

RULE MAKING ACTIVITIES

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

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

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

Office of Alcoholism and Substance Abuse Services

EMERGENCY RULE MAKING

OASAS Treatment Services: General Provisions

I.D. No. ASA-36-15-00020-E

Filing No. 1012

Filing Date: 2015-11-23

Effective Date: 2015-11-23

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

Action taken: Repeal of Part 800; and addition of new Part 800 to Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 19.07(e), 19.09(b), 32.01 and 32.07(a)

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

Specific reasons underlying the finding of necessity: The immediate adoption of this new Part is necessary for the preservation of the health, safety, and welfare of individuals receiving services. October 1, 2015 the initial implementation of a major initiative of Governor Cuomo's Medicaid Redesign Team (MRT) – carve-in of behavioral health services into Medicaid Managed Care -- will begin in New York City; followed by the rest of the state in January 2016. The concurrent promulgation of Part 800 (General Provisions), Part 822 (Outpatient Services), Part 820 (Residential Services) and Part 841 (Medical Assistance for Chemical Dependence Services) is necessary because these regulations are foundational to

all OASAS treatment modalities affected by the Medicaid Managed Care transition.

To be effective by October 1, the earliest the proposed rules would have to have been submitted for publication for regular (non-emergency) adoption (including the required 45-day public comment period provided for in the State Administrative Procedure Act (SAPA) sections 201(1) and (5)) no later than August 5; assuming no comments, the notices of adoption would have been published in the September 26 State Register. Amendments to the texts related to federal Medicaid standards delayed publication and necessitate emergency adoption.

Therefore, emergency action is necessary for the preservation of the general welfare in order to immediately establish consistent standards in Part 800 applicable to all OASAS programs certified to provide outpatient and residential services and therefore to maximize newly available federal Medicaid revenues for certain certified residential services.

Subject: OASAS Treatment Services: General Provisions.

Purpose: General provisions applicable to all OASAS treatment services: definitions, incorporation by reference, staffing.

Substance of emergency rule: The Proposed Rule amends Part 800 (formerly "Chemical Dependence Services: General Provisions") to centralize and consolidate into one Part definitions, applicable statutes and publications incorporated by reference, and authorizations applicable to all OASAS treatment modalities and regulations found in 14 NYCRR Chapter XXI related to the operations of the Office.

Section 800.1 sets forth the legal authorization in the Mental Hygiene Law for promulgation of this Rule.

§ 800.2 lists statutes, publications and other regulations which are incorporated by reference into one or all of the other Parts in Chapter XXI. Including them in one Part, rather than individually in each Part, is more efficient for purposes of regulatory enforcement and future amendments. Commonly referenced citations include:

- a. The most current version of the "International Classification of Diseases";
- b. The most current version of the "Diagnostic and Statistical Manual of Mental Disorders";
- c. 42 Code of Federal Regulations Part 2, et. seq;
- d. The most current version of the OASAS Level of Care Determination Tool (LOCADTR);
- e. The most current version of the "Medicare Provider Reimbursement Manual";
- f. "Health Insurance Portability and Accountability Act of 1996" (HIPPA).

§ 800.3 sets forth frequently used definitions applicable to all of the other Parts of Chapter XXI. Including them in one Part, rather than individually in each Part, is more efficient for purposes of regulatory enforcement and future amendments. Definitions, references and language usage in the field of substance use disorder treatment have evolved so that many existing definitions are no longer relevant and others have become more significant. Key amendments and definitions include:

- a. Definition of "substance use disorder" which will include formerly preferred references to "chemical dependence";
- b. "Sponsor" formerly "governing authority" to be consistent with other Department of Mental Hygiene Offices;
- c. "Medical Director" setting forth specific requirements for the position;
- d. "Program" and "Provider";
- e. "Qualified Health Professional" to include recent additions to the list;
- f. "Student intern" and "Peer advocate";
- g. "diagnosis".

§ 800.4 outlines the parameters for a regulatory waiver granted by the Commissioner.

§ 800.5 is a standard severability clause.

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. ASA-36-15-00020-EP, Issue of September 9, 2015. The emergency rule will expire December 9, 2015.

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

Regulatory Impact Statement

1. Statutory Authority:

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

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

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

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

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

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

2. Legislative Objectives: The Purpose of this Part is to centralize in one Part definitions, applicable statutes and publications incorporated by reference, and authorizations applicable to all OASAS treatment modalities and regulations related to the operations of the Office found in 14 NYCRR Chapter XXI.

3. Needs and Benefits: OASAS is proposing to adopt this regulation because accumulated changes in statutory requirements, language usage, and applicability since 1992 when OASAS was established (Chapter 223 / laws of 1992), have increasingly caused inconsistencies in usage throughout the Parts of Chapter XXI.

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

5. Paperwork: The proposed regulation will not require increased paperwork.

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

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

8. Alternatives: Continue adding repetitive definitions whenever a Part is amended or updated.

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

10. Compliance Schedule: The regulations will be effective October 1, 2015.

Regulatory Flexibility Analysis

1. Effect of the rule:

OASAS services are provided by programs of varying size in every county in New York State; some counties are also certified service providers. The proposed Rule consolidates existing standards applicable to all OASAS programs of all sizes and on local governments if they are certified operators; additionally this regulation has been reviewed by the OASAS Advisory Council which consists of providers and stakeholders of all sizes and municipalities.

2. Compliance requirements:

The proposed regulation consolidates existing standards applicable to all programs. Programs compliance will be determined upon program certification.

3. Professional services:

Providers will require no new professional services; no professional services will be lost.

4. Compliance costs:

No additional professional services will be required by this new regulation; nor will the proposed regulation add to the professional service needs of local governments. There will be no disparate impact on providers based on location, size of business or municipality.

5. Economic and technological feasibility:

No upgrades of hardware or software will be required; increasing electronic communications means any additional recordkeeping will be minimal regardless of geographic location.

6. Minimizing adverse impact:

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

7. Small business and local government participation:

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

Rural Area Flexibility Analysis

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

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

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

The Purpose of this Part is to centralize in one Part definitions, applicable statutes and publications incorporated by reference, and authorizations applicable to all OASAS treatment modalities and regulations related to the operations of the Office found in 14 NYCRR Chapter XXI. The regulation does not impose any new recordkeeping, compliance requirements or professional services.

3. Costs:

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

4. Minimizing adverse impact:

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

5. Rural area participation:

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

Job Impact Statement

A Job Impact Statement (JIS) is not being submitted with this notice because it is evident from the subject matter of the regulation that it will have no impact on jobs and employment opportunities.

Assessment of Public Comment

The agency received no public comment.

EMERGENCY RULE MAKING

Medical Assistance for Chemical Dependence Services

I.D. No. ASA-36-15-00021-E

Filing No. 1014

Filing Date: 2015-11-23

Effective Date: 2015-11-23

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

Action taken: Amendment of Part 841 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 19.07(e), 19.09(b), 32.01 and 32.07(a)

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

Specific reasons underlying the finding of necessity: The immediate adoption of this new Part is necessary for the preservation of the health, safety, and welfare of individuals receiving services. October 1, 2015 the initial implementation of a major initiative of Governor Cuomo's Medicaid Redesign Team (MRT) – carve-in of behavioral health services into Medicaid Managed Care -- will begin in New York City; followed by the rest of the state in January 2016. The concurrent promulgation of Part 841 (Medical Assistance for Chemical Dependence Services), Part 822 (Outpatient Services), Part 800 (General Provisions), and Part 820 (Residential Services) is necessary because these regulations are foundational

to all OASAS treatment modalities affected by the Medicaid Managed Care transition.

To be effective by October 1, the earliest the proposed rules would have to have been submitted for publication for regular (non-emergency) adoption (including the required 45-day public comment period provided for in the State Administrative Procedure Act (SAPA) sections 201(1) and (5)) no later than August 5; assuming no comments, the notices of adoption would have been published in the September 26 State Register. Amendments to the texts related to federal Medicaid standards delayed publication and necessitate emergency adoption.

Therefore, emergency action is necessary for the preservation of the general welfare in order to immediately establish consistent standards in Part 841 applicable to all OASAS programs certified to provide outpatient and residential services and therefore to maximize newly available federal Medicaid revenues for certain certified residential services.

Subject: Medical Assistance for Chemical Dependence Services.

Purpose: Update for Medicaid managed care implementation; coordinate with amendments to Parts 822, 820 and 800; technical amendments.

Substance of emergency rule: The Proposed Rule Amends Part 841 (Medical Assistance for Chemical Dependence Services) to make technical corrections and to accommodate the “carve-in” of behavioral health services into the Medicaid Managed Care system of service reimbursement. Provisions previously in Part 841 related to Medicaid services are moved into 14 NYCRR Part 841. Other Medicaid billing provisions subject to change beyond OASAS control have been removed from this Part and made available on the agency website.

Section 841.1 is a statement of background and intent.

§ 841.2 sets forth the legal basis for regulatory action and other statutory authorizations required for methods of payments made by government agencies.

§ 841.3 states the regulation’s applicability to eligible providers.

§ 841.4 sets forth definitions applicable to this Part; makes technical amendments; and removes expired provisions. In conjunction with proposed concurrent amendments to 14 NYCRR Part 800, definition of “Office” was removed to reduce page length and redundancy.

§ 841.5 sets forth requirements for financial and statistical reporting. Technical amendments only.

§ 841.6 is a non-discrimination clause; no amendments.

§ 841.7 sets forth recordkeeping requirements; no amendments.

§ 841.8 relates to billing standards; no amendments.

§ 841.9 is a statement of compliance with general medical assistance program requirements; no amendments.

§ 841.10 relates to medical assistance payments for chemical dependence inpatient services. Removes references to short term residential treatment for adolescents; adds residential service providers and residential services under 16-beds (Part 819 and Part 820 currently being drafted); other technical amendments.

§ 841.11 relates to medical assistance payments for inpatient medically supervised withdrawal services; no amendments.

§ 841.12 relates to medical assistance payments for residential rehab services for youth; technical amendments.

§ 841.13 relates to audits and revisions to rates for inpatient rehabilitation services and fees and fee add-ons for residential rehabilitation services for youth services; technical amendments.

§ 841.14 relates to Medical assistance payments for chemical dependence outpatient and opioid treatment programs. Technical amendments and removed APG categories subject to change from regulation and indicate posting on agency website. Added provisions deleted from amendments to Part 822 regarding APG billing services.

§ 841.15 relates to capital costs; technical amendments.

§ 841.16 regulates related party transactions; no amendments.

§ 841.17 is a standard severability clause; no amendments.

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. ASA-36-15-00021-EP, Issue of September 9, 2015. The emergency rule will expire December 9, 2015.

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

Regulatory Impact Statement

1. Statutory Authority:

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

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

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

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

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

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

(h) Section 364 of the Social Service Law provides that each office within the Department of Mental Health shall be responsible for establishing and maintaining standards for medical care and services received in institutions operated by it or subject to its supervision pursuant to the mental hygiene law.

(i) Section 23 of part C of chapter 58 of the laws of 2009, authorizes the Commissioner to adopt and amend rules and regulations, subject to the approval of the Commissioner of Health and the Director of the Budget, utilizing the Ambulatory Patient Group (APG) methodology for the purpose of establishing standards and methods of payments for chemical dependence outpatient clinic services.

2. **Legislative Objectives:** These amendments anticipate the “carve-in” of substance use disorder treatment services (now known as “chemical dependence treatment services”) and other behavioral health services into the Medicaid Managed Care system of service reimbursement. Provisions previously in Part 822 related to Medicaid services are moved into 14 NYCRR Part 841. Other Medicaid billing provisions subject to change beyond OASAS control have been removed from this Part and made available on the agency website. Part 841 was last amended in 2011 to incorporate the implementation of Ambulatory Patient Groups billing and reimbursement methodology (APGs) for Chemical Dependence Outpatient and Opioid Treatment Programs in the Medicaid program and provide clear guidance regarding Medicaid billing and related party transactions; APGs are being phased out.

3. **Needs and Benefits:** Amendments to this regulation are necessary to accommodate amendments to Part 822 wherein provisions related to Medicaid billing were deleted from that regulation to reduce number of pages and added to Part 841. Other Medicaid billing provisions subject to change beyond OASAS control have been removed from this Part and made available on the agency website. Technical amendments also correct numbering.

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

5. **Paperwork:** The proposed regulation will add no new paperwork requirements.

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

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

8. **Alternatives:** The current regulation would not be consistent with amendments to 14 NYCRR Part 822, 820 and 800.

9. **Federal Standards:** Federal standards governing Medicaid requirements for these services are found at 42 Code of Federal Regulations Section 441.150 et seq. These amendments do not exceed any minimum standard of the federal government for the same or similar subject areas.

10. **Compliance Schedule:** The regulations will be effective October 1, 2015. However, all standards of Medical Assistance reimbursement applicable to chemical dependence treatment programs shall be contingent on approval of the state plan amendment associated with federal financial participation.

Regulatory Flexibility Analysis

1. Effect of the rule:

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

2. Compliance requirements:

Regardless of program size, it is anticipated that there will be no new reporting or recordkeeping imposed on local governments or small businesses. There are no new mandates or administrative requirements placed on local governments.

3. Professional services:

No new or additional professional services are required in order to comply with the proposed amendments.

4. Compliance costs:

No new or additional costs are anticipated in order to comply with the proposed amendments. There will be no impact on costs to local governments.

5. Economic and technological feasibility:

Small businesses will be able to comply with the economic and technological aspects of this rule.

6. Minimizing adverse impact:

No adverse impact is anticipated.

7. Small business and local government participation:

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

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

Rural Area Flexibility Analysis

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

2. Reporting, recordkeeping and other compliance requirements; and professional services: There will be no new reporting or recordkeeping imposed on providers in rural areas as a result of these amendments. No new professional services are required; no professional services will be lost.

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

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

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

Job Impact Statement

OASAS is not submitting a Job Impact Statement because it is evident from the subject matter of the regulation that it will have no impact on jobs and employment opportunities.

Assessment of Public Comment

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

EMERGENCY RULE MAKING

Residential Services

I.D. No. ASA-36-15-00022-E

Filing No. 1011

Filing Date: 2015-11-23

Effective Date: 2015-11-23

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

Action taken: Addition of Part 820 to Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 19.07(e), 19.09(b), 32.01 and 32.07(a)

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

Specific reasons underlying the finding of necessity: The immediate adoption of this new Part is necessary for the preservation of the health, safety, and welfare of individuals receiving services. October 1, 2015 the initial implementation of a major initiative of Governor Cuomo's Medicaid Redesign Team (MRT) – carve-in of behavioral health services into Medicaid Managed Care -- will begin in New York City; followed by the rest of the state in January 2016. The concurrent promulgation of Part 820 (Residential Services), Part 800 (General Provisions), Part 822

(Outpatient Services), and Part 841 (Medical Assistance for Chemical Dependence Services) is necessary because these regulations are all related to the implementation of Medicaid Managed Care.

To be effective by October 1, the earliest the proposed rules would have to have been submitted for publication for regular (non-emergency) adoption (including the required 45-day public comment period provided for in the State Administrative Procedure Act (SAPA) sections 201(1) and (5)) no later than August 5; assuming no comments, the notices of adoption would have been published in the September 26 State Register. Amendments to the texts related to federal Medicaid standards delayed publication and necessitate emergency adoption.

Therefore, emergency action is necessary for the preservation of the general welfare in order to immediately establish provisions applicable to OASAS residential programs and therefore to maximize newly available federal Medicaid revenues for certain certified residential services.

Subject: Residential services.

Purpose: Residential services restructured for Medicaid managed care and Medicaid redesign.

Substance of emergency rule: This Rulemaking proposes a new Part 820 ("Residential Services") added to 14 NYCRR to facilitate restructuring of OASAS residential programs in response to goals of Gov. Cuomo's Medicaid Redesign Team (MRT) in order to realize more efficient and effective use of state run and state authorized treatment resources, and in response to the transition of state authorized Medicaid payments for substance use disorder treatment from fee-for-service to managed care.

Section 820.1 sets forth the legal authorization in the Mental Hygiene Law for promulgation of this Rule.

§ 820.2 designates programs to which this rule would apply.

§ 820.3 sets forth definitions applicable to residential services and the corresponding elements of recovery: stabilization, rehabilitation, and community reintegration.

§ 820.4 relates to assignment of services pursuant to OASAS statutory and regulatory requirements for certification of treatment programs (14 NYCRR Part 810).

§ 820.5 sets forth general standards for all programs certified to provide residential services.

§ 820.6 describes Staffing requirements for all programs certified to provide residential services.

§ 820.7 sets forth requirements and standards for admission, screening and assessment of residents.

§ 820.8 relates to requirements for development of a treatment/recovery or service plan for each residential service.

§ 820.9 relates to discharge requirements.

§ 820.10 describes additional requirements for stabilization services in a residential setting related to program services and staffing.

§ 820.11 sets forth additional requirements for rehabilitation services in a residential setting related to program services and staffing.

§ 820.12 sets forth additional requirements for reintegration in a residential setting related to program services and staffing.

§ 820.13 sets forth Standards pertaining to Medicaid reimbursement.

§ 820.14 is a standard Severability clause.

