

Filing Date: 2015-12-15

Effective Date: 2015-12-15

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

Action taken: Addition of section 2201.13 to Title 8 NYCRR.

Statutory authority: Education Law, sections 653, 655 and 669-e

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

Specific reasons underlying the finding of necessity: This statement is being submitted pursuant to subdivision (6) of section 202 of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation's ("HESC") Emergency Rule Making seeking to add a new section 2201.13 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

This regulation implements a statutory student financial aid program providing for awards to be made to students beginning with the fall 2014 term. Emergency adoption is necessary to avoid an adverse impact on the processing of awards to eligible scholarship applicants. The statute provides for tuition benefits to college-going students who, beginning August 2014, pursue an undergraduate program of study in science, technology, engineering, or mathematics at a New York State public institution of higher education. High school students entering college in August must inform the institution of their intent to enroll no later than May 1. Therefore, it is critical that the terms of the program as provided in the regulation be available immediately in order for HESC to process scholarship applications so that students can make informed choices. To accomplish this mandate, the statute further provides for HESC to promulgate emergency regulations to implement the program. For these reasons, compliance with section 202(1) of the State Administrative Procedure Act would be contrary to the public interest.

Subject: New York State Science, Technology, Engineering and Mathematics Incentive Program.

Purpose: To implement the New York State Science, Technology, Engineering and Mathematics Incentive Program.

Text of emergency rule: New section 2201.13 is added to Title 8 of the New York Code, Rules and Regulations to read as follows:

Section 2201.13 New York State Science, Technology, Engineering and Mathematics Incentive Program.

(a) Definitions. The following definitions apply to this section:

(1) "Award" shall mean a New York State Science, Technology, Engineering and Mathematics Incentive Program award pursuant to section 669-e of the New York State education law.

(2) "Employment" shall mean continuous employment for at least thirty-five hours per week in the science, technology, engineering or mathematics field, as published on the corporation's web site, for a public or private entity located in New York State for five years after the completion of the undergraduate degree program and, if applicable, a higher degree program or professional licensure degree program and a grace period as authorized by section 669-e(4) of the education law.

(3) "Grace period" shall mean a six month period following a recipient's date of graduation from a public institution of higher education and, if applicable, a higher degree program or professional licensure degree program as authorized by section 669-e(4) of the education law.

(4) "High school class" shall mean the total number of students eligible to graduate from a high school in the applicable school year.

(5) "Interruption in undergraduate study or employment" shall mean a temporary period of leave for a definitive length of time due to circumstances as determined by the corporation, including, but not limited to, maternity/paternity leave, death of a family member, or military duty.

(6) "Program" shall mean the New York State Science, Technology, Engineering and Mathematics Incentive Program codified in section 669-e of the education law.

(7) "Public institution of higher education" shall mean the state university of New York, as defined in subdivision 3 of section 352 of the education law, a community college as defined in subdivision 2 of section 6301 of the education law, or the city university of New York as defined in subdivision 2 of section 6202 of the education law.

(8) "School year" shall mean the period commencing on the first day of July in each year and ending on the thirtieth day of June next following.

(9) "Science, technology, engineering and mathematics" programs shall mean those undergraduate degree programs designated by the corporation on an annual basis and published on the corporation's web site.

(10) "Successful completion of a term" shall mean that at the end of any academic term, the recipient: (i) met the eligibility requirements for the award pursuant to sections 661 and 669-e of the education law; (ii) completed at least 12 credit hours or its equivalent in a course of study leading to an approved undergraduate degree in the field of science, technology, engineering, or mathematics; and (iii) possessed a cumulative grade point average (GPA) of 2.5 as of the date of the certification by the institution. Notwithstanding, the GPA requirement is preliminarily waived for the first academic term for programs whose terms are organized in semesters, and for the first two academic terms for programs whose terms are organized on a trimester basis. In the event the recipient's cumulative GPA is less than a 2.5 at the end of his or her first academic year, the recipient will not be eligible for an award for the second academic term for programs whose terms are organized in semesters or for the third academic term for programs whose terms are organized on a trimester basis. In such case, the award received for the first academic term for programs whose terms are organized in semesters and for the first two academic terms for programs whose terms are organized on a trimester basis must be returned to the corporation and the institution may reconcile the student's account, making allowances for any other federal, state, or institutional aid the student is eligible to receive for such terms unless: (A) the recipient's GPA in his or her first academic term for programs whose terms are organized in semesters was a 2.5 or above, or (B) the recipient's GPA in his or her first two academic terms for programs whose terms are organized on a trimester basis was a 2.5 or above, in which case the institution may retain the award received and only reconcile the student's account for the second academic term for programs whose terms are organized in semesters or for the third academic term for programs whose terms are organized on a trimester basis. The corporation shall issue a guidance document, which will be published on its web site.

(b) Eligibility. An applicant for an award under this program pursuant to section 669-e of the education law must also satisfy the general eligibility requirements provided in section 661 of the education law.

(c) Class rank or placement. As a condition of an applicant's eligibility, the applicant's high school shall provide the corporation:

(1) official documentation from the high school either (i) showing the applicant's class rank together with the total number of students in such applicant's high school class or (ii) certifying that the applicant is in the top 10 percent of such applicant's high school class; and

(2) the applicant's most current high school transcript; and

(3) an explanation of how the size of the high school class, as defined in subdivision (a), was determined and the total number of students in such class using such methodology. If the high school does not rank the students in such high school class, the high school shall also provide the corporation with an explanation of the method used to calculate the top 10 percent of students in the high school class, and the number of students in the top 10 percent, as calculated. Each methodology must comply with the terms of this program as well as be rational and reasonable. In the event the corporation determines that the methodology used by the high school fails to comply with the term of the program, or is irrational or unreasonable, the applicant will be denied the award for failure to satisfy the eligibility requirements; and

(4) any additional information the corporation deems necessary to determine that the applicant has graduated within the top 10 percent of his or her high school class.

(d) Administration.

(1) Applicants for an award shall:

(i) apply for program eligibility on forms and in a manner prescribed by the corporation. The corporation may require applicants to provide additional documentation evidencing eligibility; and

(ii) postmark or electronically transmit applications for program eligibility to the corporation on or before the date prescribed by the corporation for the applicable academic year. Notwithstanding any other rule or regulation to the contrary, such applications shall be received by the corporation no later than August 15th of the applicant's year of graduation from high school.

(2) Recipients of an award shall:

(i) execute a service contract prescribed by the corporation;

(ii) apply for payment annually on forms specified by the corporation;

(iii) confirm annually their enrollment in an approved undergraduate program in science, technology, engineering, or mathematics;

(iv) receive such awards for not more than four academic years of full-time undergraduate study or five academic years if the program of study normally requires five years, as defined by the commissioner pursuant to article thirteen of the education law, excluding any allowable interruption of study; and

(v) respond to the corporation's requests for a letter from their employer attesting to the employee's job title, the employee's number of hours per work week, and any other information necessary for the corporation to determine compliance with the program's employment requirements.

(e) Amounts.