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. ASA-36-15-00022-EP, Issue of September 9, 2015. The emergency rule will expire December 9, 2015.

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

Regulatory Impact Statement

1. Statutory Authority:

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

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

(c) Section 19.40 of the Mental Hygiene Law authorizes the Commissioner of the Office of Alcoholism and Substance Abuse Services to issue operating certificates for the provision of chemical dependence services.

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

(e) Section 32.07(a) of the Mental Hygiene Law authorizes the Com-

missioner of the Office of Alcoholism and Substance Abuse Services to adopt regulations to effectuate the provisions and purposes of Article 32 of the Mental Hygiene Law.

(f) Section 220.78 of the Penal Law affords limited protections from prosecution for persons seeking medical attention for accidental overdose.

(g) Section 3309 of the Public Health Law authorizes the Department of Health to establish standards for approval of any opioid overdose prevention program.

2. **Legislative Objectives:** The Purpose of adding this new Part is to accomplish restructuring of OASAS residential services as a goal set by Gov. Cuomo's Medicaid Redesign Team (MRT) in order to realize more efficient and effective use of state run and state authorized treatment resources, and in response to the transition of state authorized Medicaid payments for substance use disorder treatment from fee-for-service to managed care.

3. **Needs and Benefits:** OASAS is proposing to adopt this regulation because clinical, statutory and policy changes in delivery of behavioral health care services at the state and federal level require the implementation of regulatory revisions in order to realize the efficiencies and opportunities available to OASAS certified providers.

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

5. **Paperwork:** The proposed regulation will not require increased paperwork.

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

7. **Duplications:** This proposed rule does not duplicate, overlap, or conflict with any state or federal statute or rule.

8. **Alternatives:** No reasonable alternatives exist.

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

10. **Compliance Schedule:** The regulations will be effective October 1, 2015.

Regulatory Flexibility Analysis

1. **Effect of the rule:**

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

2. **Compliance requirements:**

The proposed regulation implements recommendations of the governor's Medicaid Redesign Team including Medicaid Managed Care for behavioral health services. Programs compliance will be determined upon program certification.

3. **Professional services:**

Providers will require no new professional services; no professional services will be lost. Residential services are already being provided.

4. **Compliance costs:**

No additional professional services will be required by this new regulation; nor will the proposed regulation add to the professional service needs of local governments. There will be no disparate impact on providers based on location, size of business or municipality.

5. **Economic and technological feasibility:**

No upgrades of hardware or software will be required; increasing electronic communications means any additional recordkeeping will be minimal regardless of geographic location.

6. **Minimizing adverse impact:**

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

7. **Small business and local government participation:**

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

Rural Area Flexibility Analysis

1. **Types and estimated number of rural areas:**

OASAS services are provided in every county in New York State. 44 counties have a population less than 200,000: Allegany, Cattaraugus, Cayuga, Chautauqua, Chemung, Chenango, Clinton, Columbia, Cortland, Delaware, Essex, Franklin, Fulton, Genesee, Greene, Hamilton, Herkimer, Jefferson, Lewis, Livingston, Madison, Montgomery, Ontario, Orleans, Oswego, Otsego, Putnam, Rensselaer, St. Lawrence, Saratoga, Schoharie, Schoharie, Schuyler, Seneca, Steuben, Sullivan, Tioga, Tompkins, Ulster, Warren, Washington, Wayne, Wyoming and Yates. 9 coun-

ties with certain townships have a population density of 150 persons or less per square mile: Albany, Broome, Dutchess, Erie, Monroe, Niagara, Oneida, Onondaga and Orange.

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

The proposed regulation accomplishes the restructuring of OASAS residential services as a goal set by Gov. Cuomo's Medicaid Redesign Team (MRT) in order to realize more efficient and effective use of state run and state authorized treatment resources in response to the transition of state authorized Medicaid payments for substance use disorder treatment from fee-for-service to managed care. Residential services providers will not be required to add professional services or increase recordkeeping and reporting beyond what they already provide for residential services.

3. **Costs:**

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

4. **Minimizing adverse impact:**

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

5. **Rural area participation:**

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

Job Impact Statement

No change in the number of jobs and employment opportunities is anticipated as a result of the proposed new regulation because the amendments either clarify or streamline provider actions which will not be eliminated or supplemented. Treatment providers already providing residential services will not need to hire additional staff or reduce staff size; the proposed changes will not adversely impact jobs outside of the agency; the proposed changes will not result in the loss of any jobs within New York State.

Assessment of Public Comment

The agency received no public comment.

EMERGENCY RULE MAKING

General Service Standards for Chemical Dependence Outpatient (CD-OP) and Opioid Treatment Programs (OTP)

I.D. No. ASA-36-15-00023-E

Filing No. 1013

Filing Date: 2015-11-23

Effective Date: 2015-11-23

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

Action taken: Repeal of Part 822; and addition of new Part 822 to Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 19.07(e), 19.09(b), 32.01 and 32.07(a)

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

Specific reasons underlying the finding of necessity: The immediate adoption of this new Part is necessary for the preservation of the health, safety, and welfare of individuals receiving services. October 1, 2015 the initial implementation of a major initiative of Governor Cuomo's Medicaid Redesign Team (MRT) – carve-in of behavioral health services into Medicaid Managed Care -- will begin in New York City; followed by the rest of the state in January 2016. This transition also coincides with the phase out of ambulatory patient groups (APG) payment methodology reflected in the previous Part 822. The concurrent promulgation of Part 822 (Outpatient Services), Part 800 (General Provisions), Part 820 (Residential Services) and Part 841 (Medical Assistance for Chemical Dependence Services) is necessary because these regulations are foundational to all OASAS treatment modalities affected by the Medicaid Managed Care transition.

To be effective by October 1, the earliest the proposed rules would have to have been submitted for publication for regular (non-emergency) adoption (including the required 45-day public comment period provided for in the State Administrative Procedure Act (SAPA) sections 201(1) and (5)) no later than August 5; assuming no comments, the notices of adoption

would have been published in the September 26 State Register. Amendments to the texts related to federal Medicaid standards delayed publication and necessitate emergency adoption.

Therefore, emergency action is necessary for the preservation of the general welfare in order to immediately establish consistent standards in Part 822 applicable to all OASAS programs certified to provide outpatient services and therefore to maximize newly available federal Medicaid revenues for certain certified residential services.

Subject: General Service Standards for Chemical Dependence Outpatient (CD-OP) and Opioid Treatment Programs (OTP).

Purpose: Amend to accommodate Medicaid managed care and Medicaid redesign; phase out APGs; amendments to Part 800.

Substance of emergency rule: The Proposed Rule Repeals Part 822 (Chemical Dependence Outpatient and Opioid Treatment Programs; effective July 1, 2011) and Adds a New Part 822. The current Part 822 was substantially rewritten in 2011 to accommodate implementation of the Ambulatory Patient Group (APG) billing and reimbursement methodology. In addition that revision incorporated provisions related to opioid treatment programs, which are also outpatient treatment, from a previously separate and distinct Part 828. This current revision anticipates the “carve-in” of chemical dependence treatment services (now known as “substance use disorder services”) and other behavioral health services into the Medicaid Managed Care system of service reimbursement.

Section 822.1 is a statement of background.

§ 822.2 sets forth the legal basis for regulatory action and other statutory authorizations required for medication assisted treatment.

§ 822.3 states the regulation’s applicability to chemical dependence outpatient programs (CD-OPs) and such outpatient programs known as opioid treatment programs (CD-OTPs).

§ 822.4 is a savings and renewals clause for purposes of a transition period for issuance of program operating certificates.

§ 822.5 sets forth definitions uniquely applicable to this Part. In conjunction with proposed concurrent amendments to 14 NYCRR Part 800, some definitions were removed to reduce page length and redundancy (ie, “commissioner,” “governing authority” or “sponsor,” “Medical Director,” “clinical staff,” “peer advocate,” “student intern,” “prescribing professional”). Significant definitions unique to this Part include, for example: “accrediting body,” “central registry system,” “complex care coordination,” “continuing care treatment,” “intensive outpatient services,” “opioid detoxification,” and “opioid taper.”

§ 822.6 sets forth minimum standards pertaining to Medicaid reimbursement (specific enumerated services are identified in 14 NYCRR Part 841) such as services which, by themselves, are not Medicaid reimbursable.

§ 822.7 details general program standards applicable to both CD-OPs and CD-OTPs or to a specific modality. These standards include requirements for policies and procedures, emergency medical kits on-site, utilization review, minimum required services, staffing, hours of operation, and optional services.

§ 822.8 relates to admission, initial services, transfers and readmission requirements for all programs and some requirements specific to CD-OPs or CD-OTPs. Requirements include pre-admission testing, timing of a decision to admit, initial medications, patient orientation, documentation required for transfers or readmissions.

§ 822.9 relates to the development, documentation, implementation and periodic review of the patient-specific treatment/recovery plan; also indicates special requirements for pregnant patients required by federal block grant.

§ 822.10 relates to minimum requirements for preparation and maintenance of case records applicable to all programs. Standards include periodic review, discharge plans, document retention, transfers, patient deaths, and confidentiality.

§ 822.11 includes minimum standards for documentation of services including required signatures, content and date of service.

§ 822.12 relates to discharge planning including minimum criteria, timing of a required discharge summary, requirement for patient participation in the development of a discharge plan and special requirements for discharge of minors pursuant to mental hygiene law § 22.11.

§ 822.13 relates to a continuing care which is a service unique to CD-OPs. Continuing care requires a discharge from active treatment and subsequent admission to continuing care with limitations on the amount and types of services available to support continued recovery.

§ 822.14 regulates additional locations of a primary CD-OP location by restricting location in relation to the primary site, extent of services, and requirement for certification.

§ 822.15 identifies additional requirements for chemical dependence outpatient rehabilitation services in CD-OPs designated to provide such services. Special requirements relate to staffing, type and frequency of services, and meals.

§ 822.16 identifies additional standards unique to CD-OTPs including

medication administration, regulation of take-home medications, voluntary and involuntary tapers, provisions for diversion control, and program participation in the central registry maintained by the Office to track patients receiving opioid treatment.

§ 822.17 is a standard severability clause.

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. ASA-36-15-00023-EP, Issue of September 9, 2015. The emergency rule will expire December 9, 2015.

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

Regulatory Impact Statement

1. Statutory Authority:

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

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

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

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

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

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

2. Legislative Objectives: The Proposed Rule Repeals Part 822 (Chemical Dependence Outpatient and Opioid Treatment Programs; effective July 1, 2011) and adds a new Part 822. The current Part 822 was substantially rewritten in 2011 to accommodate implementation of the Ambulatory Patient Group (APG) billing and reimbursement methodology. In addition that revision incorporated provisions related to opioid treatment programs, which are also outpatient treatment, from a previously separate and distinct Part 828.

This current revision anticipates the “carve-in” of substance use disorder treatment services (now known as “chemical dependence treatment services”) and other behavioral health services into the Medicaid Managed Care system of service reimbursement. Provisions previously in this Part that are related to Medicaid services are moved into 14 NYCRR Part 841 (“Medical Assistance for Chemical Dependence Services”). In conjunction with the revisions also proposed to 14 NYCRR Part 800, this revision reduces the page length of the existing regulation and updates and aligns significant definitions used throughout the other Parts of Chapter XXI.

3. Needs and Benefits:

This regulation responds to the needs and expectations of a changing service delivery landscape for OASAS providers, substantially altered by the anticipated “carve-in” of behavioral health services into Medicaid Managed Care (on/about October 2015), implementation of certain recommendations of the NYS Medicaid Redesign Team (MRT) and aspects of the federal Affordable Care Act (ACA) such as Behavioral Health Organizations (BHOs), Preferred Provider Organizations (PPOs) and other integrative health care delivery restructurings. Driving many of these developments is the demand for provider outcome measures and accountability. Providers will receive and retain operating certificates increasingly based on demonstrated results of their clinical decisions and treatment methods rather than on rote compliance with prescriptive rules and regulations.

The proposed amendments are less prescriptive with the intent of not boxing in providers to comply with narrow regulatory requirements in an increasingly integrated behavioral health/physical health service delivery marketplace. OASAS is also proposing to adopt this regulation because changes in statutory requirements, language usage and applicability, and issuance of the fifth edition of the Diagnostic and Statistical Manual (DSM V) since OASAS was consolidated (chapter 223 of the laws of 1992) have increasingly created inconsistencies throughout Parts of Chapter XXI.

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

5. Paperwork: The proposed regulation will add no new paperwork requirements.

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

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

8. Alternatives: The current regulation would not be consistent with changes in health care delivery; new regulation is the only alternative.

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

10. Compliance Schedule: The regulations will be effective October 1, 2015.

Regulatory Flexibility Analysis

1. Effect of the rule:

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

2. Compliance requirements:

The proposed regulation implements recommendations of the governor’s Medicaid Redesign Team including Medicaid Managed Care for behavioral health services and transition from ambulatory patient group (APG) payment methodology. Compliance will be determined upon recertification reviews.

3. Professional services:

Providers will require no new professional services; no professional services will be lost. Outpatient services are already being provided.

4. Compliance costs:

No additional professional services will be required by this new regulation; nor will the proposed regulation add to the professional service needs of local governments. There will be no disparate impact on providers based on location, size of business or municipality.

5. Economic and technological feasibility:

No upgrades of hardware or software will be required; increasing electronic communications means any additional recordkeeping will be minimal regardless of geographic location.

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

7. Small business and local government participation:

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

Rural Area Flexibility Analysis

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

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

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

The proposed regulation is related to the restructuring of OASAS residential services as a goal set by Gov. Cuomo’s Medicaid Redesign Team (MRT) in order to realize more efficient and effective use of state run and state authorized treatment resources in response to the transition of state authorized Medicaid payments for substance use disorder treatment from fee-for-service to managed care and the phase out of ambulatory patient groups (APGs) as a payment methodology. Outpatient service providers will not be required to add professional services or increase recordkeeping and reporting beyond what they already provide for residential services.

3. Costs:

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

4. Minimizing adverse impact:

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

5. Rural area participation:

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

Job Impact Statement

No change in the number of jobs and employment opportunities is anticipated as a result of the proposed new regulation because the amendments either clarify or streamline provider actions which will not be eliminated or supplemented. Treatment providers already providing residential services will not need to hire additional staff or reduce staff size; the proposed changes will not adversely impact jobs outside of the agency; the proposed changes will not result in the loss of any jobs within New York State.

Assessment of Public Comment

The agency received no public comment.

**EMERGENCY
RULE MAKING**

Incident Reporting in Oasas Certified, Licensed, Funded, or Operated Services

I.D. No. ASA-37-15-00001-E

Filing No. 1015

Filing Date: 2015-11-23

Effective Date: 2015-11-23

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

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

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

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

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

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

The amendments to Part 836, effective June 30, 2013 and subsequently September 25, 2013, December 20, 2013, March 20, 2014, June 17, 2014, September 12, 2014, December 14, 2014, March 14, 2015, June 12, 2015 and August 26, 2015 are necessary to implement the incident reporting and management provisions required by the statute and to ensure compliance with the criminal history background check provisions to further enhance patient safety.

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

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

Subject: Incident Reporting in Oasas Certified, Licensed, Funded, or Operated Services.

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

Substance of emergency rule: The Proposed Rule would Repeal the cur-

rent Part 836 and Replace it with a new Part 836. The new Part incorporates amendments related to incident reporting consistent with statutory requirements, definitions and procedures of the Justice Center, pursuant to the Protection of People with Special Needs Act (Chapter 501 of the Laws of 2012).

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

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

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

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

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

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

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

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

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

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

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

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

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt 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. ASA-37-15-00001-EP, Issue of September 16, 2015. The emergency rule will expire December 9, 2015.

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

Regulatory Impact Statement

1. Statutory Authority:

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

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

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

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

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

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

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

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

2. Legislative Objectives:

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

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

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

3. Needs and Benefits:

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

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

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

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

4. Costs:

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

5. Paperwork:

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

6. Local Government Mandates:

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

7. Duplications:

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

8. Alternatives:

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

9. Federal Standards:

These amendments do not conflict with federal standards.

10. Compliance Schedule:

The regulations will be effective on June 30, 2013 and subsequently September 25, 2013, December 20, 2013, March 20, 2014, June 17, 2014, September 12, 2014, and December 14, 2014, March 14, 2015, June 12, 2015 and August 26, 2015 to ensure compliance with Chapter 501 of the Laws of 2012.

Regulatory Flexibility Analysis

1. Effect of the rule:

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

2. Compliance requirements:

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

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

3. Professional services:

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

4. Compliance costs:

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

5. Economic and technological feasibility:

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

6. Minimizing adverse impact:

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

7. Small business and local government participation:

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

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

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

Rural Area Flexibility Analysis

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

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

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

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

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

3. Costs:

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

4. Minimizing adverse impact:

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

5. Rural area participation:

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

Job Impact Statement

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

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

The Rule sets forth criteria for incident reporting to the Justice Center, investigations, corrective action and penalties for programs and individuals who are not compliant with these, or other applicable, regulations. The proposed regulation requires criminal history information reviews of any employee, contractor, or volunteer in treatment facilities certified by the Office who will have the potential for, or may be permitted, regular and substantial unsupervised or unrestricted physical contact with the clients

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

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

Assessment of Public Comment

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

NOTICE OF ADOPTION

OASAS Treatment Services: General Provisions

I.D. No. ASA-36-15-00020-A

Filing No. 1005

Filing Date: 2015-11-19

Effective Date: 2015-11-20

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

Action taken: Repeal of Part 800; and addition of new Part 800 to Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 19.07(e), 19.09(b), 32.01 and 32.07(a)

Subject: OASAS Treatment Services: General Provisions.