(1) The amount of the award shall be determined in accordance with section 669-e of the education law.

(2) Disbursements shall be made each term to institutions, on behalf of recipients, within a reasonable time upon successful completion of the term subject to the verification and certification by the institution of the recipient's GPA and other eligibility requirements.

(3) Awards shall be reduced by the value of other educational grants and scholarships limited to tuition, as authorized by section 669-e of the education law.

(f) Failure to comply.

(1) All award monies received shall be converted to a 10-year student loan plus interest for recipients who fail to meet the statutory, regulatory, contractual, administrative or other requirement of this program.

(2) The interest rate for the life of the loan shall be fixed and equal to that published annually by the U.S. Department of Education for undergraduate unsubsidized Stafford loans at the time the recipient signed the service contract with the corporation.

(3) Interest shall begin to accrue on the day each award payment is disbursed to the institution.

(4) Interest shall be capitalized on the day the award recipient violates any term of the service contract or the date the corporation deems the recipient was no longer able or willing to perform the terms of the service contract. Interest on this amount shall be calculated using simple interest.

(5) Where a recipient has demonstrated extreme hardship as a result of a total and permanent disability, labor market conditions, or other such circumstances, the corporation may, in its discretion, postpone converting the award to a student loan, temporarily suspend repayment of the amount owed, prorate the amount owed commensurate with service completed, discharge the amount owed, or such other appropriate action. Where a recipient has demonstrated in-school status, the corporation shall temporarily suspend repayment of the amount owed for the period of in-school status.

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 March 13, 2016.

Text of rule and any required statements and analyses may be obtained from: Cheryl B. Fisher, NYS Higher Education Services Corporation, 99 Washington Avenue, Room 1325, Albany, New York 12255, (518) 474-5592, email: regcomments@hesc.ny.gov

Regulatory Impact Statement

Statutory authority:

The New York State Higher Education Services Corporation's ("HESC") statutory authority to promulgate regulations and administer the New York State Science, Technology, Engineering and Mathematics Incentive Program ("Program") is codified within Article 14 of the Education Law. In particular, Part G of Chapter 56 of the Laws of 2014 created the Program by adding a new section 669-e to the Education Law. Subdivision 5 of section 669-e of the Education Law authorizes HESC to promulgate emergency regulations for the purpose of administering this Program.

Pursuant to Education Law § 652(2), HESC was established for the purpose of improving the post-secondary educational opportunities of eligible students through the centralized administration of New York State financial aid programs and coordinating the State's administrative effort in student financial aid programs with those of other levels of government.

In addition, Education Law § 653(9) empowers HESC's Board of Trustees to perform such other acts as may be necessary or appropriate to carry out the objects and purposes of the corporation including the promulgation of rules and regulations.

HESC's President is authorized, under Education Law § 655(4), to propose rules and regulations, subject to approval by the Board of Trustees, governing, among other things, the application for and the granting and administration of student aid and loan programs, the repayment of loans or the guarantee of loans made by HESC; and administrative functions in support of state student aid programs. Also, consistent with Education Law § 655(9), HESC's President is authorized to receive assistance from any Division, Department or Agency of the State in order to properly carry out his or her powers, duties and functions. Finally, Education Law § 655(12) provides HESC's President with the authority to perform such other acts as may be necessary or appropriate to carry out effectively the general objects and purposes of HESC.

Legislative objectives:

The Education Law was amended to add a new section 669-e to create the "New York State Science, Technology, Engineering and Mathematics Incentive Program" (Program). This Program is aimed at increasing the number of individuals working in the fields of science, technology, engineering and mathematics (STEM) in New York State to meet the increasingly critical need for those skills in the State's economy.

Needs and benefits:

According to a February 2012 report by President Obama's Council of Advisors on Science and Technology, there is a need to add to the American workforce over the next decade approximately one million more science, technology, engineering and mathematics (STEM) professionals than the United States will produce at current rates in order for the country to stay competitive. To meet this goal, the United States will need to increase the number of students who receive undergraduate STEM degrees by about 34% annually over current rates. The report also stated that fewer than 40% of students who enter college intending to major in a STEM field complete a STEM degree. Further, a recent Wall Street Journal article reported that New York state suffers from a shortage of graduates in STEM fields to fill the influx of high-tech jobs that occurred five years ago. At a plant in Malta, about half the jobs were filled by people brought in from outside New York and 11 percent were foreigners. According to the article, Bayer Corp. is due to release a report showing that half of the recruiters from large U.S. companies surveyed couldn't find enough job candidates with four-year STEM degrees in a timely manner; some said that had led to more recruitment of foreigners. About two-thirds of the recruiters surveyed said that their companies were creating more STEM positions than other types of jobs. There are also many jobs requiring a two-year degree. In an effort to deal with this shortage, companies are using more internships, grants and scholarships.

The Program is aimed at increasing the number New York graduates with two and four year degrees in STEM who will be working in STEM fields across New York state. Eligible recipients may receive annual awards for not more than four academic years of undergraduate full-time study (or five years if enrolled in a five-year program) while matriculated in an approved program leading to a career in STEM.

The maximum amount of the award is equal to the annual tuition charged to New York State resident students attending an undergraduate program at the State University of New York (SUNY), including state operated institutions, or City University of New York (CUNY). The current maximum annual award for the 2014-15 academic year is \$6,170. Payments will be made directly to schools on behalf of students upon certification of their successful completion of the academic term.

Students receiving a New York State Science, Technology, Engineer-

ing and Mathematics Incentive Program award must sign a service agreement and agree to work in New York state for five years in a STEM field and reside in the State during those five years. Recipients who do not fulfill their service obligation will have the value of their awards converted to a student loan and be responsible for interest.

Costs:

a. It is anticipated that there will be no costs to the agency for the implementation of, or continuing compliance with this rule.

b. The maximum cost of the program to the State is \$8 million in the first year based upon budget estimates.

c. It is anticipated that there will be no costs to Local Governments for the implementation of, or continuing compliance with, this rule.

d. The source of the cost data in (b) above is derived from the New York State Division of the Budget.

Local government mandates:

No program, service, duty or responsibility will be imposed by this rule upon any county, city, town, village, school district, fire district or other special district.

Paperwork:

This proposal will require applicants to file an electronic application for each year they wish to receive an award up to and including five years of eligibility. Recipients are required to sign a contract for services in exchange for an award. Recipients must submit annual status reports until a final disposition is reached in accordance with the written contract.

Duplication:

No relevant rules or other relevant requirements duplicating, overlapping, or conflicting with this rule were identified.

Alternatives:

The proposed regulation is the result of HESC's outreach efforts to financial aid professionals with regard to this Program. Several alternatives were considered in the drafting of this regulation. For example, several alternatives were considered in defining terms/phrases used in the regulation as well as the academic progress requirement. Given the statutory language as set forth in section 669-e of the Education Law, a "no action" alternative was not an option.

Federal standards:

This proposal does not exceed any minimum standards of the Federal Government, and efforts were made to align it with similar federal subject areas as evidenced by the adoption of the federal unsubsidized Stafford loan rate in the event that the award is converted into a student loan.

Compliance schedule:

The agency will be able to comply with the regulation immediately upon its adoption.

Regulatory Flexibility Analysis

This statement is being submitted pursuant to subdivision (3) of section 202-b of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation's ("HESC") Emergency Rule Making, seeking to add a new section 2201.13 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that it will not impose an adverse economic impact on small businesses or local governments. HESC finds that this rule will not impose any compliance requirement or adverse economic impact on small businesses or local governments. Rather, it has potential positive impacts inasmuch as it implements a statutory student financial aid program that provides tuition benefits to college students who pursue their undergraduate studies in the fields of science, technology, engineering, or mathematics at a New York State public institution of higher education. Students will be rewarded for remaining and working in New York, which will provide an economic benefit to the State's small businesses and local governments as well.

Rural Area Flexibility Analysis

This statement is being submitted pursuant to subdivision (4) of section 202-bb of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation's Emergency Rule Making, seeking to add a new section 2201.13 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that it will not impose an adverse impact on rural areas. Rather, it has potential positive impacts inasmuch as it implements a statutory student financial aid program that provides tuition benefits to college students who pursue their undergraduate studies in the fields of science, technology, engineering, or mathematics at a New York State public institution of higher education. Students will be rewarded for remaining and working in New York, which will benefit rural areas around the State as well.

This agency finds that this rule will not impose any reporting, record keeping or other compliance requirements on public or private entities in rural areas.

Job Impact Statement

This statement is being submitted pursuant to subdivision (2) of section 201-a of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation's Emergency Rule Making seeking to add a new section 2201.13 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that it will not have any negative impact on jobs or employment opportunities. Rather, it has potential positive impacts inasmuch as it implements a statutory student financial aid program that provides tuition benefits to college students who pursue their undergraduate studies in the fields of science, technology, engineering, or mathematics at New York State public institution of higher education. Students will be rewarded for remaining and working in New York, which will benefit the State as well.

Department of Law

NOTICE OF ADOPTION

Digital Submission Requirements for Cooperative Interests in Realty

I.D. No. LAW-42-15-00015-A

Filing No. 1101

Filing Date: 2015-12-15

Effective Date: 2016-02-01

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

Action taken: Amendment of Parts 18, 20, 21, 22, 23, 24 and 25 of Title 13 NYCRR.

Statutory authority: General Business Law, section 352-e(2-b)

Subject: Digital Submission Requirements for Cooperative Interests in Realty.

Purpose: To streamline the Department of Law's regulations and internal operations while also reducing transaction costs and paper waste.

Text or summary was published in the October 21, 2015 issue of the Register, I.D. No. LAW-42-15-00015-P.

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

Text of rule and any required statements and analyses may be obtained from: Jacqueline Dischell, Department of Law, 120 Broadway, 23rd Floor, New York, NY 10271, (212) 416-8655, email: jackie.dischell@ag.ny.gov

Initial Review of Rule

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

Assessment of Public Comment

The Department of Law's Notice of Proposed Rule Making entitled "Digital Submission Requirements for Cooperative Interests in Realty" was published in the New York State Register on October 21, 2015. A forty-five day public comment period followed the publication of the Notice of Proposed Rule Making, as required by State Administrative Procedure Act ("S.A.P.A.") Section 202(1)(a). During this period, the Department of Law received six public comments, many of which touched upon the same topics. The received comments fall into the following six categories: (1) Amendment Submission, (2) Submission Timing, (3) Digital Copy Format, (4) Privacy Concerns, (5) Clarification of Non-Material Changes, and (6) Effective Date.

Most public comments did not suggest significant alternatives to the proposed rule. Instead, the majority were framed as questions about the digital submission process. The Department of Law anticipated such logistical questions, and thus included the following provision in the proposed regulations: "The Department of Law shall periodically issue a Guidance Document as defined by S.A.P.A. Section 102(14), setting forth particular guidelines and procedures for the submission of digital copies. Such Guidance Document will be available on the Department of Law's website, as required by S.A.P.A. Section 202(e)." The proposed regulations do not contemplate the specifics of the submission process; rather, the regulations leave such procedural discussions to the guidance document.

Accordingly, on December 9, 2015, the Department of Law issued a detailed guidance document pursuant to S.A.P.A. Section 102(14),

answering these questions and providing further information on compliance with the new submission requirements. The regulations and guidance document effectively address any questions or concerns raised in the public comments, and, for the reasons described below, the Department of Law does not believe any of the received public comments necessitate revising its proposed regulations. Therefore, the Department of Law has adopted the proposed regulations without any changes, effective as of February 1, 2016.

The received public comments, along with the Department of Law's responses thereto, are discussed below.

(1) Amendment Submission

Many of the public comments focused on the proposed requirement that sponsors and holders of unsold shares submit "[o]ne digital copy of the offering plan including all previously filed amendments, if not already submitted to the Department of Law" when submitting new amendments to the Department of Law.

Two commenters inquired about the status of the Department of Law's Cooperative Policy Statement #9, which exempts sponsors and holders of unsold shares from submitting a copy of the offering plan and all previously filed amendments with a new amendment submission. Because the regulations will now require amendment submissions to include one digital copy of the offering plan and all previously filed amendments, the Department of Law has determined Cooperative Policy Statement #9 is no longer appropriate. Therefore, the Department of Law will repeal Cooperative Policy Statement #9 as of February 1, 2016. The Department of Law will issue a formal memorandum repealing Cooperative Policy Statement #9; thus, no changes to the regulations are necessary.

Similarly, one commenter asked how the proposed regulations would affect the sponsors and holders of unsold shares who have received exemptions from filing amendments pursuant to the Department of Law's Cooperative Policy Statement #5. Under the regulations, Cooperative Policy Statement #5 will remain in full effect. However, if a Plan with Cooperative Policy Statement #5 treatment must be amended in accordance with the policy statement, the amendment must be submitted to the Department of Law pursuant to the revised submission requirements. The Department of Law's aforementioned guidance document describes the specifics in more detail.

Another commenter suggested that the Department of Law amend the sections of the proposed regulations that require the submission of "[o]ne digital copy of the offering plan including all previously filed amendments, if not already submitted to the Department of Law." This commenter suggested this provision should instead read: "One digital copy of the offering plan, including digital copies of all previously filed amendments, unless digital copies of such previously filed amendments were submitted to the Department of Law prior to the date of submission of the subject amendment." The Department of Law believes that such a change is unnecessary because the language already contained in the regulations is sufficiency similar to the suggested language. The Department of Law further believes that updated language is not needed due to the fact that other sections of the proposed regulations, as well as the guidance document, make explicitly clear that the submission of "[o]ne digital copy of the offering plan including all previously filed amendments" is a one-time requirement.

(2) Submission Timing

One commenter suggested that the Department of Law require digital copies to be submitted at the same time as paper copies because emailing digital copies could create confusion regarding the submission date. The Department of Law agrees with this assessment and is implementing such a system (and, in fact, had always envisioned this method of submission). The Department of Law's guidance document clarifies that digital copies of offering plans and amendments must be submitted simultaneously to the paper copies and details the process for so doing. Because the proposed regulations do not contemplate specific submission procedures, no change to the regulations is needed to reflect this requirement.