Purpose: General provisions applicable to all OASAS treatment services; definitions, incorporation by reference, staffing.

Substance of final rule: The Proposed Rule amends Part 800 (formerly "Chemical Dependence Services: General Provisions") to centralize and consolidate into one Part definitions, applicable statutes and publications incorporated by reference, and authorizations applicable to all OASAS treatment modalities and regulations found in 14 NYCRR Chapter XXI related to the operations of the Office.

Section 800.1 sets forth the legal authorization in the Mental Hygiene Law for promulgation of this Rule.

§ 800.2 lists statutes, publications and other regulations which are incorporated by reference into one or all of the other Parts in Chapter XXI. Including them in one Part, rather than individually in each Part, is more efficient for purposes of regulatory enforcement and future amendments. Commonly referenced citations include:

- a. The most current version of the "International Classification of Diseases";
- b. The most current version of the "Diagnostic and Statistical Manual of Mental Disorders";
- c. 42 Code of Federal Regulations Part 2, et. seq;
- d. The most current version of the OASAS Level of Care Determination Tool (LOCADTR);
- e. The most current version of the "Medicare Provider Reimbursement Manual";
- f. "Health Insurance Portability and Accountability Act of 1996" (HIPPA);
- g. 21 Code of Federal Regulations Part 1301.72, et seq.

§ 800.3 sets forth frequently used definitions applicable to all of the other Parts of Chapter XXI. Including them in one Part, rather than individually in each Part, is more efficient for purposes of regulatory enforcement and future amendments. Definitions, references and language usage in the field of substance use disorder treatment have evolved so that many existing definitions are no longer relevant and others have become more significant. Key amendments and definitions include:

- a. Definition of "substance use disorder" which will include formerly preferred references to "chemical dependence";
- b. "Sponsor" formerly "governing authority" to be consistent with other Department of Mental Hygiene Offices;
- c. "Medical Director" and medical staff setting forth specific requirements for the positions;
- d. "Program" and "Provider";
- e. "Qualified Health Professional" to include recent additions to the list;

f. "Student intern" and "Peer advocate";

g. "diagnosis";

§ 800.4 outlines the parameters for a regulatory waiver granted by the Commissioner.

§ 800.5 is a standard severability clause.

Final rule as compared with last published rule: Nonsubstantive changes were made in sections 800.2(b), (g), 800.3(e) and (l).

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

Revised Regulatory Impact Statement

OASAS is not submitting a Revised Regulatory Impact Statement because amendments to the text of this rule subsequent to close of public comments do not constitute substantive amendments that would alter the purpose and substance of the rule as Proposed and Adopted by emergency and as published in the September 9, 2015 State Register.

Revised Regulatory Flexibility Analysis

OASAS is not submitting a Revised Regulatory Flexibility Analysis for Small Businesses and Local Governments because amendments to the text of this rule subsequent to close of public comments do not constitute substantive amendments that would alter the purpose and substance of the rule as Proposed and Adopted by emergency and as published in the September 9, 2015 State Register.

Revised Rural Area Flexibility Analysis

OASAS is not submitting a Revised Rural Area Flexibility Analysis because amendments to the text of this rule subsequent to close of public comments do not constitute substantive amendments that would alter the purpose and substance of the rule as Proposed and Adopted by emergency and as published in the September 9, 2015 State Register.

Revised Job Impact Statement

A Revised Job Impact Statement (JIS) is not being submitted with this notice because it is evidence from the subject matter of the regulation that it will have no impact on jobs and employment opportunities and amendments to the text of this rule subsequent to close of public comments do not constitute substantive amendments that would alter the purpose and substance of the rule as Proposed and Adopted by emergency and as published in the September 9, 2015 State Register.

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

Medical Assistance for Chemical Dependence Services

I.D. No. ASA-36-15-00021-A

Filing No. 1007

Filing Date: 2015-11-19

Effective Date: 2015-11-20

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

Action taken: Amendment of Part 841 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 19.07(e), 19.09(b), 32.01 and 32.07(a)

Subject: Medical Assistance for Chemical Dependence Services.

Purpose: Update for Medicaid managed care implementation; coordinate with amendments to Parts 822, 820 and 800; technical amendments.

Substance of final rule: The Proposed Rule Amends Part 841 (Medical Assistance for Chemical Dependence Services) to make technical corrections and to accommodate the "carve-in"; of behavioral health services into the Medicaid Managed Care system of service reimbursement. Provisions previously in Part 841 related to Medicaid services are moved into 14 NYCRR Part 841. Other Medicaid billing provisions subject to change beyond OASAS control have been removed from this Part and made available on the agency website.

Section 841.1 is a statement of background and intent.

§ 841.2 sets forth the legal basis for regulatory action and other statutory authorizations required for methods of payments made by government agencies.

NOTICE OF ADOPTION

§ 841.3 states the regulation's applicability to eligible providers.

§ 841.4 sets forth definitions applicable to this Part; makes technical amendments; and removes expired provisions. In conjunction with proposed concurrent amendments to 14 NYCRR Part 800, definition of "Office" was removed to reduce page length and redundancy.

§ 841.5 sets forth requirements for financial and statistical reporting. Technical amendments only.

§ 841.6 is a non-discrimination clause; no amendments.

§ 841.7 sets forth recordkeeping requirements; no amendments.

§ 841.8 relates to billing standards; no amendments.

§ 841.9 is a statement of compliance with general medical assistance program requirements; no amendments.

§ 841.10 relates to medical assistance payments for chemical dependence inpatient services. Removes references to short term residential treatment for adolescents; adds residential service providers and residential services under 16-beds (Part 819 and Part 820 currently being drafted); other technical amendments.

§ 841.11 relates to medical assistance payments for inpatient medically supervised withdrawal services; no amendments.

§ 841.12 relates to medical assistance payments for residential rehab services for youth; technical amendments.

§ 841.13 relates to audits and revisions to rates for inpatient rehabilitation services and fees and fee add-ons for residential rehabilitation services for youth services; technical amendments.

§ 841.14 relates to Medical assistance payments for chemical dependence outpatient and opioid treatment programs. Technical amendments and removed APG categories subject to change from regulation and indicate posting on agency website. Added provisions deleted from amendments to Part 822 regarding APG billing services.

§ 841.15 relates to capital costs; technical amendments.

§ 841.16 regulates related party transactions; no amendments; technical amendments.

§ 841.17 is a standard severability clause; no amendments.

Final rule as compared with last published rule: Nonsubstantive changes were made in sections 841.13(c)(2), 841.15(c), (e), (f), (h), (j), (m) and 841.16(a).

Text of rule and any required statements and analyses may be obtained from: Sara Osborne, Associate Attorney, NYS Office of Alcoholism and Substance Abuse Services, 1450 Western Ave., Albany, NY 12203, (518) 495-2317, email: Sara.Osborne@oasas.ny.gov

Revised Regulatory Impact Statement

OASAS is not submitting a Revised Regulatory Impact Statement because amendments to the text of this rule subsequent to close of public comments do not constitute substantive amendments that would alter the purpose and substance of the rule as Proposed and Adopted by emergency and as published in the September 9, 2015 State Register.

Revised Regulatory Flexibility Analysis

OASAS is not submitting a Revised Regulatory Flexibility Analysis for Small Business and Local Governments because amendments to the text of this rule subsequent to close of public comments do not constitute substantive amendments that would alter the purpose and substance of the rule as Proposed and Adopted by emergency and as published in the September 9, 2015 State Register.

Revised Rural Area Flexibility Analysis

OASAS is not submitting a Revised Rural Area Flexibility Analysis because amendments to the text of this rule subsequent to close of public comments do not constitute substantive amendments that would alter the purpose and substance of the rule as Proposed and Adopted by emergency and as published in the September 9, 2015 State Register.

Revised Job Impact Statement

OASAS is not submitting a Revised No Job Impact Statement because amendments to the text of this rule subsequent to close of public comments do not constitute substantive amendments that would alter the purpose and substance of the rule as Proposed and Adopted by emergency and as published in the September 9, 2015 State Register.

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.

Residential Services

I.D. No. ASA-36-15-00022-A

Filing No. 1006

Filing Date: 2015-11-19

Effective Date: 2015-11-20

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

Action taken: Addition of Part 820 to Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 19.07(e), 19.09(b), 32.01 and 32.07(a)

Subject: Residential services.

Purpose: Residential services restructured for Medicaid managed care and Medicaid redesign.

Substance of final rule: This Rulemaking proposes a new Part 820 ("Residential Services") added to 14 NYCRR to facilitate restructuring of OASAS residential programs in response to goals of Gov. Cuomo's Medicaid Redesign Team (MRT) in order to realize more efficient and effective use of state run and state authorized treatment resources, and in response to the transition of state authorized Medicaid payments for substance use disorder treatment from fee-for-service to managed care.

Section 820.1 sets forth the legal authorization in the Mental Hygiene Law for promulgation of this Rule.

§ 820.2 designates programs to which this rule would apply.

§ 820.3 sets forth definitions applicable to residential services and the corresponding elements of recovery: stabilization, rehabilitation, and community reintegration.

§ 820.4 relates to assignment of services pursuant to OASAS statutory and regulatory requirements for certification of treatment programs (14 NYCRR Part 810).

§ 820.5 sets forth general standards for all programs certified to provide residential services.

§ 820.6 describes Staffing requirements for all programs certified to provide residential services.

§ 820.7 sets forth requirements and standards for admission, screening and assessment of residents.

§ 820.8 relates to requirements for development of a treatment/recovery or service plan for each residential service.

§ 820.9 relates to discharge requirements.

§ 820.10 describes additional requirements for stabilization services in a residential setting related to program services and staffing.

§ 820.11 sets forth additional requirements for rehabilitation services in a residential setting related to program services and staffing.

§ 820.12 sets forth additional requirements for reintegration in a residential setting related to program services and staffing.

§ 820.13 sets forth Standards pertaining to Medicaid reimbursement.

§ 820.14 is a standard Severability clause.

Final rule as compared with last published rule: Nonsubstantive changes were made in sections 820.4, 820.5(a), (b), 820.7(a), (c), 820.8(b), 820.9(c), 820.11, 820.12 and 820.13.

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

Revised Regulatory Impact Statement

OASAS is not submitting a Revised Regulatory Impact Statement because amendments to the text of this rule subsequent to close of public comments do not constitute substantive amendments that would alter the purpose and substance of the rule as Proposed and Adopted by emergency and as published in the September 9, 2015 State Register.

Revised Regulatory Flexibility Analysis

OASAS is not submitting a Revised Regulatory Flexibility Analysis for Small Businesses and Local Governments because amendments to the text of this rule subsequent to close of public comments do not constitute substantive amendments that would alter the purpose and substance of the rule as Proposed and Adopted by emergency and as published in the September 9, 2015 State Register.

Revised Rural Area Flexibility Analysis

OASAS is not submitting a Revised Rural Area Flexibility Analysis because amendments to the text of this rule subsequent to close of public comments do not constitute substantive amendments that would alter the purpose and substance of the rule as Proposed and Adopted by emergency and as published in the September 9, 2015 State Register.

Revised Job Impact Statement

OASAS is not submitting a Job Impact Statement because amendments to the text of this rule subsequent to close of public comments do not constitute substantive amendments that would alter the purpose and substance of the rule as Proposed and Adopted by emergency and as published in the September 9, 2015 State Register.

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**General Service Standards for Chemical Dependence Outpatient (CD-OP) and Opioid Treatment Programs (OTP)**

I.D. No. ASA-36-15-00023-A

Filing No. 1004

Filing Date: 2015-11-19

Effective Date: 2015-11-20

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

Action taken: Repeal of Part 822; and addition of new Part 822 to Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 19.07(e), 19.09(b), 32.01 and 32.07(a)

Subject: General Service Standards for Chemical Dependence Outpatient (CD-OP) and Opioid Treatment Programs (OTP).

Purpose: Amend to accommodate Medicaid managed care and Medicaid redesign; phase out APGs; amendments to Part 800.

Substance of final rule: The Proposed Rule Repeals Part 822 (Chemical Dependence Outpatient and Opioid Treatment Programs; effective July 1, 2011) and Adds a New Part 822. The current Part 822 was substantially rewritten in 2011 to accommodate implementation of the Ambulatory Patient Group (APG) billing and reimbursement methodology. In addition that revision incorporated provisions related to opioid treatment programs, which are also outpatient treatment, from a previously separate and distinct Part 828. This current revision anticipates the “carve-in” of chemical dependence treatment services (now known as “substance use disorder services”) and other behavioral health services into the Medicaid Managed Care system of service reimbursement.

Section 822.1 is a statement of background.

§ 822.2 sets forth the legal basis for regulatory action and other statutory authorizations required for medication assisted treatment.

§ 822.3 states the regulation’s applicability to chemical dependence outpatient programs (COOPs) and such outpatient programs known as opioid treatment programs (CD-OTPs).

§ 822.4 is a savings and renewals clause for purposes of a transition period for issuance of program operating certificates.

§ 822.5 sets forth definitions uniquely applicable to this Part. In conjunction with proposed concurrent amendments to 14 NYCRR Part 800, some definitions were removed to reduce page length and redundancy (i.e., “commissioner,” “governing authority” or “sponsor,” “Medical Director,” “clinical staff,” “peer advocate,” “student intern,” “prescribing professional”). Significant definitions unique to this Part include, for example: “accrediting body,” “central registry system,” “complex care coordination,” “continuing care treatment,” “intensive outpatient services,” “opioid detoxification,” and “opioid taper.”

§ 822.6 sets forth minimum standards pertaining to Medicaid reimbursement (specific enumerated services are identified in 14 NYCRR Part 841) such as services which, by themselves, are not Medicaid reimbursable.

§ 822.7 details general program standards applicable to both CD-OPs and CD-OTPs or to a specific modality. These standards include requirements for policies and procedures, emergency medical kits on-site, utilization review, minimum required services, staffing, hours of operation, and optional services.

§ 822.8 relates to admission, initial services, transfers and readmission requirements for all programs and some requirements specific to CD-OPs or CD-OTPs. Requirements include preadmission testing, timing of a decision to admit, initial medications, patient orientation, documentation required for transfers or readmissions.

§ 822.9 relates to the development, documentation, implementation and periodic review of the patient-specific treatment/recovery plan; also

indicates special requirements for pregnant patients required by federal block grant.

§ 822.10 relates to minimum requirements for preparation and maintenance of case records applicable to all programs. Standards include periodic review, discharge plans, document retention, transfers, patient deaths, and confidentiality.

§ 822.11 includes minimum standards for documentation of services including required signatures, content and date of service.

§ 822.12 relates to discharge planning including minimum criteria, timing of a required discharge summary, requirement for patient participation in the development of a discharge plan and special requirements for discharge of minors pursuant to mental hygiene law § 22.11.

§ 822.13 relates to a continuing care which is a service unique to CD-OPs. Continuing care requires a discharge from active treatment and subsequent admission to continuing care with limitations on the amount and types of services available to support continued recovery.

§ 822.14 regulates additional locations of a primary CD-OP location by restricting location in relation to the primary site, extent of services, and requirement for certification.

§ 822.15 identifies additional requirements for chemical dependence outpatient rehabilitation services in CD-OPs designated to provide such services. Special requirements relate to staffing, type and frequency of services, and meals.

§ 822.16 identifies additional standards unique to CD-OTPs including medication administration, regulation of take-home medications, voluntary and involuntary tapers, provisions for diversion control, and program participation in the central registry maintained by the Office to track patients receiving opioid treatment.

§ 822.17 is a standard severability clause.

Final rule as compared with last published rule: Nonsubstantive changes were made in sections 822.5, 822.7(a), (g), 822.8(a), (b), 822.9(b), (c), 822.10(b), (f) and 822.13(b).

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

Revised Regulatory Impact Statement

OASAS is not submitting a Revised Regulatory Impact Statement because amendments to the text of this rule subsequent to close of public comments do not constitute substantive amendments that would alter the purpose and substance of the rule as Proposed and Adopted by emergency and as published in the September 9, 2015 State Register.

Revised Regulatory Flexibility Analysis

OASAS is not submitting a Revised Regulatory Flexibility Analysis for Small Business and Local Governments because amendments to the text of this rule subsequent to close of public comments do not constitute substantive amendments that would alter the purpose and substance of the rule as Proposed and Adopted by emergency and as published in the September 9, 2015 State Register.

Revised Rural Area Flexibility Analysis

OASAS is not submitting a Revised Rural Area Flexibility Analysis because amendments to the text of this rule subsequent to close of public comments do not constitute substantive amendments that would alter the purpose and substance of the rule as Proposed and Adopted by emergency and as published in the September 9, 2015 State Register.