(3) Digital Copy Format

One commenter inquired whether the digital copies of offering plans and amendments must be printable. Another commenter wondered how the "[o]ne digital copy of the offering plan including all previously filed amendments" should be formatted. The Department of Law's guidance document makes clear that all digital copies must be a read-only.pdf document, which is searchable and printable to the extent technologically possible. Additionally, the guidance document acknowledges that technology may limit the extent to which previously-accepted plans and amendments can be made searchable. The guidance document states that if portions of such documents are not searchable by keyword, the documents nevertheless must be submitted to the Department of Law as digital copy, with the attorney transmittal letter clearly denoting that certain portions of the documents may not be searchable. Again, the Department of Law believes that the guidance document effectively addresses the above comments, and the regulations need not be amended to reflect these requirements.

(4) Privacy Concerns

Another commenter expressed concern that the use of digital copies would allow “sensitive material” (such as Social Security numbers) to be disseminated more easily, and suggested adding a provision to the proposed regulations to allow sponsors to redact “sensitive material” from digital copies. The Department of Law has determined that such a change is unwarranted, because, under the proposed regulations, the Agency’s Freedom of Information Law (“FOIL”) procedures will remain largely the same as at present. As described in the Department of Law’s Regulatory Impact Statement, the use of digital copies will allow members of the public making FOIL requests to obtain the requested documents digitally. But in order to obtain the requested documents, the public must still make a formal FOIL request and any sensitive information will be redacted by the Department of Law before the public can view the documents. At present, no information will be made generally available to the public through a web portal or other online database, and therefore privacy concerns should be allayed.

(5) Clarification Non-Material Changes

In addition to requiring digital copies of offering plans and amendments, the proposed regulations also amend several other related sections of Title 13 regarding submission requirements. For example, the proposed 13 N.Y.C.R.R. Section 18.5(b)(1)(vi), requires the attorney transmittal letter for amendments to disclose, “if there is currently an investigation pending by the Department of Law of the sponsor, a principal of sponsor, or the property to be owned by the apartment corporation.” One commenter inquired about this particular change, asking whether “clarity [could] be added to what the term ‘investigation’ is meant to encompass”.

The Department of Law’s guidance document makes clear that such changes are non-material and simply ensure that the Department of Law’s submission requirements are consistent throughout Title 13. Nothing was added to any Part of Title 13 that was not already included in another Part of Title 13. The language that is included in the proposed 13 N.Y.C.R.R. Section 18.5(b)(1)(vi) is nearly identical to that contained in other corresponding sections of Title 13. The Department of Law has determined that any further changes or clarifications to 13 N.Y.C.R.R. Section 18.5(b)(1)(vi) would undermine its goal of streamlining its submission requirements throughout Title 13.

(6) Effective Date

The Department of Law originally planned for its regulations to go into effect on January 1, 2016. However, two commenters noted that the January 1 effective date did not give sponsors adequate time to comply with the new digital submission requirements. The Department of Law would like for the transition to the digital submission framework to be as seamless as possible; consequently, the Department of Law has decided to delay the effective date until February 1, 2016. The Department of Law believes this extra month will provide sponsors with sufficient time to familiarize themselves with the digital submission procedures. The Department of Law will update its guidance document to reflect the new effective date. The regulations themselves do not reference the effective date; therefore, no revisions are necessary to accommodate this change.

Public Service Commission

NOTICE OF ADOPTION

EEPS and RPS Programs

I.D. No. PSC-41-14-00009-A

Filing Date: 2015-12-11

Effective Date: 2015-12-11

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

Action taken: On 12/17/15, the PSC adopted an order authorizing New York State Energy Research and Development Authority (NYSERDA) to continue to operate the Energy Efficiency Portfolio Standard (EEPS) and Renewable Portfolio Standard (RPS) programs.

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

Subject: EEPS and RPS programs.

Purpose: To authorize NYSERDA to continue to operate the EEPS and RPS programs.

Substance of final rule: The Commission, on December 17, 2015, adopted an order authorizing New York State Energy Research and Development Authority to continue to operate the Energy Efficiency Portfolio Standard

and Renewable Portfolio Standard Customer-Sited Tier programs through February 29, 2016, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: John Pitucci, Public Service Commission, Three Empire State Plaza, Albany, New York, 12223, (518) 486-2655, email: john.pitucci@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(14-M-0094SA2)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Addition of Third Party Financing Options for Distributed Generation (DG), Natural Gas Vehicle (NGV) and Prime-WNY Programs

I.D. No. PSC-52-15-00013-P

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

Proposed Action: The Commission is considering a proposal by National Fuel Gas Distribution Corporation to establish a competitive financing component for its DG, NGV and Prime-WNY Programs contained in its gas tariff schedule, P.S.C. No. 8.

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

Subject: Addition of third party financing options for Distributed Generation (DG), Natural Gas Vehicle (NGV) and Prime-WNY Programs.

Purpose: To consider the addition of third party financing options for the DG, NGV and Prime-WNY Programs.

Substance of proposed rule: The Public Service Commission (Commission) is considering a tariff filing proposed by National Fuel Gas Distribution Corporation (NFG or the Company) in compliance with the Commission’s Order Approving the Tariff Amendments with Modifications issued May 15, 2015 (May 2015 Order) in this proceeding. The May 2015 Order approved, with modifications, the extension of the Company’s Distributed Generation (DG) and Natural Gas Vehicle (NGV) Programs and the establishment of the Partnership to Revitalize the Industrial Manufacturing Economy of Western New York (Prime-WNY) Program. These programs utilize shareholder funding to incent large commercial and industrial customers in the Company’s service territory to install incremental gas-fired equipment at their existing facilities. In its May 2015 Order, the Commission directed the Company to work with Department of Public Service Staff to develop a competitive component of the loan programs to allow other financial institutions or comparable lenders the same or similar opportunities to compete with shareholders in these loans to participating DG, NGV and Prime-WNY Program customers for investments in incremental equipment and associated facilities. On December 11, 2015, NFG made a proposed tariff filing to its gas schedule, P.S.C. No. 8 – Gas, establishing a third party financing option. The proposed amendments have an effective date of April 1, 2016. The Commission may adopt, modify, or reject, 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: John Pitucci, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: john.pitucci@dps.ny.gov

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

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

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

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

(14-G-0551SP2)

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

Notice of Intent to Submeter Electricity

I.D. No. PSC-52-15-00014-P

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

Proposed Action: The Public Service Commission is considering the Notice of Intent, filed by EO 180 Water LLC, to submeter electricity at 180 Water Street, New York, New York.

Statutory authority: Public Service Law, sections 2, 4(1), 30, 32-48, 52, 53, 65(1), 66(1), (2), (3), (4), (12) and (14)

Subject: Notice of Intent to submeter electricity.

Purpose: To consider the Notice of Intent of EO 180 Water LLC to submeter electricity at 180 Water Street, New York, New York.

Substance of proposed rule: The Commission is considering the Notice of Intent, filed by EO 180 Water LLC on November 25, 2015, to submeter electricity at 180 Water Street, New York, New York, located in the service territory of Consolidated Edison Company of New York, Inc. 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: John Pitucci, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: john.pitucci@dps.ny.gov

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

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

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

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

(15-E-0690SP1)

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

Consequences Pursuant to the Commission's Uniform Business Practices (UBP)

I.D. No. PSC-52-15-00015-P

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

Proposed Action: The Public Service Commission is considering whether to impose consequences on an energy services company (ESCO), Astral Energy, LLC (Astral), for apparent non-compliance with Commission requirements.

Statutory authority: Public Service Law, sections 4, 65 and 66

Subject: Consequences pursuant to the Commission's Uniform Business Practices (UBP).

Purpose: To consider whether to impose consequences on Astral for its apparent non-compliance with Commission requirements.

Substance of proposed rule: The Public Service Commission (Commission) is considering whether to impose consequences, pursuant to section two of the Commission's Uniform Business Practices (UBP), on Astral Energy, LLC (Astral), an energy services company (ESCO). On October 15, 2015, the Commission issued an Order Instituting Proceeding and to Show Cause (Show Cause Order), which explained the results of an investigation showing a number of apparent failures on the part of Astral to comply with Commission requirements. The Show Cause Order stated that the Commission may revoke Astral's eligibility to operate in New York, or may impose any of the consequences set forth in the UBP section 2.D.6.b. The Show Cause Order required Astral to respond explaining why (1) its ability to enroll new residential and non-residential customers should not be suspended until the Commission orders otherwise; and (2) its eligibility to operate in New York should not be revoked or why other consequences should not be imposed. On October 23, 2015, Astral submit-

ted a response as to why its ability to enroll new customers should not be suspended, which included an explanation of measures it has taken or may take to address the issues raised in the Show Cause Order. On November 6, 2015, the Order Suspending Astral Energy, LLC's Authority to Market to and Enroll Residential and Non-residential Customers was issued. On November 16, 2015, Astral responded as to why its eligibility to operate in New York should not be revoked. That response included proposals by Astral as to steps that could be taken to allow Astral to restart enrolling customers. The Commission may impose consequences pursuant to UBP section 2.D.6.b, and may accept, reject or modify, in whole or in part, the proposals set forth in Astral's filings, and may also 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: John Pitucci, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: john.pitucci@dps.ny.gov

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

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

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

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

(15-E-0556SP1)

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

Notice of Intent to Submeter Electricity

I.D. No. PSC-52-15-00016-P

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

Proposed Action: The Public Service Commission is considering the Notice of Intent, filed by G-Z/10 UNP Realty, LLC, to submeter electricity at 823 First Avenue, New York, New York.

Statutory authority: Public Service Law, sections 2, 4(1), 30, 32-48, 52, 53, 65(1), 66(1), (2), (3), (4), (12) and (14)

Subject: Notice of Intent to submeter electricity.

Purpose: To consider the Notice of Intent of G-Z/10 UNP Realty, LLC to submeter electricity at 823 First Avenue, New York, New York.

Substance of proposed rule: The Commission is considering the Notice of Intent, filed by G-Z/10 UNP Realty, LLC on December 9, 2015, to submeter electricity at 823 First Avenue, New York, New York, located in the service territory of Consolidated Edison Company of New York, Inc. 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: John Pitucci, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: john.pitucci@dps.ny.gov

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

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

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

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

(15-E-0705SP1)

Department of State

NOTICE OF ADOPTION

Experience Requirements

I.D. No. DOS-43-15-00001-A

Filing No. 1091

Filing Date: 2015-12-15

Effective Date: 2015-12-30

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

Action taken: Amendment of section 1102.4 of Title 19 NYCRR.

Statutory authority: Executive Law, art. 6-E, section 160-d

Subject: Experience requirements.

Purpose: Clarify maximum hours of experience through review appraisals.

Text or summary was published in the October 28, 2015 issue of the Register, I.D. No. DOS-43-15-00001-P.

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

Text of rule and any required statements and analyses may be obtained from: David Mossberg, NYS Dept. of State, 123 William St., 20th Fl., New York, NY 10038, (212) 417-2063, email: david.mossberg@dos.ny.gov

Initial Review of Rule

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Appraisal Standards

I.D. No. DOS-43-15-00002-A

Filing No. 1090

Filing Date: 2015-12-15

Effective Date: 2016-01-01

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

Action taken: Amendment of section 1106.1 of Title 19 NYCRR.

Statutory authority: Executive Law, art. 6-E, section 160-d

Subject: Appraisal Standards.

Purpose: To adopt the 2016-2017 edition of the Uniform Standards of Professional Appraisal Practice.

Text or summary was published in the October 28, 2015 issue of the Register, I.D. No. DOS-43-15-00002-P.

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

Text of rule and any required statements and analyses may be obtained from: David Mossberg, NYS Dept. of State, 123 William St., 20th Fl., New York, NY 10038, (212) 417-2063, email: david.mossberg@dos.ny.gov

Initial Review of Rule

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

Assessment of Public Comment

The agency received no public comment.

Susquehanna River Basin Commission

INFORMATION NOTICE

Final Rule

SUMMARY: This document contains final rules that would amend the regulations of the Susquehanna River Basin Commission (Commission)

to simplify and clarify the process for transferring approvals and to add sections dealing with general permits and modifications to approvals. These amendments are to be made effective upon publication of this rulemaking.

DATES: Effective December 11, 2015.

ADDRESSES: Susquehanna River Basin Commission, 4423 N. Front Street, Harrisburg, PA 17110-1788.

FOR FURTHER INFORMATION CONTACT: Jason E. Oyler, Esq., General Counsel, telephone: 717-238-0423, ext. 1312; fax: 717-238-2436; e-mail: joyler@srbc.net. Also, for further information on the final rulemaking, visit the Commission's website at www.srbc.net.

SUPPLEMENTARY INFORMATION: Notice of proposed rulemaking was published in the Federal Register on September 21, 2015 (80 FR 56936); the New York Register on October 7, 2015; the Maryland Register on October 16, 2015; and the Pennsylvania Bulletin on October 17, 2015. The Commission convened a public hearing on October 29, 2015, in Grantville, Pennsylvania and a written comment period was held open through November 9, 2015.

General Comments

Comment: The rule will simplify the approval process for certain modifications and will be less burdensome on permittees and the Commission while still protecting the Susquehanna River Basin resources.

Comment: The proposed rule will assist in streamlining the administrative and permitting process and are positive changes.

Comment: The proposed rule should serve to provide great potential improvements for both the Commission and the regulated community.

Response: The Commission appreciates the comments.

Comments by Section, Part 806

Section 806.6—Transfer of approvals.

Comment: We appreciate § 806.6(b) addressing previously unpermitted withdrawals and uses of water, which should address actions that affect local water resources.

Response: The Commission appreciates the comment. This section is largely unchanged from the prior regulatory text.