Revised Job Impact Statement

OASAS is not submitting a Revised Job Impact Statement because amendments to the text of this rule subsequent to close of public comments do not constitute substantive amendments that would alter the purpose and substance of the rule as Proposed and Adopted by emergency and as published in the September 9, 2015 State Register.

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

Incident Reporting in Oasas Certified, Licensed, Funded, or Operated Services**I.D. No.** ASA-37-15-00001-A**Filing No.** 1008**Filing Date:** 2015-11-19**Effective Date:** 2015-11-20

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

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

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

Subject: Incident Reporting in Oasas Certified, Licensed, Funded, or Operated Services.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Final rule as compared with last published rule: Nonsubstantive changes were made in section 836.4(u).

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

Revised Regulatory Impact Statement

OASAS is not submitting a Revised Regulatory Impact Statement because amendments to the text of this rule subsequent to close of public comments do not constitute substantive amendments that would alter the purpose and substance of the rule as Proposed and Adopted by emergency and as published in the September 16, 2015 *State Register*.

Revised Regulatory Flexibility Analysis

OASAS is not submitting a Revised Regulatory Flexibility Analysis for Small Businesses and Local Governments because amendments to the text of this rule subsequent to close of public comments do not constitute substantive amendments that would alter the purpose and substance of the rule as Proposed and Adopted by emergency and as published in the September 16, 2015 *State Register*.

Revised Rural Area Flexibility Analysis

OASAS is not submitting a Revised Rural Areas Flexibility Analysis because amendments to the text of this rule subsequent to close of public comments do not constitute substantive amendments that would alter the purpose and substance of the rule as Proposed and Adopted by emergency and as published in the September 16, 2015 *State Register*.

Revised Job Impact Statement

OASAS is not submitting a Revised No Job Impact Statement because amendments to the text of this rule subsequent to close of public comments do not constitute substantive amendments that would alter the purpose and substance of the rule as Proposed and Adopted by emergency and as published in the September 16, 2015 *State Register*.

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.

Office of Children and Family Services

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Youth Development Program Funding and Implementation**I.D. No.** CFS-49-15-00005-P

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

Proposed Action: Repeal of Subparts 165-1 and 165-2; addition of new Subpart 165-1; and amendment of Subtitle E of Title 9 NYCRR.

Statutory authority: Social Services Law, sections 20(3)(d) and 34(3)(f); Executive Law, sections 419, 501(5) and L. 2013, ch. 57, part G

Subject: Youth development program funding and implementation.

Purpose: To implement changes in the Executive Law regarding youth development program funding and implementation.

Substance of proposed rule (Full text is posted at the following State website: ocfs.ny.gov): Part G of Chapter 57 of the Laws of 2013 (Chapter 57) repealed subdivision 1 of Section 420 of the Executive Law, as it pertained to special delinquency prevention programs (SDPP) and youth development and delinquency prevention (YDDP) services, and replaced it with a new subdivision 1. Section 420(1) of the Executive Law, as added by Part G of Chapter 57, streamlined the funding for youth development programs by providing a single stream of funding to replace multiple funding streams, each with its own set of rules.

These proposed regulations repeal subparts 165-1 and 165-2 of Title 9 of the New York Codes, Rules and Regulations (NYCRR), which provide rules for SDPPs and YDDPs, and add a new subpart 165-1, which provides rules for implementing the new youth development programs. The

proposed regulations also contain an amendment to the title of Subtitle E of 9 NYCRR, to reflect that the prior Division for Youth is now the Office of Children and Family Services (OCFS).

The following is a summary of the provisions of the proposed subpart 165-1:

Section 165-1.1 states the purpose of the proposed regulations, which is to provide for the coordination and allocation methodology for funding for a range of community level programs and services that will promote positive youth development through youth development programs.

Section 165-1.2 provides definitions for the youth development program regulations. The following terms are defined: Office (meaning the Office of Children and Family Services); youth; municipality; youth development program; youth bureau; municipal youth bureau; local youth bureau; youth board; comprehensive plan for youth development programs; and youth development funding.

Section 165-1.3 provides information about comprehensive plans for youth development programs.

Subdivision (a) of section 165-1.3 requires that each municipality that seeks youth development funding submit a comprehensive plan for youth development programs (comprehensive plan), written in consultation with its municipal youth bureau. The comprehensive plan must be submitted in the manner and form and at such time as designated by OCFS and is subject to the approval of OCFS.

Subdivision (b) of section 165-1.3 describes the information that must be included in the comprehensive plan for youth development programs.

Subdivision (c) of section 165-1.3 addresses the instances in which OCFS may approve all or part of a municipality's comprehensive plan for youth development programs. Upon receipt of a notification that OCFS has not approved all or part of its comprehensive plan, a municipality has sixty days under the proposed regulations to submit a revised plan or documents to OCFS. If OCFS does not approve the revised plan submitted during the 60-day period, OCFS may withhold youth development funds from the municipality until its plan is fully approved.

Subdivision (d) of section 165-1.3 requires that municipalities obtain OCFS approval of any amendments to their comprehensive plans for youth development programs prior to the plans taking effect.

Subdivision (e) of section 165-1.3 provides a municipality with the ability to request a waiver of any non-statutory regulatory requirement relating to the content or timing of its comprehensive plan for youth development programs.

Subdivision (f) of section 165-1.3 allows OCFS to waive any non-statutory regulatory requirements related to the content or timing of a comprehensive plan for youth development programs where it is determined that the requirement will impose an undue burden or unreasonably impede a municipality's ability to implement its comprehensive plan. OCFS may establish alternative requirements as a condition of receiving the waiver.

Section 165-1.4 provides rules for implementing the funding of youth development programs.

Subdivision (a) of section 165-1.4 provides that each municipality operating a youth development program is eligible for 100% state reimbursement of qualified expenditures, exclusive of federal funds and subject to the availability of youth development funds. This subdivision also establishes regulatory provisions for youth development funding regarding the following: eligibility, the distribution methodology, the establishment of a single municipal youth bureau by two or more municipalities, and the possible use of funds for statewide training and technical assistance.

Subdivision (b) of section 165-1.4 provides rules regarding reimbursable expenditures and claims for youth development programs.

Subdivision (c) of section 165-1.4 provides rules for instances in which two or more municipalities join together to establish, operate and maintain a municipal youth bureau.

Subdivision (d) of section 165-1.4 permits a municipality to include in its comprehensive plan for youth development programs the funding for a municipal youth bureau and one or more local youth bureaus that are approved by the municipality after April 1, 2013. It also provides that any youth bureau that was approved by OCFS on or before April 1, 2013 shall be an approved local youth bureau. The proposed regulations also provide for minimum requirements that pertain to the funding of local youth bureaus by a municipality.

Subdivision (e) of section 165-1.4 establishes limitations that OCFS may place on reimbursable expenditures and claims.

Subdivision (f) of section 165-1.4 permits OCFS to require municipalities receiving youth development funding to submit reports estimating expenditures.

Section 165-1.5 addresses the administration of youth development programs.

Subdivision (a) of section 165-1.5 prohibits discrimination in the provision of services or in employment of personnel by youth development programs.

Subdivision (b) of section 165-1.5 permits municipalities to enter into contracts in accordance with applicable laws, rules and regulations to effectuate youth development programs.

Subdivision (c) of section 165-1.5 establishes rules that are applicable to the administration of municipal youth bureaus, including requirements regarding the employment and responsibilities of an executive director or other designated person; youth boards; youth board composition; and the powers, duties and responsibilities of youth boards for municipal youth bureaus.

Subdivision (d) of section 165-1.5 provides for rules regarding the establishment of local youth bureaus.

Subdivision (e) of section 165-1.5 requires a municipality receiving youth development funding to make its youth development program records available for examination or inspection upon the request of OCFS.

Subdivision (f) of section 165-1.5 requires municipalities to submit any statistical or other reports related to youth development programs that OCFS may require.

Text of proposed rule and any required statements and analyses may be obtained from: Public Information Office, New York State Office of Children and Family Services, 52 Washington Street, Rensselaer, New York 12144, (518) 473-7793, email: info@ocfs.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:

Section 20(3)(d) of the Social Services Law authorizes the Office of Children and Family Services (OCFS) to establish rules, regulations and policies to carry out the powers and duties of OCFS under the Social Services Law.

Section 34(3)(f) of the Social Services Law authorizes the Commissioner of OCFS to establish regulations for the administration of public assistance and care within the State.

Section 419 of the Executive Law authorizes OCFS to adopt, amend or rescind all rules and regulations necessary to carry out the objectives of Article 19-A of the Executive Law, including the objective that state aid for funding for youth development programs be granted uniformly throughout the state, having regard for various conditions and needs in different parts of the state.

Section 501(5) of the Executive Law authorizes OCFS to promulgate rules and regulations for the establishment, operation and maintenance of OCFS facilities and programs.

2. Legislative objectives:

The proposed regulations are necessary to advance the legislative objective of preventing delinquency and youth crime while advancing the moral, physical, mental, and social well-being of youth through the provision of youth development programs. Part G of Chapter 57 of the Laws of 2013 made changes to certain sections of the Executive Law and the Social Services Law by consolidating the youth development and delinquency prevention program (YDDP) and the special delinquency prevention program (SDPP) into a single youth development program and repealing certain provisions of the Executive Law relating to those two programs. Part G of Chapter 57 of the Laws of 2013 revised and simplified the structure for providing state aid for youth development programs, and authorized OCFS to promulgate regulations for these programs.

3. Needs and benefits:

Part G of Chapter 57 of the Laws of 2013 made various changes to the law with respect to the funding of youth development programs. Therefore, it is necessary to repeal the current regulations and to provide new regulations that conform to the new enacted legislation.

These proposed regulations repeal subparts 165-1 and 165-2 of Title 9 of the New York Codes, Rules and Regulations (NYCRR), which provide rules for SDPPs and YDDPs, and add a new subpart 165-1, which provides rules for implementing the new youth development programs. The proposed regulations also contain an amendment to the title of Subtitle E of 9 NYCRR, to reflect that the prior Division for Youth is now the Office of Children and Family Services (OCFS).

The proposed regulations are necessary to clarify the youth development program legislation and to help municipalities understand what is required of them under the law. The proposed regulations also provide a framework for municipalities to follow to apply for youth development funding. The statutory scheme previously included multiple funding streams for youth development programs, which was reflected in the regulations that would be repealed. The proposed regulations reflect the consolidation of the multiple categories of funding, each with its own requirements, into a single funding stream for all youth development programs, which will ease the administrative burden on localities.

4. Costs:

The proposed regulations will not impose any additional costs on the

State or municipalities. The proposed regulations streamline previous regulations and should thereby provide administrative relief to municipalities.

5. Local government mandates:

The proposed regulations will not impose any additional mandates on municipalities with respect to applying for youth development funding beyond those that were previously required by law and regulation. The proposed regulations simplify the process by which municipalities may apply for State aid for youth development programs.

6. Paperwork:

The proposed regulations would require that all municipalities report information on the need within the municipality for services to assist runaway and homeless youth and youth in need of crisis intervention or respite services. Currently, this requirement only applies to municipalities that receive funding from OCFS for runaway and homeless youth programs. The proposed regulations do not require any other additional paperwork. Furthermore, the proposed regulations eliminate some of the paperwork that was previously required of municipalities that sought to apply for youth development funding, eliminating previous requirements for each youth development program that received funding from more than one of the previous funding streams to submit separate applications and reports for every funding stream supporting that program.

7. Duplication:

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

8. Alternatives:

The regulations are necessary to comply with Part G of Chapter 57 of the Laws of 2013. The proposed regulations were developed based on the experience of OCFS with oversight and funding of youth development programs. No significant alternatives were considered.

9. Federal standards:

The proposed regulations do not conflict with any Federal standards.

10. Compliance schedule:

The requirements made under the proposed regulations are already in effect under Part G of Chapter 57 of the Laws of 2013. The proposed regulations would be effective upon adoption.

Regulatory Flexibility Analysis

1. Effect of rule:

The proposed regulations will potentially affect 57 municipalities and New York City. They will affect any municipality (i.e., a county, two or more counties that apply together, or a city of more than one million) that applies for youth development funding. In addition, the regulations will affect approximately 1,000 private non-profit organizations throughout New York State that receive state funding for youth development programs.

2. Compliance requirements:

In conformance with the provisions of Part G of Chapter 57 of the Laws of 2013 municipalities that apply for youth development funding under the proposed regulations must submit to the Office of Children and Family Services (OCFS) a comprehensive plan for youth development programs that contains information specified in Part G of Chapter 57 of the Laws of 2013. This includes information about the programs funded, projected performance outcomes, and success in achieving previous projected outcomes. In order to comply with Part G of Chapter 57 of the Laws of 2013, the proposed regulations also require those municipalities that do not submit a plan for Runaway and Homeless Youth programs, which is required when applying for Runaway and Homeless Youth program funding, to report on the need within the municipality for services to assist runaway and homeless youth and youth in need of crisis intervention or respite services. The proposed regulations also require a municipality to adhere to all applicable laws, rules, and regulations for any contracts that it enters into to carry out youth development programs.

The proposed regulations require municipalities that receive youth development funding from New York State to designate an executive director or other person to maintain overall responsibility of the municipal youth bureau.

3. Professional services:

The proposed regulations do not create the need for any additional professional services to be provided by small business or local governments. No additional staff will be required.

4. Compliance costs:

Most of the procedures in the proposed regulations are already the existing practice by OCFS and municipalities. These practices are currently supported by existing funding levels. As a result, it is anticipated that these proposed regulations will carry no additional state or local fiscal impact.

5. Economic and technological feasibility:

Compliance and reporting requirements in the proposed regulations reflect those already established pursuant to Part G of Chapter 57 of the Laws of 2013.

The proposed regulations do not impose any additional economic or technological burdens on local governments or small businesses.

6. Minimizing adverse impact:

OCFS staff provides ongoing technical assistance to local governments and small businesses operating youth development programs in fulfilling the requirements stated in the proposed regulations. OCFS staff is available to answer questions or address issues or problems the municipalities may encounter with respect to the proposed regulations. Through open communication with local government staff and youth development program staff, OCFS should be able to identify if there are any difficulties in implementing the proposed regulations, and will provide written guidance, as determined by OCFS to be necessary, in assisting local governments in implementing the proposed regulations.

The proposed regulations also provide local governments with the ability to request a waiver of any non-statutory regulatory requirement regarding their comprehensive plans for youth development programs that may create an undue hardship for them.

7. Small business and local government participation:

OCFS staff communicates with staff from youth bureaus and youth development programs and services and is aware of their thoughts on problems and issues regarding the administration of youth development programs. OCFS has been working with an advisory group of about ten representatives from local government and non-profit groups to determine how best to implement Part G of Chapter 57 of the Laws of 2013.

Rural Area Flexibility Analysis

1. Types and estimated number of rural areas:

There are 44 counties in the State that are rural areas. Municipalities in those rural areas as well as agencies and organizations providing youth development programs in rural areas will be affected by the proposed regulations.

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

Chapter 57 of the Laws of 2013 reduced the number of funding streams for youth development programs to one. The proposed regulations simplify the reporting, record keeping and compliance requirements of municipalities, to include rural municipalities, as compared to the current regulatory requirements.

In accordance with Chapter 57 of the Laws of 2013, the proposed regulations also contain a new requirement for all municipalities, including rural municipalities, to report on projected and actual performance outcomes for youth development programs funded with state aid. In accordance with the law, the regulations also contain a new requirement that any municipality that does not submit a runaway and homeless youth plan required to obtain state funding for runaway and homeless youth programs must submit an annual assessment of the need within the municipality for services to assist runaway and homeless youth and youth in need of crisis intervention or respite services.

3. Costs:

No capital costs are anticipated as a result of the proposed regulations. The proposed regulations do not impose any additional costs on rural areas. The proposed regulations streamline previous regulations and should thereby provide administrative relief to municipalities.

4. Minimizing adverse impact:

Chapter 57 of the Laws of 2013 reduces the number of funding streams for youth development programs to one and establishes uniform standards for all municipalities across the state to apply for funding for youth development programs. The proposed regulations implement these standards in regulation.

Chapter 57 of the Laws of 2013 and the proposed regulations also provide municipalities with the option of joining with one or more municipalities to establish, operate and maintain a municipal youth bureau, which may be of particular interest to rural municipalities.

5. Rural area participation:

Local youth development program stakeholders, including from rural areas, participated in an advisory group created by OCFS regarding implementation of Chapter 57 of the Laws of 2013, as they pertain to youth development programs. Such participation assisted OCFS in developing the proposed regulations.

Job Impact Statement

The proposed change will not result in the loss of jobs or have any adverse impact on future employment opportunities.

Department of Economic Development

EMERGENCY RULE MAKING

START-UP NY Program

I.D. No. EDV-49-15-00001-E

Filing No. 1002

Filing Date: 2015-11-17

Effective Date: 2015-11-17

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

Action taken: Addition of Part 220 to Title 5 NYCRR.

Statutory authority: Economic Development Law, art. 21, sections 435-36; L. 2013, ch. 68

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

Specific reasons underlying the finding of necessity: On June 24, 2013, Governor Andrew Cuomo signed into law the SUNY Tax-free Areas to Revitalize and Transform UPstate New York (START-UP NY) program, which offers an array of tax benefits to eligible businesses and their employees that locate in facilities affiliated with New York universities and colleges. The START-UP NY program will leverage these tax benefits to attract innovative start-ups and high tech industries to New York so as to create jobs and promote economic development.