Comment: The Commission should require approvals being transferred that are greater than 10 years old to perform a new or updated aquatic resource survey (ARS).

Response: The Commission disagrees with the comment. The transfer rule does not allow new project sponsors to increase the withdrawal or consumptive use of the project above what was previously approved. The Commission will be able to require an ARS, if appropriate and necessary, when these approvals expire and need to be renewed pursuant to 18 CFR 806.14.

Comment: The proposed rule will allow approvals where there is a change in ownership but no change in the project or the use of water to occur without the submittal of an entirely new application, and the Commission is to be commended for proposing this change.

Response: The Commission appreciates the comment.

Section 806.14—Contents of application.

Comment: The Commission proposed to add § 806.14(d) to set forth the application requirements for minor modifications. Section 806.14(a) should be correspondingly revised to include an exception for applications for minor modifications.

Response: The Commission agrees and will add the phrase "applications for minor modifications" in the first sentence of § 806.14(a) to clarify that the requirements of that paragraph do not apply to applications for minor modifications.

Section 806.15—Notice of application.

Comment: The next to last sentence of § 806.15(a) appears to contain grammatically incorrect language (which appears in the existing regulatory text). This should be corrected.

Response: The Commission agrees with the comment. The next to last sentence will be corrected to delete the word "for" and place two commas to make the sentence grammatically correct.

Comment: The intent of proposed rulemaking is that new paragraph (i) is meant to be the exclusive source of notice requirements for minor modification; however, no changes were proposed to paragraph (a) that make it clear that paragraph (a) does not apply to minor modifications. Paragraph (a) should be clarified.

Response: The Commission agrees with the comment and also finds it applicable to new paragraph (h). In the final rule, paragraph (a) will now begin with "Except with respect to paragraphs (h) and (i), ...".

Comment: The extension of time allotted for notices to be published from 10 to 20 days allows ample time for all interested parties and the public to comment.

Response: The Commission appreciates with the comment.

806.17—General permits.

Comment: Section 806.17(d)(3) provides that a Notice of Intent (NOI) must be denied if the project does not meet the requirements of § 806.21(a) or (b). However, § 806.21(b) does not provide any requirements, but rather gives the Commission discretion to modify or deny a project if the Commission determines that the project is not in the best interest of the conservation, development, management or control of the basin’s water resources or is in conflict with the Comprehensive Plan. The reference to § 806.21(b) should be removed or the standard placed verbatim into § 806.17(d)(3).

Response: The Commission does not agree with the proposed revisions of the commenter. However, the Commission agrees that the paragraph could be clarified in light of the comment. As a part of the final rule, the Commission will revise paragraph (d)(3) to read as set out in the regulatory text at the end of this document.

Comment: The Commission does not define “minimal adverse impacts” in § 806.17(a)(4).

Comment: The Commission should tier a determination of minimal adverse impacts, looking at the existing standards in 18 CFR 806.23 or adopting a “significance” inquiry as provided in the National Environmental Policy Act (NEPA).

Comment: The Commission should add a paragraph that provides that it shall not issue a general permit that creates or incites significant direct, indirect or cumulative impacts to water resources.

Response: The Commission agrees that § 806.17(a)(4) would be strengthened by a reference to the Commission’s existing regulatory review standards. These standards are known and defined with respect to Commission reviews of consumptive uses, withdrawals and diversions. Conversely, the Commission does not agree that the inquiries under NEPA would provide clarity in a substantive review in establishing a general permit. In addition, adopting a new set of standards for general permits would add complexity and confusion to the process that is avoided by referencing the Commission’s existing review standards. The Commission will revise the final rule so that § 806.17(a)(4) reads as set out in the regulatory text at the end of this document.

Comment: The proposed regulations seem to presume NOI issuance.

Response: The Commission disagrees with the comment. Part of the proposed rule includes § 806.17(d) entitled, “Denial of Coverage.”

Comment: Public notice under the general permit procedure is inadequate. Specifically, the public is not afforded notice via the Federal Register of receipt of an NOI.

Response: The Commission agrees that the procedures do not set forth any requirement that the Commission publish receipt of NOIs. Accordingly, the Commission will amend the final rule to include a new paragraph (c)(9) to read as set out in the regulatory text at the end of this document.

Comment: Section 806.17(b)(3) should be revised to require the Commission to take into account the level of public interest and likelihood for controversy for any proposed general permit in determining whether to hold a public hearing.

Response: The Commission agrees with the comment. The Commission will amend § 806.17(b)(3) to read as set out in the regulatory text at the end of this document.

Comment: Section 806.17(c)(4) should be amended to provide for full Commission review and approval of general permits.

Response: No such revision is necessary. Section 806.17(b)(4) currently provides that the Commission will adopt and issue general permits. Paragraph (c)(4) provides that the approval of coverage under a general permit, shall be determined by the Executive Director unless the Commission establishes a different mechanism for approval when issuing the general permit. This process is similar to the existing process for approving projects under the Commission’s Approvals By Rule in 18 CFR 806.22(e)(7) and (f)(10), where the Executive Director issues the approvals to project sponsors.

Comment: Section 806.17(c)(8) should be amended to require the project to conduct an aquatic resource survey (ARS) before any General Permit is renewed or amended.

Response: The Commission disagrees with the comment. The Commission currently requires projects to conduct an ARS on a case-by-case basis for individual applications for surface water withdrawals. The Commission does not believe that it would be appropriate to require ARSs to be conducted as a rule for every general permit NOI holder for renewal or amendment. The general permit procedures as proposed, however, are sufficiently broad to allow the Commission, as a part of the scope or application of a general permit developed by the Commission, to require an ARS from NOI applicants, if the Commission finds it appropriate for the type of activity being permitted.

Comment: The Commission is urged to specifically mandate adequate fees for general permit applications.

Response: The Commission appreciates the comment. The proposed rule provides that the Commission may set a fee for NOIs to any general permit. This allows the Commission to set a specific fee for NOIs under each particular general permit and tailor the fees to what is required of the NOI applicants and the Commission for each activity permitted.

806.18—Approval modifications.

Comment: Section 806.18(c)(8) should be revised to be grammatically consistent with paragraphs (c)(1) through (7).

Response: The Commission agrees with the comment. Paragraph (c)(8) is revised to read as set out in the regulatory text at the end of this document.

Comment: The word “flows” in § 806.18(d)(4) should be revised to “flow.”

Response: The Commission agrees with the comment and has made this revision to the final rule.

Comment: Aside from the correction of typographical errors, every suggested minor modification category includes changes in permit terms that can result in significant adverse impacts to local water resources and should not be allowed as minor modifications.

Response: The Commission disagrees with the comment. In developing the list of minor modifications, the Commission examined the range of modification requests that it receives and carefully vetted those categories and developed them specifically because they do not pose significant adverse impacts to local water resources. Review of these types of modifications is largely administrative in nature and poses little to no risk to human health, safety or the environment.

Transition Issues

As a part of the Resolution adopting this final rule, the Commission also has set a reduced fee for applications for minor modifications at \$750. Future adjustments may be made to this application fee during the regular annual adjustments to the Commission fee schedule.