Regulatory action is required to implement the START-UP NY program. The legislation creating the START-UP NY program delegated to the Department of Economic Development the establishment of procedures for the implementation and execution of the START-UP NY program. Without regulatory action by the Department of Economic Development, procedures will not be in place to accept applications from institutions of higher learning desiring to create Tax-Free Areas, or businesses wishing to participate in the START-UP NY program.

Adoption of this rule will enable the State to begin accepting applications from businesses to participate in the START-UP NY program, and represent a step towards the realization of the strategic objectives of the START-UP NY program: attracting and retaining cutting-edge start-up companies, and positioning New York as a global leader in high tech industries.

Subject: START-UP NY Program.

Purpose: Establish procedures for the implementation and execution of START-UP NY.

Substance of emergency rule: START-UP NY is a new program designed to stimulate economic development and promote employment of New Yorkers through the creation of tax-free areas that bring together educational institutions, innovative companies, and entrepreneurial investment.

1) The regulation defines key terms, including: "business in the formative stage," "campus," "competitor," "high tech business," "net new job," "new business," and "underutilized property."

2) The regulation establishes that the Commissioner shall review and approve plans from State University of New York (SUNY) colleges, City University of New York (CUNY) colleges, and community colleges seeking designation of Tax-Free NY Areas, and report on important aspects of the START-UP NY program, including eligible space for use as Tax-Free Areas and the number of employees eligible for personal income tax benefits.

3) The regulation creates the START-UP NY Approval Board, composed of three members appointed by the Governor, Speaker of the Assembly and Temporary President of the Senate, respectively. The START-UP NY Approval Board reviews and approves plans for the creation of Tax-Free NY Areas submitted by private universities and colleges, as well as certain plans from SUNY colleges, CUNY colleges, and community colleges, and designates Strategic State Assets affiliated with eligible New York colleges or universities. START-UP NY Approval Board members may designate representatives to act on their behalf during their absence. START-UP NY Approval Board members must remain disinterested, and recuse themselves where appropriate.

4) The regulation establishes eligibility criteria for Tax-Free Areas. Eligibility of vacant land and space varies based on whether it is affiliated with a SUNY college, CUNY college, community college, or private col-

lege, and whether the land or space in question is located upstate, downstate, or in New York City. The regulation prohibits any allocation of land or space that would result in the closure or relocation of any program or service associated with a university or college that serves students, faculty, or staff.

5) The regulation establishes eligibility requirements for businesses to participate in the START-UP program, and enumerates excluded industries. To be eligible, a business must: be a new business to the State at the time of its application, subject to exceptions for NYS incubators, businesses restoring previously relocated jobs, and businesses the Commissioner has determined will create net new jobs; comply with applicable worker protection, environmental, and tax laws; align with the academic mission of the sponsoring institution (the Sponsor); demonstrate that it will create net new jobs in its first year of operation; and not be engaged in the same line of business that it conducted at any time within the last five years in New York without the approval of the Commissioner. Businesses locating downstate must be in the formative stages of development, or engaged in a high tech business. To remain eligible, the business must, at a minimum, maintain net new jobs and the average number of jobs that existed with the business immediately before entering the program.

6) The regulation describes the application process for approval of a Tax-Free Area. An eligible institution may submit a plan to the Commissioner identifying land or space to be designated as a Tax-Free Area. This plan must: identify precisely the location of the applicable land or space; describe business activities to be conducted on the land or space; establish that the business activities in question align with the mission of the institution; indicate how the business would generate positive community and economic benefits; summarize the Sponsor's procedures for attracting businesses; include a copy of the institution's conflict of interest guidelines; attest that the proposed Tax-Free Area will not jeopardize or conflict with any existing tax-exempt bonds used to finance the Sponsor; and certify that the Sponsor has not relocated or eliminated programs serving students, faculty, or staff to create the vacant land. Applications by private institutions require approval by both the Commissioner and START-UP NY Approval Board. The START-UP NY Approval Board is to approve applications so as to ensure balance among rural, urban and suburban areas throughout the state.

7) A sponsor applying to create a Tax-Free Area must provide a copy of its plan to the chief executive officer of any municipality in which the proposed Tax-Free Area is located, local economic development entities, the applicable university or college faculty senate, union representatives and the campus student government. Where the plan includes land or space outside of the campus boundaries of the university or college, the institution must consult with the chief executive officer of any municipality in which the proposed Tax-Free Area is to be located, and give preference to underutilized properties identified through this consultation. The Commissioner may enter onto any land or space identified in a plan, or audit any information supporting a plan application, as part of his or her duties in administering the START-UP program.

8) The regulation provides that amendments to approved plans may be made at any time through the same procedures as such plans were originally approved. Amendments that would violate the terms of a lease between a sponsor and a business in a Tax-Free Area will not be approved. Sponsors may amend their plans to reallocate vacant land or space in the case that a business, located in a Tax-Free Area, is disqualified from the program but elects to remain on the property.

9) The regulation describes application and eligibility requirements for businesses to participate in the START-UP program. Businesses are to submit applications to sponsoring universities and colleges by 12/31/20. An applicant must: (1) authorize the Department of Labor (DOL) and Department of Taxation and Finance (DTF) to share the applicant's tax information with the Department of Economic Development (DED); (2) allow DED to monitor the applicant's compliance with the START-UP program; (3) provide to DED, upon request, information related to its business organization, tax returns, investment plans, development strategy, and non-competition with any businesses in the community but outside of the Tax-Free Area; (4) certify efforts to ascertain that the business would not compete with another business in the same community but outside the Tax-Free Area, including an affidavit that notice regarding the application was published in a daily publication no fewer than five consecutive days; (5) include a statement of performance benchmarks as to new jobs to be created through the applicant's participation in START-UP; (6) provide a statement of consequences for non-conformance with the performance benchmarks, including proportional recovery of tax benefits when the business fails to meet job creation benchmarks in up to three years of a ten-year plan, and removal from the program for failure to meet job creation benchmarks in at least four years of a ten-year plan; (7) identify information submitted to DED that the business deems confidential, proprietary, or a trade secret. Sponsors forward applications deemed to meet eligibility requirements to the Commissioner for further review.

The Commissioner shall reject any application that does not satisfy the START-UP program eligibility requirements or purpose, and provide written notice of the rejection to the Sponsor. The Commissioner may approve an application anytime after receipt; if the Commissioner approves the application, the business applicant is deemed accepted into the START-UP NY Program and can locate to the Sponsor's Tax-Free NY Area. Applications not rejected will be deemed accepted after sixty days. The Commissioner is to provide documentation of acceptance to successful applicants.

10) The regulation allows a business to amend a successful application at any time in accordance with the procedure of its original application. No amendment will be approved that would contain terms in conflict with a lease between a business and a SUNY college when the lease was included in the original application.

11) The regulation permits a business that has been rejected from the START-UP program to locate within a Tax-Free Area without being eligible for START-UP program benefits, or to reapply within sixty days via a written request identifying the reasons for rejection and offering verified factual information addressing the reasoning of the rejection. Failure to reapply within sixty days waives the applicant's right to resubmit. Upon receipt of a timely resubmission, the Commissioner may use any resources to assess the claim, and must notify the applicant of his or her determination within sixty days. Disapproval of a reapplication is final and non-appealable.

12) With respect to audits, the regulation requires businesses to provide access to DED, DTF, and DOL to all records relating to facilities located in Tax-Free Areas at a business location within the State during normal business hours. DED, DTF, and DOL are to take reasonable steps to prevent public disclosure of information pursuant to Section 87 of the Public Officers Law where the business has timely informed the appropriate officials, the records in question have been properly identified, and the request is reasonable.

13) The regulation provides for the removal of a business from the program under a variety of circumstances, including violation of New York law, material misrepresentation of facts in its application to the START-UP program, or relocation from a Tax-Free Area. Upon removing a business from the START-UP program, the Commissioner is to notify the business and its Sponsor of the decision in writing. This removal notice provides the basis for the removal decision, the effective removal date, and the means by which the affected business may appeal the removal decision. A business shall be deemed served three days after notice is sent. Following a final decision, or waiver of the right to appeal by the business, DED is to forward a copy of the removal notice to DTF, and the business is not to receive further tax benefits under the START-UP program.

14) To appeal removal from the START-UP program, a business must send written notice of appeal to the Commissioner within thirty days from the mailing of the removal notice. The notice of appeal must contain specific factual information and all legal arguments that form the basis of the appeal. The appeal is to be adjudicated in the first instance by an appeal officer who, in reaching his or her decision, may seek information from outside sources, or require the parties to provide more information. The appeal officer is to prepare a report and make recommendations to the Commissioner. The Commissioner shall render a final decision based upon the appeal officer's report, and provide reasons for any findings of fact or law that conflict with those of the appeal officer.

15) With regard to disclosure authorization, businesses applying to participate in the START-UP program authorize the Commissioner to disclose any information contained in their application, including the projected new jobs to be created.

16) In order to assess business performance under the START-UP program, the Commissioner may require participating businesses to submit annual reports within thirty days at the end of their taxable year describing the businesses' continued satisfaction of eligibility requirements, jobs data, an accounting of wages paid to employees in net new jobs, and any other information the Commissioner may require. The Commissioner shall prepare annual reports on the START-UP program for the Governor and publication on the DED website, beginning April 1, 2015. Information contained in businesses' annual reports may be published in these reports or otherwise disseminated.

17) The Freedom of Information Law is applicable to the START-UP program, subject to disclosure waivers to protect certain proprietary information submitted in support of an application to the START-UP program.

18) All businesses must keep relevant records throughout their participation in the START-UP program, plus three years. DED has the right to inspect all such documents upon reasonable notice.

19) If the Commissioner determines that a business has acted fraudulently in connection with its participation in the START-UP program, the business shall be immediately terminated from the program, subject to criminal penalties, and liable for taxes that would have been levied against the business during the current year.

20) The regulation requires participating universities and colleges to maintain a conflict of interest policy relevant to issues that may arise during the START-UP program, and to report violations of said policies to the Commissioner for publication.

This notice is intended to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires February 14, 2016.

Text of rule and any required statements and analyses may be obtained from: Phillip Harmonick, New York State Department of Economic Development, 625 Broadway, Albany, New York 12207, (518) 292-5112, email: pharmonick@esd.ny.gov

Regulatory Impact Statement

STATUTORY AUTHORITY:

Chapter 68 of the Laws of 2013 requires the Commissioner of Economic Development to promulgate rules and regulations to establish procedures for the implementation and execution of the SUNY Tax-free Areas to Revitalize and Transform UPstate New York program (START-UP NY). These procedures include, but are not limited to, the application processes for both academic institutions wishing to create Tax-Free NY Areas and businesses wishing to participate in the START-UP NY program, standards for evaluating applications, and any other provisions the Commissioner deems necessary and appropriate.

LEGISLATIVE OBJECTIVES:

The proposed rule is in accord with the public policy objectives the New York State Legislature sought to advance by enacting the START-UP NY program, which provides an incentive to businesses to locate critical high-tech industries in New York State as opposed to other competitive markets in the U.S. and abroad. It is the public policy of the State to establish Tax-Free Areas affiliated with New York universities and colleges, and to afford significant tax benefits to businesses, and the employees of those businesses, that locate within these Tax-Free Areas. The tax benefits are designed to attract and retain innovative start-ups and high-tech industries, and secure for New York the economic activity they generate. The proposed rule helps to further such objectives by establishing the application process for the program, clarifying the nature of eligible businesses and facilities, and describing key provisions of the START-UP NY program.

NEEDS AND BENEFITS:

The emergency rule is necessary in order to implement the statute contained in Article 21 of the Economic Development Law, creating the START-UP NY program. The statute directs the Commissioner of Economic Development to establish procedures for the implementation and execution of the START-UP NY program.

Upstate New York has faced longstanding economic challenges due in part to the departure of major business actors from the region. This divestment from upstate New York has left the economic potential of the region unrealized, and left many upstate New Yorkers unemployed.

START-UP NY will promote economic development and job creation in New York, particularly the upstate region, through tax benefits conditioned on locating business facilities in Tax-Free NY Areas. Attracting start-ups and high-tech industries is critical to restoring the economy of upstate New York, and to positioning the state as a whole to be competitive in a globalized economy. These goals cannot be achieved without first establishing procedures by which to admit businesses into the START-UP NY program.

The proposed regulation establishes procedures and standards for the implementation of the START-UP program, especially rules for the creation of Tax-Free NY Areas, application procedures for the admission of businesses into the program, and eligibility requirements for continued receipt of START-UP NY benefits for admitted businesses. These rules allow for the prompt and efficient commencement of the START-UP NY program, ensure accountability of business participants, and promote the general welfare of New Yorkers.

COSTS:

I. Costs to private regulated parties (the business applicants): None. The proposed regulation will not impose any additional costs to eligible business applicants.

II. Costs to the regulating agency for the implementation and continued administration of the rule: None.

III. Costs to the State government: None.

IV. Costs to local governments: None.

LOCAL GOVERNMENT MANDATES:

The rule establishes certain property tax benefits for businesses locating in Tax-Free NY Areas that may impact local governments. However, as described in the accompanying statement in lieu of a regulatory flexibility analysis for small businesses and local governments, the program is expected to have a net-positive impact on local government.

PAPERWORK:

The rule establishes application and eligibility requirements for Tax-Free NY Areas proposed by universities and colleges, and participating

businesses. These regulations establish paperwork burdens that include materials to be submitted as part of applications, documents that must be submitted to maintain eligibility, and information that must be retained for auditing purposes.

DUPLICATION:

The proposed rule will create a new section of the existing regulations of the Commissioner of Economic Development, Part 220 of 5 NYCRR. Accordingly, there is no risk of duplication in the adoption of the proposed rule.

ALTERNATIVES:

No alternatives were considered in regard to creating a new regulation in response to the statutory requirement. The regulation implements the statutory requirements of the START-UP NY program regarding the application process for creation of Tax-Free NY Areas and certification as an eligible business. This action is necessary in order to clarify program participation requirements and is required by the legislation establishing the START-UP NY program.

FEDERAL STANDARDS:

There are no federal standards applicable to the START-UP NY program; it is purely a State program that offers tax benefits to eligible businesses and their employees. Therefore, the proposed rule does not exceed any federal standard.

COMPLIANCE SCHEDULE:

The affected State agency (Department of Economic Development) and the business applicants will be able to achieve compliance with the regulation as soon as it is implemented.

Regulatory Flexibility Analysis

Participation in the START-UP NY program is entirely at the discretion of qualifying business that may choose to locate in Tax-Free NY Areas. Neither statute nor the proposed regulations impose any obligation on any business entity to participate in the program. Rather than impose burdens on small business, the program is designed to provide substantial tax benefits to start-up businesses locating in New York, while providing protections to existing businesses against the threat of tax-privileged start-up companies locating in the same community. Local governments may not be able to collect tax revenues from businesses locating in certain Tax-Free NY Areas. However, the regulation is expected to have a net-positive impact on local governments in light of the substantial economic activity associated with businesses locating their facilities in these communities.

Because it is evident from the nature of the proposed rule that it will have a net-positive impact on small businesses and local government, no further affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses and local government is not required and one has not been prepared.

Rural Area Flexibility Analysis

The START-UP NY program is open to participation from any business that meets the eligibility requirements, and is organized as a corporation, partnership, limited liability company, or sole proprietorship. A business's decision to locate its facilities in a Tax-Free NY Area associated with a rural university or college would be no impediment to participation; in fact, START-UP NY allocates space for Tax-Free NY Areas specifically to the upstate region which contains many of New York's rural areas. Furthermore, START-UP NY specifically calls for the balanced allocation of space for Tax-Free NY Areas between eligible rural, urban, and suburban areas in the state. Thus, the regulation will not have a substantial adverse economic impact on rural areas, and instead has the potential to generate significant economic activity in upstate rural areas designated as Tax-Free NY Areas. Accordingly, a rural flexibility analysis is not required and one has not been prepared.

Job Impact Statement

The regulation establishes procedures and standards for the administration of the START-UP NY program. START-UP NY creates tax-free areas designed to attract innovative start-ups and high-tech industries to New York so as to stimulate economic activity and create jobs. The regulation will not have a substantial adverse impact on jobs and employment opportunities; rather, the program is focused on creating jobs. Because it is evident from the nature of the rulemaking that it 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.

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

Employee Training Incentive Program

I.D. No. EDV-49-15-00002-EP

Filing No. 1003

Filing Date: 2015-11-17

Effective Date: 2015-11-17

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

Proposed Action: Addition of Part 250 to Title 5 NYCRR.

Statutory authority: L. 2015, ch. 59

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

Specific reasons underlying the finding of necessity: The Employee Training Incentive Program ("ETIP") offers qualifying business applicants tax incentives to procure eligible training for their employees, and also to provide internship opportunities for current students, recent graduates, and recent members of the armed forces. These incentives are designed to encourage employers in strategic industries to address shortages of qualified employees through qualified training activities rather than relocating their operations outside of New York State to attract human capital.

Regulatory action is required to implement ETIP. The legislation creating ETIP delegated to the Department of Economic Development (the "Department") the establishment of procedures for the implementation and execution of the program. Without regulatory action by the Department, procedures will not be in place to accept applications from business desiring to engage in qualified training.

Adoption of this rule will enable the Department to begin accepting applications from businesses to participate in ETIP, and promote the objectives of ETIP to support the growth and retention of businesses in New York State through the development of employee skills.

Subject: Employee Training Incentive Program.

Purpose: Establish procedures for the implementation of the Employee Training Incentive Program.

Substance of emergency/proposed rule (Full text is posted at the following State website: esd.ny.gov): The Employee Training Incentive Program ("ETIP") provides tax credits to business entities in strategic industries that procure eligible training for their employees in conjunction with creating at least ten (10) net new jobs or making a significant capital investment, as well as to business entities that provide internships in advanced technology to current students, recent graduates, and/or recent members of the armed forces through an eligible internship program.

1) The rule defines numerous important terms, including, but not limited to, "approved provider of eligible training," "capital investment," "eligible internship program," and "strategic industry."

2) The rule describes the eligibility criteria for business entities applying to ETIP based upon procuring eligible training. Such applicants must operate in the state predominantly in a strategic industry, procure eligible training from an approved provider, create at least ten (10) net new jobs or make a significant capital investment in conjunction with the training, be in compliance with all worker protection and environmental laws and regulations, and not owe past due state taxes or local property taxes.

3) The rule describes eligibility criteria for business entities applying to ETIP based upon providing eligible internship training. Such applicants must demonstrate that they will provide an eligible internship program of no more than twelve (12) months in duration in the state, be in compliance with all worker protection and environmental laws and regulations, not owe past due state taxes or local property taxes, certify that the eligible internship program will not displace employees of the applicant, and employ fewer than one hundred employees.

4) The rule states that initial applications are to be submitted by applicants to the Commissioner of Economic Development, and that such applications shall be submitted prior to procuring eligible training or retaining interns.

5) The total value of tax credits issued by the Commissioner for any taxable year shall not exceed five million dollars, of which at least two hundred fifty thousand dollars and no more than one million dollars shall be reserved for applicants providing eligible internship programs.

6) The rule describes the contents of an initial application by an applicant applying to procure eligible training for its employees. Such an application shall, among other things, identify the approved provider from which the applicant proposes to procure eligible training, include a curriculum or other evidence that the training to be procured is eligible training,

estimate the total cost of the training, and establish the applicant's efforts to secure competitive bids from approved providers to provide the eligible training.

7) The rule describes the contents of an initial application by an applicant applying to provide an eligible internship program. Such an application shall, among other things, include a curriculum or other evidence that the internship program will be an eligible internship program providing training in advanced technology, identify the approved provider that will provide the eligible internship program and the employees of such entity who will be responsible for managing and training interns retained by the business entity, and estimate the total costs of stipends to be provided to interns participating in the eligible internship program.

8) The rule describes the contents of a final application by an applicant, including proof that such applicant has completed eligible training and created ten (10) net new jobs or made a significant capital investment, or that such applicant has completed an eligible internship program.

9) The rule indicates that participants in ETIP shall maintain all relevant records for the duration of its program participation plus three (3) years, and make such records available to the Department and its agents upon seven (7) days' notice.

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 February 14, 2016.

Text of rule and any required statements and analyses may be obtained from: Phillip Harmonick, New York State Department of Economic Development, 625 Broadway, 8th Floor, Albany, NY 12245, (518) 292-5112, email: Phillip.Harmonick@esd.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:

Chapter 59 of the Laws of 2015 requires the Commissioner of the Department of Economic Development (the "Department") to promulgate regulations establishing the application process for the Employee Training Incentive Program ("ETIP"). These procedures include the process for applying for tax credits under ETIP, standards for the assessment of applications, and other provisions deemed necessary and appropriate. This regulatory impact statement is submitted in conjunction with the submission of a permanent regulation.

LEGISLATIVE OBJECTIVES:

The proposed rule gives effect to the intention of the legislature in adopting ETIP to encourage employers in strategic industries, characterized by technological disruption and a shortage of potential employees within New York State, to develop talent in New York State through eligible training and internship programs rather than relocating to other regions to secure skilled employees.

NEEDS AND BENEFITS:

The rulemaking is necessary in order to implement Article 22 of the Economic Development Law, which establishes ETIP. The statute directs the Commissioner to establish procedures for the implementation and execution of ETIP.

New York suffers from a skills gap in its workforce, resulting in thousands of job vacancies that employers are unable to fill due to a shortage of qualified workers. Without action on the part of the state, employers in industries subject to such shortages of skilled workers may be required to relocate outside of New York in order to retain adequate numbers of skilled employees. This problem is made more acute by the action of other states in the region to create programs to cultivate pools of skilled labor, creating an incentive for employers in New York to relocate jobs outside of the state. To address this problem, ETIP provides tax credit incentives to business entities that procure eligible training or provide eligible internship programs in advanced technology.

Business applicants to the program must first establish that they are engaged in a strategic industry, as evidenced by factors such as shortages of skilled employees and technological disruption in the industry. Furthermore, such applicants must demonstrate, among other things, that they will be procuring eligible training from an approved provider or providing an eligible internship program in advanced technology. In order to begin to receive applications from business entities, the Department must establish application criteria describing the contents of applications, defining key terms such as "approved provider of eligible training" and "strategic industry," and establishing procedures for the processing of applications.

The proposed rule establishes the necessary application procedures for the Department to receive applications by business entities to ETIP. These rules allow for the prompt and efficient commencement of ETIP, clarify which business entities will be eligible to participate in ETIP, and promote the cultivation of the skilled New York workforce necessary to support economic development.

COSTS:

I. Costs to private regulated parties (the business applicants): None. The proposed rule will not impose any additional costs to eligible business applicants.

II. Costs to the regulating agency for the implementation and continued administration of the rule: None.

III. Costs to the State government: None.

IV. Costs to local governments: None. The proposed rule will not impose any costs on local governments.

LOCAL GOVERNMENT MANDATES:

None. There are no local government mandates associated with ETIP.

PAPERWORK:

The rule establishes qualification rules and application procedures for ETIP. The rule entails certain paperwork burdens including materials to be submitted as part of applications for tax credits, additional documents the Commissioner may request from applicants as part of his evaluation of applications, and certain records that must be maintained by program participants for auditing purposes.

DUPLICATION:

The proposed rule will create a new section of the existing regulations of the Commissioner of the Department of Economic Development, Part 250 of 5 NYCRR. Accordingly, there is no risk of duplication in the adoption of the proposed rule.

ALTERNATIVES:

No alternatives were considered with regard to creating a new rule in response to the statutory requirement. The rule establishes the procedures for business entities to apply to ETIP. This action is necessary in order to clarify how qualifying businesses in strategic industries may receive program benefits, and is required by the legislation establishing ETIP.

FEDERAL STANDARDS:

There are no federal standards applicable to ETIP; it is purely a state program that offers tax benefits to business entities in strategic industries incurring qualifying costs for eligible training or an eligible internship program in advanced technology. Therefore, the proposed rule does not exceed any federal standard.

COMPLIANCE SCHEDULE:

The affected agency (Department of Economic Development) and any applicants to ETIP will be able to achieve compliance with the regulation as soon as it is implemented.

Regulatory Flexibility Analysis

Participation in the Employee Training Incentive Program ("ETIP") is entirely at the discretion of qualifying business entities. Neither statute nor the proposed rule impose any obligation on any local government or business entity to participate in the program. The proposed rule does not impose any adverse economic impact or compliance requirements on small businesses or local governments. In fact, the proposed rule may have a positive economic impact on small businesses. Only small businesses, those with one hundred (100) employees or fewer, are eligible to apply to ETIP for benefits associated with providing an eligible internship program.

Because it is evident from the nature of the proposed rule that it will have either no impact or a positive impact on small businesses and local government, no further 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

The Employee Training Incentive Program ("ETIP") provides tax benefits to participating business entities engaged in strategic industries, and does not distinguish between entities located in rural and urban areas of New York. Furthermore, the rule does not impose reporting, recordkeeping or other compliance requirements on public or private entities in rural areas, except for any rural business entities voluntarily applying to participate in ETIP. Therefore, the rule will not have a substantial adverse economic impact on rural areas. Accordingly, a rural flexibility analysis is not required and one has not been prepared.

Job Impact Statement

The proposed rule establishes application procedures for business entities to apply to the Employee Training Incentive Program ("ETIP") for tax credit benefits associated with providing eligible training to their employees, or an eligible internship program in advanced technology. The program aims to induce employers to provide training in order to cultivate a pool of skilled workers who can meet the requirements for unfilled positions in strategic industries. The rule will not have a substantial adverse impact on jobs and employment opportunities; rather, the program is intended to increase employment opportunities. Because it is evident from the nature of the rulemaking that it 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

Annual Professional Performance Reviews of Classroom Teachers and Building Principals

I.D. No. EDU-27-15-00019-E

Filing No. 1023

Filing Date: 2015-11-24

Effective Date: 2015-11-27

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(o) and Subpart 30-2; and addition of Subpart 30-3 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(1)-(10) and 3012-d(1)-(15); L. 2015, chs. 20 and 56, part EE, subparts D and E

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 3012-c and 3012-d, as amended and added by Subpart E of Part EE of Chapter 56 of the Laws of 2015, regarding annual professional performance reviews (APPRs) of classroom teachers and building principals.

The proposed amendment was adopted by emergency action at the June 15-16, 2015 Board of Regents meeting. A Notice of Proposed Rule Making was published in the State Register on July 8, 2015. The Department subsequently revised the proposed rule to address public comment received. The Board of Regents adopted the revised rule as an emergency measure at its September meeting, effective September 28, 2015. A Notice of Revised Rule Making was published in the State Register on October 7, 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 30-day public comment period provided for in the State Administrative Procedure Act (SAPA) sections 202(4-a), would be the November 16-17, 2015 Regents meeting. Furthermore, pursuant to SAPA section 203(1), the earliest effective date of the proposed rule, if adopted at the November meeting, would be December 2, 2015, the date a Notice of Adoption would be published in the State Register.

However, the September emergency rule will expire on November 26, 2015, 60 days after its filing with the Department of State. Emergency action is therefore necessary for the preservation of the general welfare to ensure that the proposed amendment adopted by emergency action at the June 2015 Regents meeting and revised at the September 2015 Regents meeting, remains continuously in effect until the effective date of its permanent adoption in order to timely implement provisions of Subpart E of Part EE of Chapter 56 of the Laws of 2015 relating to a new annual evaluation system for classroom teachers and building principals.

Subject: Annual Professional Performance Reviews of Classroom Teachers and Building Principals.

Purpose: To implement subparts D and E of part EE of chapters 20 and 56 of the Laws of 2015.

Text of emergency rule: 1. Subparagraph (ii) of paragraph (1) of section 100.2(o) of the Commissioner's regulations is amended, effective November 27, 2015, to read as follows:

(ii) Annual review. The governing body of each school district and BOCES shall ensure that the performance of all teachers providing instructional services or pupil personnel services, as defined in section 80-1.1 of this Title, is reviewed annually in accordance with this subdivision, except evening school teachers of adults enrolled in nonacademic, vocational subjects; and supplementary school personnel, as defined in section 80-5.6 of this Title, and any classroom teacher subject to the evaluation requirements prescribed in [Subpart] *Subparts 30-2 and 30-3* of this Title.

2. The title of Subpart 30-2 of the Rules of the Board of Regents is amended effective November 27, 2015, to read as follows:

SUBPART 30-2

ANNUAL PROFESSIONAL PERFORMANCE REVIEWS OF CLASSROOM TEACHERS AND BUILDING PRINCIPALS

CONDUCTED PRIOR TO THE 2015-2016 SCHOOL YEAR OR FOR ANNUAL PROFESSIONAL PERFORMANCE REVIEWS CONDUCTED PURSUANT TO A COLLECTIVE BARGAINING AGREEMENT ENTERED INTO ON OR BEFORE APRIL 1, 2015 WHICH REMAINS IN EFFECT ON OR AFTER APRIL 1, 2015 UNTIL A SUBSEQUENT AGREEMENT IS REACHED

3. Subdivision (b) of section 30-2.1 of the Rules of the Board of Regents is amended, effective November 27, 2015, to read as follows:

(b) For annual professional performance reviews conducted by school districts or BOCES [in] *from the 2012-2013 school year [and any school year thereafter] through the 2015-2016 school year or for any annual professional performance review conducted pursuant to a collective bargaining agreement entered into on or before April 1, 2015 that remains in effect on and after April 1, 2015 until a successor agreement is reached*, the governing body of each school district and BOCES shall ensure that the reviews of all classroom teachers and building principals are conducted in accordance with the requirements of section 3012-c of the Education Law and the provisions of this Subpart.

4. Subdivision (d) of section 30-2.1 of the Rules of the Board of Regents is amended, effective November 27, 2015, to read as follows:

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

5. Subdivision (c) of section 30-2.11 of the Rules of the Board of Regents is amended, effective November 27, 2015, to read as follows:

(c) Nothing in this section shall be construed to alter or diminish the authority of the governing body of a school district or BOCES to grant or deny tenure to or terminate probationary teachers or probationary building principals during the pendency of an appeal pursuant to this section for statutorily and constitutionally permissible reasons [other than] *including the teacher's or principal's performance that is the subject of the appeal*.

6. A new section 30-2.13 of the Rules of the Board of Regents is added, effective November 27, 2015, to read as follows:

§ 30-2.13. *Challenges to State-Provided Growth Score Results for the 2014-2015 School Year and Thereafter.*

(a) *A teacher/principal shall have the right to challenge their State-provided growth score under this Subpart; provided that the teacher/principal provides sufficient documentation that he/she meets at least one of the following criteria in their annual evaluation:*

(1) *a teacher/principal was rated Ineffective on his/her State-provided growth score and Highly Effective on the other measures of teacher/leader effectiveness subcomponent in the current year and was rated either Effective or Highly Effective on his/her State-provided growth score in the previous year; or*

(2) *a high school principal of a building that includes at least all of grades 9-12, was rated Ineffective on the State-provided growth score but such percent of students as shall be established by the Commissioner in his/her school/program within four years of first entry into grade 9 received results on department-approved alternative examinations in English Language Arts and/or mathematics as described in section 100.2(f) of this Title (including, but not limited to, advanced placement examinations, and/or International Baccalaureate examinations, SAT II, etc.) scored at proficiency (i.e., a Level 3 or higher).*

(b) *A teacher/principal shall submit an appeal to the Department, in a manner prescribed by the Commissioner, within 20 days of receipt of his/her overall annual professional performance review rating or the effective date of this section, whichever is later, and submit a copy of the appeal to the school district and/or BOCES. The school district and/or BOCES shall have ten days from receipt of a copy of such appeal to submit a reply to the Department.*

(c) *Based on the documentation received, if the Department overturns a teacher's/principal's rating on the State-provided growth score, the district/BOCES shall substitute the teacher's/principal's results on the back-up SLO developed by the district/BOCES for such teacher/principal.*

If a back-up SLO was not developed, then the teacher's/principal's overall composite score and rating shall be based on the portions of their annual professional performance review not affected by the nullification of the State-provided growth score. Provided, however, that following a successful appeal under paragraph (1) of subdivision (a) of this section, if a back-up SLO is used a teacher/principal shall not receive a score/rating higher than developing on such SLO.

(d) An evaluation that is the subject of an appeal shall not be sought to be offered in evidence or placed in evidence in any proceeding conducted pursuant to Education Law sections 3020-a and 3020-b or any locally negotiated alternate disciplinary procedure until the appeal process is concluded.

(e) Nothing in this section shall be construed to alter or diminish the authority of the governing body of a district to grant or deny tenure to or terminate probationary teachers or probationary building principals during the pendency of an appeal pursuant to this section for statutorily and constitutionally permissible reasons, including the teacher's/principal's performance that is the subject of the appeal.

(f) Nothing in this Subpart shall be construed to authorize a teacher/principal to commence the appeal process prior to receipt of his/her overall rating from the district/BOCES.

(g) During the pendency of an appeal under this section, nothing shall be construed to alter the obligation of a school district/BOCES to develop and implement a teacher improvement plan or principal improvement plan during the pendency of an appeal.

(h) Nothing in this section shall be construed to limit any rights of a teacher/principal under section 30-2.11 of this Subpart.

(i) Notwithstanding any other provision of rule or regulation to the contrary, a high school principal of a building that includes at least all of grades 9-12 who meets either of the criteria in paragraphs (1) or (2) of this subdivision shall not receive a State-provided growth score and shall instead use back-up SLOs:

(1) the principal would be rated *Ineffective* or *Developing* on the State-provided growth score but the graduation rate of the students in that school building exceeded 90%, and the proportion of the student population included in either the ELA Regents Median Growth Percentile or the Algebra Regents Median Growth Percentile was less than ten percent of the total enrollment for the school; or the principal

(2) has no Combined Median Growth Percentile rating or score, and the proportion of the student population included in the ELA Regents Median Growth Percentile and Algebra Regents Median Growth Percentile was less than five percent of the total enrollment for the school in one subject, and less than ten percent of the total enrollment in the other subject;

(3) If a back-up SLO was not developed, then the principal's overall composite score and rating shall be based on the remaining portions of their annual professional performance review.