List of Subjects in 18 CFR Part 806

Administrative practice and procedure, Water resources.

Accordingly, for the reasons set forth in the preamble, the Susquehanna River Basin Commission amends 18 CFR part 806 as follows:

PART 806—REVIEW AND APPROVAL OF PROJECTS

1. The authority citation for part 806 continues to read as follows:

Authority: Secs. 3.4, 3.5(5), 3.8, 3.10, and 15.2, Pub. L. 91-575, 84 Stat. 1509 et seq.

Subpart A—General Provisions

2. Amend § 806.4 by adding paragraph (a)(9) and revising paragraph (c) to read as follows:

§ 806.4 Projects requiring review and approval.

(a) * * *

(9) Any project subject to coverage under a general permit issued under § 806.17.

* * * * *

(c) Any project that did not require Commission approval prior to January 1, 2007, and not otherwise exempt from the requirements of paragraph (a)(1)(iv), (a)(2)(v), or (a)(3)(iv) of this section, pursuant to paragraph (b) of this section, may be undertaken by a new project sponsor upon a change of ownership pending action on a transfer application under § 806.6.

3. Revise § 806.6 to read as follows:

§ 806.6 Transfer of approvals.

(a) An existing Commission approval may be transferred to a new project sponsor by the Executive Director provided:

(1) The application for transfer is submitted within 90 days of a transfer or change in ownership of a project.

(2) The new project sponsor operates the project subject to the same terms and conditions of the existing approval pending approval of the transfer application.

(3) Any noncompliance by the existing project sponsor associated with the project or by the new project sponsor associated with other projects is resolved to the Commission’s satisfaction.

(4) If the existing approval is greater than 10 years old, the transfer shall be conditioned to require the submission of an updated metering and monitoring plan consistent with the requirements of § 806.30.

(5) If the existing project has an unapproved withdrawal, consumptive use and/or diversion listed in paragraph (b) of this section, the transfer shall be conditioned to require the submission of a new application for review and approval of the unapproved withdrawal, consumptive use and/or diversion consistent with §§ 806.4 and 806.14.

(6) Any modifications proposed by the new project sponsor shall be subject to a separate application and review process under §§ 806.14 and 806.18.

(b) Previously unapproved activities associated with a project subject to transfer under paragraph (a) of this section include:

(1) The project has an associated pre-compact consumptive water use that has not been subject to approval or had mitigation approved by the Commission.

(2) The project has an associated diversion that was initiated prior to January 23, 1971.

(3) The project has an associated groundwater withdrawal that was initiated prior to July 13, 1978, and that has not been approved by the Commission.

(4) The project has an associated surface water withdrawal that was initiated prior to November 11, 1995, and that has not been approved by the Commission.

(5) The project has a consumptive water use approval and has an associated withdrawal that has not been approved by the Commission.

(c) Upon undergoing a change of name that does not affect ownership or control of the project, the project sponsor must request a reissuance of the project's approval by the Executive Director within 90 days from the date of the change.

Subpart B—Application Procedure

4. Amend § 806.14 by revising paragraph (a) introductory text and adding paragraph (d) to read as follows:

§ 806.14 Contents of applications.

(a) Except with respect to applications to renew an existing Commission approval, applications for minor modifications, and Notices of Intent for approvals by rule and general permits, applications shall include, but not be limited to, the following information and, where applicable, shall be submitted on forms and in the manner prescribed by the Commission. Renewal applications shall include such information that the Commission determines to be necessary for the review of same, shall be subject to the standards set forth in subpart C of this part, and shall likewise be submitted on forms and in the manner prescribed by the Commission.

(d) Applications for minor modifications must be complete and will be on a form and in a manner prescribed by the Commission. Applications for minor modifications must contain the following:

(1) Description of the project;

(2) Description of all sources, consumptive uses and diversions related to the project;

(3) Description of the requested modification;

(4) Statement of the need for the requested modification;

(5) Demonstration that the anticipated impact of the requested modification will not adversely impact the water resources of the basin; and

(6) Any other information that the Commission or Executive Director deems necessary.

5. Amend § 806.15 by revising paragraph (a) and adding paragraphs (h) and (i) to read as follows:

§ 806.15 Notice of application.

(a) Except with respect to paragraphs (h) and (i) of this section, any project sponsor submitting an application to the Commission shall provide notice thereof to the appropriate agency of the member State, each municipality in which the project is located, and the county planning agency of each county in which the project is located. The project sponsor shall also publish notice of submission of the application at least once in a newspaper of general circulation serving the area in which the project is located. The project sponsor shall also meet any of the notice requirements set forth in paragraphs (b) through (f) of this section, if applicable. All notices required under this section shall be provided or published no later than 20 days after submission of the application to the Commission and shall contain a description of the project, its purpose, the requested quantity of water to be withdrawn, obtained from sources other than withdrawals, or consumptively used, and the address, electronic mail address, and phone number of the project sponsor and the Commission. All such notices shall be in a form and manner as prescribed by the Commission.

(h) For Notices of Intent (NOI) seeking coverage under a general permit, the project sponsor shall provide the NOI to the appropriate agency of the member State and each municipality and county planning agency in which the project is located and any additional notice identified in the general permit.

(i) For applications for minor modifications, the project sponsor shall provide notice of the application to the appropriate agency of the member State and each municipality and county planning agency in which the project is located.

6. Add § 806.17 to read as follows:

§ 806.17 General permits.

(a) Coverage and purpose. The Commission may issue a general permit, in lieu of issuing individual approvals, for a specifically described category of diversions, water withdrawals and consumptive uses that:

(1) Involve the same or substantially similar types of operations or activities;

(2) Require the same limitations or operating conditions, or both;

(3) Require the same or similar monitoring and reporting; and

(4) Will result in minimal adverse impacts consistent with §§ 806.21 through 806.24.

(b) Procedure for issuance. (1) At least 30 days prior to the issuance of a general permit, the Commission shall publish notice in the Federal Register and the member jurisdiction administrative bulletins of the intent to issue a general permit.

(2) At least 30 days shall be provided for interested members of the public and Federal, State and local agencies to provide written comments on a proposed general permit.

(3) The Commission or Executive Director may, in its discretion, hold a public hearing on a proposed general permit, taking into account the level of public interest and likelihood of controversy.

(4) The issuance of a general permit adopted by the Commission will be published in the Federal Register and the member jurisdiction administrative bulletins. This notice shall set forth the effective date of the general permit.

(c) Administration of general permits. General permits may be issued, amended, suspended, revoked, reissued or terminated under this section.

(1) Any general permit issued under this section shall set forth the applicability of the permit and the conditions that apply to any diversion, withdrawal or consumptive use authorized by such general permit.

(2) The Commission may fix a term to any general permit issued.

(3) A project sponsor shall obtain permission to divert, withdraw or consumptively use water in accordance with a general permit by filing a Notice of Intent (NOI) with the Commission, in a form and manner determined by the Commission.

(4) Approval of coverage under a general permit shall be determined by the Executive Director or by any other manner that the Commission shall establish for any general permit.