7. A new Subpart 30-3 of the Rules of the Board of Regents shall be added, effective November 27, 2015, to read as follows:

SUBPART 30-3

ANNUAL PROFESSIONAL PERFORMANCE REVIEWS OF CLASSROOM TEACHERS AND BUILDING PRINCIPALS FOR THE 2015-2016 SCHOOL YEAR AND THEREAFTER

§ 30-3.1 Applicability.

(a) For annual professional performance reviews conducted by districts for the 2015-2016 school year and any school year thereafter, the governing body of each district shall ensure that the reviews of all classroom teachers and building principals are conducted in accordance with the requirements of Education Law § 3012-d and this Subpart, except as otherwise provided in subdivision (b) of this section.

(b) The requirements of Education Law § 3012-c and Subpart 30-2 of this Part shall continue to apply to annual professional performance reviews conducted prior to the 2015-2016 school year and thereafter, where such reviews are conducted pursuant to a collective bargaining agreement entered into on or before April 1, 2015 that remains in effect on and after April 1, 2015 until entry into a successor agreement.

(c) In accordance with Education Law § 3012-d(12), all collective bargaining agreements entered into after April 1, 2015 shall be consistent with the requirements of Education Law § 3012-d and this Subpart, unless such agreement related to the 2014-2015 school year only. Nothing in this Subpart shall be construed to abrogate any conflicting provisions of any collective bargaining agreement in effect on and after April 1, 2015 during the term of such agreement and until entry into a successor collective bargaining agreement, provided that notwithstanding any other provision of law to the contrary, upon expiration of such term and the entry into a

successor collective bargaining agreement, all the requirements of Education Law § 3012-d and this Subpart shall apply.

(d) Annual professional performance reviews of classroom teachers and building principals shall be a significant factor for employment decisions, including but not limited to, promotion, retention, tenure determination, termination, and supplemental compensation, in accordance with Education Law § 3012-d(1). Such evaluations shall also be a significant factor in teacher and principal development, including but not limited to coaching, induction support, and differentiated professional development. Nothing herein shall be construed to affect the unfettered statutory right of a district to terminate a probationary (non-tenured) teacher or principal for any statutorily and constitutionally permissible reasons.

(e) The Board of Regents shall convene an assessment and evaluation workgroup or workgroups, comprised of stakeholders and experts in the field to provide recommendations to the Board of Regents on assessments and evaluations that could be used for annual professional performance reviews in the future.

§ 30-3.2 Definitions. As used in this Subpart:

(a) Approved teacher or principal practice rubric shall mean a rubric approved by the commissioner for inclusion on the State Education Department's list of approved rubrics in teacher or principal evaluations.

(b) Approved student assessment shall mean a student assessment approved by the commissioner for inclusion in the State Education Department's lists of approved student assessments to measure student growth for use in the mandatory subcomponent and/or for use in the optional subcomponent of the student performance category.

(1) Approved assessments in grades kindergarten through grade two. Traditional standardized assessments in grades kindergarten through grade two shall not be on the approved list. However, an assessment that is not a traditional standardized assessment shall be considered an approved student assessment if the superintendent, district superintendent, or chancellor of a district that chooses to use such assessment certifies in its annual professional performance review plan that the assessment is not a traditional standardized assessment, and that the assessment meets the minimum requirements prescribed by the Commissioner in guidance.

(c) Classroom teacher or teacher shall mean a teacher in the classroom teaching service as that term is defined in section 80-1.1 of this Title who is a teacher of record as defined in this section, except evening school teachers of adults enrolled in nonacademic, vocational subjects, and supplemental school personnel as defined in section 80-5.6 of this Title.

(d) Common branch subjects shall mean common branch subjects as defined in section 80-1.1 of this Title.

(e) Co-principal means a certified administrator under Part 80 of this Title, designated by the school's controlling authority to have executive authority, management, and instructional leadership responsibility for all or a portion of a school or BOCES-operated instructional program in a situation in which more than one such administrator is so designated. The term co-principal implies equal line authority, with each designated administrator reporting to a district-level or comparable BOCES-level supervisor.

(f) Developing means an overall rating of *Developing* received by a teacher or building principal, based on the ratings an educator received in the student performance category and observation/school visit category pursuant to the matrix prescribed in section 30-3.6 of this Subpart.

(g) District means school district and/or board of cooperative educational services, unless otherwise provided in this Subpart.

(h) Effective means an overall rating of *Effective* received by a teacher or building principal, based on the ratings an educator received in the student performance category and observation/school visit category pursuant to the matrix prescribed in section 30-3.6 of this Subpart.

(i) Evaluator shall mean any individual who conducts an evaluation of a classroom teacher or building principal under this Subpart.

(j) Highly Effective means an overall rating of *Highly Effective* received by a teacher or building principal, based on the ratings an educator received in the student performance category and observation/school visit category pursuant to the matrix prescribed in section 30-3.6 of this Subpart.

(k) Ineffective means an overall rating of *Ineffective* received by a teacher or building principal, based on the ratings an educator received in the student performance category and observation/school visit category pursuant to the matrix prescribed in section 30-3.6 of this Subpart.

(l) Lead evaluator shall mean the primary individual responsible for conducting and completing an evaluation of a classroom teacher or building principal under this Subpart. To the extent practicable, the building principal, or his or her designee, shall be the lead evaluator of a classroom teacher in this Subpart. To the extent practicable, the lead evaluator of a

principal should be the superintendent or BOCES district superintendent or his/her designee.

(m) Leadership standards shall mean the Educational Leadership Policy Standards: ISLLC 2008 as adopted by the National Policy Board for Educational Administration (Council of Chief State School Officers, Washington DC, One Massachusetts Avenue, NW, Suite 700, Washington, DC 20001-1431; 2008- available at the Office of Counsel, State Education Department, State Education Building, Room 148, 89 Washington Avenue, Albany, New York 12234). The Leadership Standards provide that an education leader promotes the success of every student by:

(1) facilitating the development, articulation, implementation, and stewardship of a vision of learning that is shared and supported by the school community;

(2) advocating, nurturing and sustaining a school culture and instructional program conducive to student learning and staff professional growth;

(3) ensuring management of the organization, operations and resources for a safe, efficient, and effective learning environment;

(4) collaborating with families and community members, responding to diverse community interests and needs, and mobilizing community resources;

(5) acting with integrity, fairness, and in an ethical manner; and

(6) understanding, responding to, and influencing the larger political, social, economic, legal, and cultural context.

(n) Principal shall mean a building principal or an administrator in charge of an instructional program of a board of cooperative educational services.

(o) School building shall mean a school or program identified by its Basic Educational Data System (BEDS) code, as determined by the commissioner.

(p) State approved student growth model means a statistical model that uses prior academic history, poverty, students with disabilities and English language learners, and any additional factors approved by the Commissioner to measure student growth.

(q) State-designed supplemental assessment shall mean a selection of state tests or assessments developed or designed by the Department, or that the Department purchased or acquired from (i) another state; (ii) an institution of higher education; or (iii) a commercial or not-for-profit entity, provided that such entity must be objective and may not have a conflict of interest or appearance of a conflict of interest; and tests or assessments that have been previously designed or acquired by local districts, but only if the Department significantly modifies growth targets or scoring bands for such tests or assessments or otherwise adapts the test or assessment to the Department's requirements. Such assessments may only be used in the optional student performance subcomponent in order to produce a growth score calculated pursuant to a State-provided or approved growth model.

(r) Student growth means the change in student achievement for an individual student between two or more points in time.

(s) Student growth percentile score shall mean the result of a statistical model that calculates each student's change in achievement between two or more points in time on a State assessment or other comparable growth measure and compares each student's performance to that of similarly achieving students.

(t) Student Learning Objective(s) (SLOs) are academic goals for an educator's students that are set at the start of a course, except in rare circumstances as defined by the Commissioner. SLOs represent the most important learning for the year (or semester, where applicable). They must be specific and measurable, based on available prior student learning data, and aligned to the New York State learning standards, as well as to any other school and district priorities. An educator's scores are based upon the degree to which his or her goals were attained.

(u) Superintendent of schools shall mean the chief school officer of a district or the district superintendent of a board of cooperative educational services, provided that in the case of the City School District of the City of New York, superintendent shall mean the Chancellor of the City School District of the City of New York or his or her designee.

(v) Teacher or principal state provided growth scores shall mean a measure of central tendency of the student growth percentile scores through the use of standard deviations and confidence ranges to identify with statistical certainty educators whose students' growth is well above or well below average compared to similar students for a teacher's or principal's students after the following student characteristics are taken into consideration: poverty, students with disabilities and English language learners. Additional factors may be added by the Commissioner, subject to approval by the Board of Regents.

(w) Teacher(s) of record shall be defined in a manner prescribed by the commissioner.

(x) Teaching Standards are enumerated below:

(1) the teacher acquires knowledge of each student, and demonstrates knowledge of student development and learning to promote achievement for all students;

(2) the teacher knows the content they are responsible for teaching, and plans instruction that ensures growth and achievement for all students;

(3) the teacher implements instruction that engages and challenges all students to meet or exceed the learning standards;

(4) the teacher works with all students to create a dynamic learning environment that supports achievement and growth;

(5) the teacher uses multiple measures to assess and document student growth, evaluate instructional effectiveness, and modify instruction;

(6) the teacher demonstrates professional responsibility and engages relevant stakeholders to maximize student growth, development, and learning; and

(7) the teacher sets informed goals and strives for continuous professional growth.

(y) Testing standards shall mean the "Standards for Educational and Psychological Testing" (American Psychological Association, National Council on Measurement in Education, and American Educational Research Association; 2014- available at the Office of Counsel, State Education Department, State Education Building, Room 148, 89 Washington Avenue, Albany, New York 12234).

(z) The governing body of each district shall mean the board of education of each district, provided that, in the case of the City School District of the City of New York, governing body shall mean the Chancellor of the City School District of the City of New York or, to the extent provided by law, the board of education of the City School District of the City of New York and, in the case of BOCES, governing body shall mean the board of cooperative educational services.

(aa) Traditional standardized assessment shall mean a systematic method of gathering information from objectively scored items that allow the test taker to select one or more of the given options or choices as their response. Examples include multiple-choice, true-false, and matching items. Traditional standardized assessments are those that require the student (and not the examiner/assessor) to directly use a "bubble" answer sheet. Traditional standardized assessments do not include performance assessments or assessments in which students perform real-world tasks that demonstrate application of knowledge and skills; assessments that are otherwise required to be administered by Federal law; and/or assessments used for diagnostic or formative purposes, including but not limited to assessments used for diagnostic screening required by Education Law section 3208(5).

§ 30-3.3. Requirements for annual professional performance review plans submitted under this Subpart.

(a) Applicability.

(1) The governing body of each district shall adopt a plan, in a form and timeline prescribed by the commissioner, for the annual professional performance review of all of the district's classroom teachers and building principals in accordance with the requirements of Education Law section 3012-d and this Subpart and shall submit such plan to the commissioner for approval. The commissioner shall approve or reject the plan. The commissioner may reject a plan that does not rigorously adhere to the provisions of Education Law section 3012-d and the requirements of this Subpart. Absent a finding by the Commissioner of extraordinary circumstances, if any material changes are made to the plan, the district must submit the material changes by March 1 of each school year, on a form prescribed by the commissioner, to the commissioner for approval. The provisions of Education Law § 3012-c(2)(k) shall only apply to the extent provided in this paragraph.

(2) Such plan shall be filed in the district office, as applicable, and made available to the public on the district's web-site no later than September 10th of each school year, or within 10 days after the plan's approval by the commissioner, whichever shall later occur.

(3) Any plan submitted to the commissioner shall include a signed certification on a form prescribed by the commissioner, by the superintendent, district superintendent or chancellor, attesting that:

(i) the amount of time devoted to traditional standardized assessments that are not specifically required by State or Federal law for each classroom or program of the grade does not exceed, in the aggregate, one percent of the minimum in required annual instructional hours for such classroom or program of the grade; and

(ii) the amount of time devoted to test preparation under standardized testing conditions for each grade does not exceed, in the aggregate, two percent of the minimum required annual instructional hours for such grade. Time devoted to teacher administered classroom quizzes or exams, portfolio reviews, or performance assessments shall not be counted towards the limits established by this subdivision. In addition, formative and diagnostic assessments shall not be counted towards the limits established by this subdivision and nothing in this subdivision shall be construed to supersede the requirements of a section 504 plan of a qualified student with a disability or Federal law relating to English language learners or the individualized education program of a student with a disability.

(b) Content of the plan. The annual professional performance review plan shall:

(1) describe the district's process for ensuring that the department receives accurate teacher and student data, including enrollment and attendance data and any other student, teacher, school, course and teacher/student linkage data necessary to comply with this Subpart, in a format and timeline prescribed by the commissioner. This process shall also provide an opportunity for every classroom teacher and building principal to verify the subjects and/or student rosters assigned to them;

(2) describe how the district will report to the Department the individual scores and ratings for each subcomponent and category and overall rating for each classroom teacher and building principal in the district, in a format and timeline prescribed by the commissioner;

(3) describe the assessment development, security, and scoring processes utilized by the district. Such processes shall ensure that any assessments and/or measures used to evaluate teachers and principals under this section are not disseminated to students before administration and that teachers and principals do not have a vested interest in the outcome of the assessments they score;

(4) describe the details of the district's evaluation system, which shall include, but not be limited to, whether the district chose to use each of the optional subcomponents in the student performance and observation/school visit categories and the assessments and/or measures, if any, that are used in each subcomponent of the student performance category and the observation/school visit category and the name of the approved teacher and/or principal practice rubrics that the district uses or evidence that a variance has been granted by the Commissioner from this requirement;

(5) describe how the district will provide timely and constructive feedback to classroom teachers and building principals on their annual professional performance review;

(6) describe the appeal procedures that the district is using pursuant to section 30-3.12 of this section; and

(7) include any certifications required under this Subpart.

(c) The entire annual professional performance review shall be completed and provided to the teacher or the principal as soon as practicable but in no case later than September 1st of the school year next following the school year for which the teacher or principal's performance is measured. The teacher's and principal's score and rating on the observation/school visit category and in the student performance category, if available, shall be computed and provided to the teacher or principal, in writing, by no later than the last day of the school year for which the teacher or principal is being measured, but in no case later than September 1st of the school year next following the school year for which the teacher or principal's performance is measured. Nothing in this subdivision shall be construed to authorize a teacher or principal to commence the appeal process prior to receipt of his or her overall rating. Districts shall ensure that there is a complete evaluation for all classroom teachers and building principals, which shall include scores and ratings on the subcomponent(s) of the student performance category and the observation/school visit category and the combined category scores and ratings, determined in accordance with the applicable provisions of Education Law § 3012-d and this Subpart, for the school year for which the teacher's or principal's performance is measured.

§ 30-3.4 Standards and criteria for conducting annual professional performance reviews of classroom teachers under Education Law § 3012-d.

(a) Annual professional performance reviews conducted under this section shall differentiate teacher effectiveness resulting in a teacher being rated Highly Effective, Effective, Developing or Ineffective based on multiple measures in two categories: the student performance category and the teacher observation category.

(b) Student performance category. The student performance category shall have one mandatory subcomponent and one optional subcomponent as follows:

(1) Mandatory first subcomponent.

(i) for a teacher whose course ends in a State-created or administered test for which there is a State-provided growth model and at least 50% of a teacher's students are covered under the State-provided growth measure, such teacher shall have a State-provided growth score based on such model; and

(ii) for a teacher whose course does not end in a State-created or administered test or where less than 50% of the teacher's students are covered by a State-provided growth measure, such teacher shall have a Student Learning Objective (SLO) developed and approved by his/her superintendent or his or her designee, using a form prescribed by the commissioner, consistent with the SLO process determined or developed by the commissioner, that results in a student growth score; provided that, for any teacher whose course ends in a State-created or administered assessment for which there is no State-provided growth model, such assessment must be used as the underlying assessment for such SLO. The SLO process determined by the Commissioner shall include a minimum growth target of one year of expected growth, as determined by the superintendent or his or her designee. Such targets, as determined by the superintendent or his or her designee, may take the following characteristics into account: poverty, students with disabilities, English language learners status and prior academic history. SLOs shall include the following SLO elements, as defined by the commissioner in guidance:

(a) student population;

(b) learning content;

(c) interval of instructional time;

(d) evidence;

(e) baseline;

(f) target;

(g) criteria for rating a teacher Highly Effective, Effective, Developing or Ineffective ("HEDI"); and

(h) rationale.

(iii) for a teacher whose course does not end in a State-created or administered test or where a State-provided growth measure is not determined, districts may determine whether to use SLOs based on a list of approved student assessments, or a school-or-BOCES-wide group, team, or linked results based on State/Regents assessments, as defined by the Commissioner in guidance.

(iv) Districts shall develop back-up SLOs for all teachers whose courses end in a State created or administered test for which there is a State-provided growth model, to use in the event that no State-provided growth score can be generated for such teachers.