(5) The Commission may set a fee for NOIs to any general permit.

(6) A project sponsor shall provide notice for NOIs in accordance with § 806.15(h) and any additional notice requirements that the Commission may adopt for any general permit.

(7) The requirements of § 806.16 apply to the review of NOIs to any general permit.

(8) Upon reissuance or amendment of a general permit, all project sponsors permitted to divert, withdraw or consumptively use water in accordance with the previous general permit shall be permitted to continue to operate with the renewed or modified general permit unless otherwise notified by the Commission.

(9) Notice of receipt of NOIs shall be published on the Commission's website and in any other manner that the Commission shall establish for any general permit.

(d) Denial of coverage. The Executive Director will deny or revoke coverage under a general permit when one or more of the following conditions exist:

(1) The project or project sponsor does not or can no longer meet the criteria for coverage under a general permit.

(2) The diversion, withdrawal or consumptive use, individually or in combination with other similar Commission regulated activities, is causing or has the potential to cause adverse impacts to water resources or competing water users.

(3) The project does not comport with § 806.21(a) or (b).

(4) The project includes other diversions, withdrawals or consumptive uses that require an individual approval and the issuance of both an individual approval and a general permit for the project would constitute an undue administrative burden on the Commission.

(5) The Executive Director determines that a project cannot be effectively regulated under a general permit and is more effectively regulated under an individual approval.

(e) Requiring an individual approval. If coverage is denied or revoked under paragraph (d) of this section, the project sponsor shall be notified in writing. The notice will include a brief statement for the reasons for the decision. If coverage under a general permit was previously granted, the notice will also include a deadline for submission of an application for an individual approval. Timely submission of a complete application will result in continuation of coverage of the applicable withdrawal,

consumptive use or diversion under the general permit, until the Commission takes final action on the pending individual approval application.

(f) Action of the Commission. Action by the Executive Director denying or revoking coverage under a general permit under paragraph (d) of this section, or requiring an individual approval under paragraph (e) of this section, is not a final action of the Commission until the project sponsor submits and the Commission takes final action on an individual approval application.

7. Add § 806.18 to read as follows:

§ 806.18 Approval modifications.

(a) General. A project sponsor shall submit an application for modification of a current approval prior to making a change in the design, operational plans, or use as presented in the application upon which the approval was originally issued, and that will affect the terms and conditions of the current approval.

(b) Applications for modification. A project sponsor may apply for a modification of a current approval by submitting an application for modification to the Commission.

(c) Minor modifications. The following are minor modifications:

- (1) Correction of typographical errors;
- (2) Changes to monitoring or metering conditions;
- (3) Addition of sources of water for consumptive use;
- (4) Changes to the authorized water uses;
- (5) Changes to conditions setting a schedule for developing, implementing, and/or reporting on monitoring, data collection and analyses;
- (6) Changes to the design of intakes;
- (7) Increases to total system limits that were established based on the projected demand of the project; and
- (8) Modifications of extraction well network used for groundwater remediation systems.

(d) Major modifications. Major modifications are changes not considered to be minor modifications. Major modifications may include, but are not limited to:

- (1) Increases in the quantity of water withdrawals, consumptive uses or diversions;
- (2) Increases to peak day consumptive water use;
- (3) Increases to the instantaneous withdrawal rate or changes from a single withdrawal rate to a varied withdrawal rate;
- (4) Changes affecting passby flow requirements; and
- (5) Changes that have the potential for adverse impacts to water resources or competing water users.

(e) Notice and approval. (1) Applications for modifications are subject to the notice requirements of § 806.15.

(2) The Commission or Executive Director may approve, approve with conditions or deny an application for minor modification, or direct that an application for major modification be made.

(3) The Commission may approve, approve with conditions or deny an application for major modification.

Dated: December 7, 2015.
Stephanie L. Richardson,
Secretary to the Commission.

Office of Temporary and Disability Assistance

NOTICE OF EXPIRATION

The following notice has expired and cannot be reconsidered unless the Office of Temporary and Disability Assistance publishes a new notice of proposed rule making in the NYS Register.

Local Advisory Councils

I.D. No.	Proposed	Expiration Date
TDA-49-14-00001-P	December 10, 2014	December 10, 2015

Workers' Compensation Board

NOTICE OF ADOPTION

Ambulatory Surgery Fee Schedule

I.D. No. WCB-37-15-00004-A

Filing No. 1088

Filing Date: 2015-12-15

Effective Date: 2015-12-30

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

Action taken: Amendment of Part 329 of Title 12 NYCRR.

Statutory authority: Workers' Compensation Law, sections 13, 117 and 141

Subject: Ambulatory Surgery Fee Schedule.

Purpose: Change the methodology for reimbursement of fees for ambulatory surgery.

Text or summary was published in the September 16, 2015 issue of the Register, I.D. No. WCB-37-15-00004-P.

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

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

Assessment of Public Comment

The 45-day public comment period with respect to Proposed Rule I.D. No. WCB371500004 commenced on September 16, 2015, and expired on October 26, 2015. The Chair and the Workers' Compensation Board (Board) accepted formal written public comments on the proposed rule through October 26, 2015.

The Chair and Board received four written comments. These comments were reviewed and assessed. The comments are discussed below.

The Board received three comments from providers of spinal cord stimulators. These commenters stated that the methodology proposed by the Board that does not permit separate reimbursement for spinal cord stimulators unacceptably reduces payments for these devices. Initially the Board notes that all surgical implants are treated the same under the Ambulatory Patient Groups (APG) methodology adopted by the New York State Department of Health and incorporated by reference by the Board. Secondly, the Board notes that the methodology that incorporates payment for the implant within the total cost for the procedure is consistent with Medicaid and other health plans' approach. Finally, the Board notes that the Medical Advisory Committee that developed the Medical Treatment Guidelines states that use of spinal cord stimulators is rarely recommended. Accordingly, the Board did not make any changes in response to this comment.

A comment from the New York State Association of Ambulatory Surgery Centers states that the Board should reconsider the cuts to pain management reimbursement. The Board disputes that the rates for pain management reimbursement have been cut. While Medicaid and Medicare may have cut some base rates associated to pain management reimbursement, the Ambulatory Fee Schedule reimburses at 150% of Medicaid. Accordingly no change has been made in response to this comment.

The same commenter also stated that the proposed fee schedule reduced rates for orthopedic surgeons reimbursements and that this would result in more patients having surgeries performed in hospitals at increased costs to the system. The proposed fee schedule does not reduce reimbursement to orthopedic surgeons. The Ambulatory Fee Schedule using APG methodology will reimburse facilities at 150% of Medicaid rates. The prior Ambulatory Fee Schedule using PAS methodology reimbursed at 150% of Medicaid rates in 2003. Accordingly no change has been made in response to this comment.

The same commenter stated that the deadline associated to the transition to ICD-10 imposed a hardship on its members as the payer community was not prepared. As the Board announced the transition to ICD-10 in 2012, the Board thinks there has been ample opportunity to prepare for the transition. Accordingly no change has been made in response to this comment.