(2) Optional second subcomponent. A district may locally select a second measure that shall be applied in a consistent manner, to the extent practicable, across the district based on State/Regents assessments or State-designed supplemental assessments and be either:

(i) a second State-provided growth score on a state-created or administered test; provided that the State-provided growth measure is different than that used in the required subcomponent of the student performance category, which may include one or more of the following measures:

(a) a teacher-specific growth score computed by the State based on percentage of students who achieve a State-determined level of growth (e.g., percentage of students whose growth is above the median for similar students);

(b) school-wide growth results based on a State-provided school-wide growth score for all students attributable to the school who took the State English language arts or math assessment in grades 4-8; or

(c) school-wide, group, team, or linked growth results using available State-provided growth scores that are locally-computed; or

(ii) a growth score based on a State-designed supplemental assessment, calculated using a State-provided or approved growth model. Such growth score may include school or BOCES-wide group, team, or linked results where the State-approved growth model is capable of generating such a score.

(3) All State-provided or approved growth model scores must control for poverty, students with disabilities, English language learners status and prior academic history. For SLOs, these characteristics may be taken into account through the use of targets based on one year of "expected growth", as determined by the superintendent or his or her designee.

(4) The district shall measure student growth using the same measure(s) of student growth for all classroom teachers in a course and/or grade level in a district.

(c) Weighting of Subcomponents Within Student Performance Category.

(1) If a district does not locally select to use the optional second student growth subcomponent, then the mandatory subcomponent shall be weighted at 100%.

(2) If the optional second student growth subcomponent is selected, then the mandatory subcomponent shall be weighted at a minimum of 50% and the optional second subcomponent shall be weighted at no more than 50%.

(3) Each measure used in the student performance category (State provided growth score, SLOs, State-designed supplemental assessments) must result in a score between 0 and 20. The State will generate scores of 0-20 for measures using a State-provided growth score. Districts shall calculate scores for SLOs in accordance with the minimum percentages prescribed in the table below; provided however that for teachers with courses with small "n" sizes as defined by the Commissioner in guidance, districts shall calculate scores for SLOs using a methodology prescribed by the Commissioner in guidance. For all other measures that are not State-provided growth measures, scores of 0-20 shall be computed locally in accordance with the State provided or approved growth model used.

SLOs Percent of Students Meeting Target	Scoring Range
0-4%	0
5-8%	1
9-12%	2
13-16%	3
17-20%	4
21-24%	5
25-28%	6
29-33%	7
34-38%	8
39-43%	9
44-48%	10
49-54%	11
55-59%	12
60-66%	13
67-74%	14
75-79%	15
80-84%	16
85-89%	17
90-92%	18
93-96%	19
97-100%	20

(d) Overall Rating on Student Performance Category.

(1) Multiple student performance measures shall be combined using a weighted average pursuant to subdivision (c) of this section to produce an overall student performance category score of 0 to 20. Based on such score, an overall student performance category rating shall be derived from the table below:

	Overall Student Performance Category Score and Rating	
	Minimum	Maximum
H	18	20
E	15	17
D	13	14
I	0	12

(2) Teacher observation category. The observation category for teachers shall be based on at least two observations; one of which must be unannounced.

(i) Two Mandatory subcomponents.

(a) One observation shall be conducted by a principal or other trained administrator; and

(b) a second observation shall be conducted by: either one or more impartial independent trained evaluator(s) selected and trained by the district or in cases where a hardship waiver is granted by the Department pursuant to subclause (1) of this clause, a second observation shall be conducted by one or more evaluators selected and trained by the district, who are different than the evaluator(s) who conducted the evalua-

tion pursuant to clause (a) of this paragraph. An independent trained evaluator may be employed within the district, but may not be assigned to the same school building as the teacher being evaluated.

(1) A rural school district, as defined by the Commissioner in guidance, or a school district with only one registered school pursuant to section 100.18 of the Commissioner's regulations may apply to the Department for a hardship waiver on an annual basis, in a timeframe and manner prescribed by the Commissioner, if due to the size and limited resources of the school district, it is unable to obtain an independent evaluator within a reasonable proximity without an undue burden to the school district.

(ii) Optional third subcomponent. The observations category may include a third optional subcomponent based on classroom observations conducted by a trained peer teacher rated Effective or Highly Effective on his or her overall rating in the prior school year from the same school or from another school in the district.

(iii) Frequency and Duration of Observations. The frequency and duration of observations shall be determined locally.

(iv) All observations must be conducted using a teacher practice rubric approved by the commissioner pursuant to a Request for Qualification ("RFQ") process, unless the district has an approved variance from the Commissioner.

(a) Variance for existing rubrics. A variance may be granted to a district that seeks to use a rubric that is either a close adaptation of a rubric on the approved list, or a rubric that was self-developed or developed by a third-party, upon a finding by the Commissioner that the rubric meets the criteria described in the Request for Qualification and the district has demonstrated that it has made a significant investment in the rubric and has a history of use that would justify continuing the use of that rubric.

(b) Variance for use of new innovative rubrics. A variance may be granted to a district that seeks to use a newly developed rubric, upon a finding by the Commissioner that the rubric meets the criteria described in the RFQ, has demonstrated how it will ensure inter-rater reliability and the rubric's ability to provide differentiated results over time.

(v) All observations for a teacher for the school year must use the same approved rubric; provided that districts may locally determine whether to use different rubrics for teachers who teach different grades and/or subjects during the school year.

(vi) At least one of the mandatory observations must be unannounced.

(vii) Observations may occur either live or via recorded video, as determined locally.

(viii) Nothing in this Subpart shall be construed to limit the discretion of a board of education, superintendent of schools or a principal or other trained administrator to conduct observations in addition to those required by this section for non-evaluative purposes.

(ix) Observations must be based only on observable rubric subcomponents. The evaluator may select a limited number of observable rubric subcomponents for focus within a particular observation, so long as all observable Teaching Standards/Domains are addressed across the total number of annual observations.

(x) New York State Teaching Standards/Domains that are part of the rubric but not observable during the classroom observation may be observed during any optional pre-observation conference or post-observation review or other natural conversations between the teacher and the evaluator and incorporated into the observation score.

(xi) Points shall not be allocated based on any artifacts, unless such artifact constitutes evidence of an otherwise observable rubric subcomponent (e.g., a lesson plan viewed during the course of the observation may constitute evidence of professional planning).

(xii) Each observation shall be evaluated on a 1-4 scale based on a State-approved rubric aligned to the New York State Teaching Standards and an overall score for each observation shall be generated between 1-4. Multiple observations shall be combined using a weighted average pursuant to subparagraph (xiv) of this paragraph, producing an overall observation category score between 1-4. In the event that a teacher earns a score of 1 on all rated components of the practice rubric across all observations, a score of 0 will be assigned.

(xiii) Weighting of Subcomponents Within Teacher Observation Category. The weighting of the subcomponents within the teacher observation category shall be established locally within the following constraints:

(a) observations conducted by a principal or other trained administrator shall be weighted at a minimum of 80%.

(b) observations conducted by independent impartial observer(s), or other evaluators selected by the district if a hardship waiver is granted, shall be weighted at a minimum of 10%.

(c) if a district selects to use the optional third observation subcomponent, then the weighting assigned to the optional observations conducted by peers shall be established locally within the constraints outlined in clause (1) and (2) of this subparagraph.

(xiv) Overall Rating on the Teacher Observation Category. The overall observation score calculated pursuant to paragraphs (xii) and (xiii) shall be converted into an overall rating, using cut scores determined locally for each rating category; provided that such cut scores shall be consistent with the permissible ranges identified below:

	Overall Observation Category Score and Rating	
	Min	Max
H	3.5 to 3.75	4.0
E	2.5 to 2.75	3.49 to 3.74
D	1.5 to 1.75	2.49 to 2.74
I	0	1.49 to 1.74

§ 30-3.5 Standards and criteria for conducting annual professional performance reviews of building principals under Education Law § 3012-d.

(a) Ratings. Annual professional performance reviews conducted under this section shall differentiate principal effectiveness resulting in a principal being rated Highly Effective, Effective, Developing or Ineffective based on multiple measures in the following two categories: the student performance category and the school visit category.

(b) Student performance category. Such category shall have at least one mandatory first subcomponent and an optional second subcomponent as follows:

(1) Mandatory first subcomponent.

(i) for a principal with at least 30% of his/her students covered under the State-provided growth measure, such principal shall have a State-provided growth score based on such model; and

(ii) for a principal where less than 30% of his/her students are covered under the State-provided growth measure, such principal shall have a Student Learning Objective (SLO), on a form prescribed by the commissioner, consistent with the SLO process determined or developed by the commissioner, that results in a student growth score; provided that, for any principal whose building or program includes courses that end in a State-created or administered assessment for which there is no State-provided growth model, such assessment must be used as the underlying assessment for such SLO. The SLO process determined by the Commissioner shall include a minimum growth target of one year of expected growth, as determined by the superintendent or his or her designee. Such targets, as determined by the superintendent or his or her designee in the exercise of their pedagogical judgment, may take the following characteristics into account: poverty, students with disabilities, English language learners status and prior academic history. SLOs shall include the following elements, as defined by the Commissioner in guidance:

- (a) student population;
- (b) learning content;
- (c) interval of instructional time;
- (d) evidence;
- (e) baseline;
- (f) target;
- (g) criteria for rating a principal Highly Effective, Effective, Developing or Ineffective (“HEDI”); and
- (h) Rationale.

(iii) for a principal of a building or program whose courses do not end in a State-created or administered test or where a State-provided growth score is not determined, districts shall use SLOs based on a list of State approved student assessments.

(2) Optional second subcomponent. A district may locally select one or more other measures for the student performance category that shall be applied in a consistent manner, to the extent practicable, across the district based on either:

(i) a second State-provided growth score on a State-created or administered test; provided that a different measure is used than that for the required subcomponent in the student performance category, which may include one or more of the following measures:

(a) principal-specific growth computed by the State based on percentage of students who achieve a State-determined level of growth (e.g. percentage of students whose growth is above the median for similar students);

(b) school-wide growth results using available State-provided growth scores that are locally-computed; or

(ii) a growth score based on a State-designed supplemental assessment, calculated using a State-provided or approved growth model. Such growth score may include school or BOCES-wide group, team, or linked measures where the state-approved growth model is capable of generating such a score.

(3) All State-provided or approved growth scores must control for

poverty, students with disabilities, English language learners status and prior academic history. For SLOs, these characteristics may be taken into account through the use of targets based on one year of “expected growth”, as determined by the superintendent or his or her designee.

(4) The district shall measure student growth using the same measure(s) of student growth for all building principals within the same building configuration or program.

(c) Weighting of Subcomponents Within Student Performance Category.

(1) If a district does not locally select to use the optional second student growth subcomponent, then the mandatory subcomponent shall be weighted at 100%.

(2) If the optional second student growth subcomponent is selected, then the mandatory subcomponent shall be weighted at a minimum of 50% and the optional second subcomponent shall be weighted at no more than 50%.

(3) Each measure used in the student performance category (State provided growth score, SLOs, State-designed supplemental assessments) must result in a score between 0 and 20. The State will generate scores of 0-20 for measures using a State-provided growth score. Districts shall calculate growth scores for SLOs in accordance with the minimum percentages prescribed in the table below; provided however that for principals of a building or program with small “n” sizes as defined by the Commissioner in guidance, districts shall calculate scores for SLOs using a methodology prescribed by the Commissioner in guidance. For all other measures that are not State-provided growth measures, scores of 0-20 shall be computed locally in accordance with the State provided or approved growth model used.

SLOs	Scoring Range
Percent of Students Meeting Target	
0-4%	0
5-8%	1
9-12%	2
13-16%	3
17-20%	4
21-24%	5
25-28%	6
29-33%	7
34-38%	8
39-43%	9
44-48%	10
49-54%	11
55-59%	12
60-66%	13
67-74%	14
75-79%	15
80-84%	16
85-89%	17
90-92%	18
93-96%	19
97-100%	20

(4) Overall Rating on Student Performance Category. Multiple measures shall be combined using a weighted average, to produce an overall student performance category score of 0 to 20. Based on such score, an overall student performance category rating shall be derived from the table below:

	Overall Student Performance Category Score and Rating	
	Minimum	Maximum
H	18	20
E	15	17
D	13	14
I	0	12

(d) Principal school visits category. The school visits category for principals shall be based on a State-approved rubric and shall include up

to three subcomponents; two of which are mandatory and one of which is optional.

(1) Two Mandatory subcomponents. A district shall evaluate a principal based on at least:

(i) one school visit shall be based on a State-approved principal practice rubric conducted by the building principal's supervisor or other trained administrator; and

(ii) a second school visit shall be conducted by: either one or more impartial independent trained evaluator(s) selected and trained by the district or in cases where a hardship waiver is granted by the Department pursuant to clause (a) of this subparagraph, a second school visit shall be conducted by one or more evaluators selected and trained by the district, who are different than the evaluator(s) who conducted the evaluation pursuant to subparagraph (i) of this paragraph. An independent trained evaluator may be employed within the district, but may not be assigned to the same school building as the principal being evaluated.

(a) A rural school district, as defined by the Commissioner in guidance, or a school district with only one registered school pursuant to section 100.18 of the Commissioner's regulations may apply to the Department for a hardship waiver on an annual basis, in a timeframe and manner prescribed by the Commissioner, if due to the size and limited resources of the school district, it is unable to obtain an independent evaluator within a reasonable proximity without an undue burden to the school district.

(2) Optional third subcomponent. The school visit category may also include a third optional subcomponent based on school visits conducted by a trained peer administrator rated Effective or Highly Effective on his or her overall rating in the prior school year from the same or another school in the district.

(3) Frequency and Duration of School Visits. The frequency of school visits shall be established locally.

(4) All school visits must be conducted using a principal practice rubric approved by the Commissioner pursuant to an RFQ process, unless the district has a currently approved variance from the Commissioner.

(i) Variance for existing rubric. A variance may be granted to a district that seeks to use a rubric that is either a close adaptation of a rubric on the approved list, or a rubric that was self-developed or developed by a third-party, upon a finding by the Commissioner that the rubric meets the criteria described in the RFQ, and the district has demonstrated that it has made a significant investment in the rubric and has a history of use that would justify continuing the use of that rubric.

(ii) Variance for use of new innovative rubrics. A variance may be granted to a district that seeks to use a newly developed rubric, upon a finding by the Commissioner that the rubric meets the criteria described in the RFQ and the district has demonstrated how it will ensure inter-rater reliability and the rubric's ability to provide differentiated results over time.

(5) All school visits for a principal for the year must use the same approved rubric; provided that districts may locally determine whether to use different rubrics for a principal assigned to different grade level configurations or building types.

(6) At least one of the mandatory school visits must be unannounced.

(7) School visits may not be conducted via video.

(8) Nothing in this Subpart shall be construed to limit the discretion of a board of education, superintendent of schools, or other trained administrator from conducting school visits of a principal in addition to those required under this section for non-evaluative purposes.

(9) School visits may be based only on observable rubric subcomponents.

(10) The evaluator may select a limited number of observable rubric subcomponents for focus on within a particular school visit, so long as all observable ISLLC Standards are addressed across the total number of annual school visits.

(11) Leadership Standards and their related functions that are part of the rubric but not observable during the course of the school visit may be observed through other natural conversations between the principal and the evaluator and incorporated into the observation score.

(12) Points shall not be allocated based on any artifacts, unless such artifact constitutes evidence of a rubric subcomponent observed during a school visit. Points shall not be allocated based on professional goal-setting; however, organizational goal-setting may be used to the extent it is evidence from the school visit and related to a component of the principal practice rubric.

(13) Each school visit shall be evaluated on a 1-4 scale based on a state approved rubric aligned to the ISLLC standards and an overall score for each school visit shall be generated between 1-4. Multiple observations shall be combined using a weighted average, producing an overall observation category score between 1-4. In the event that a principal earns a score of 1 on all rated components of the practice rubric across all observations, a score of 0 will be assigned. Weighting of Subcomponents

Within Principal School Visit Category. The weighting of the subcomponents within the principal school visit category shall be established locally within the following constraints:

(i) school visits conducted by a superintendent or other trained administrator shall be weighted at a minimum of 80%.

(ii) school visits conducted by independent impartial trained evaluators or other evaluators selected by the district if a hardship waiver is granted, shall be weighted at a minimum of 10%.

(iii) if a district selects to use the optional third school visit subcomponent, then the weighting assigned to the optional school visits conducted by peers shall be established locally within the constraints outlined in clause (i) and (ii) of this subparagraph.

(14) Overall Rating on the Principal School Visits Category. The overall principal school visit score shall be converted into an overall rating, using cut scores determined locally for each rating category; provided that such cut scores shall be consistent with the permissible ranges identified below:

(15) The overall principal/school visit score shall be converted into an overall rating, using cut scores determined locally for each rating category; provided that such cut scores shall be consistent with the permissible ranges identified below:

	Overall Observation Category Score and Rating	
	Min	Max
H	3.5 to 3.75	4.0
E	2.5 to 2.75	3.49 to 3.74
D	1.5 to 1.75	2.49 to 2.74
I	0	1.49 to 1.74

§ 30-3.6. Rating determination.

(a) The overall rating determination for a teacher or principal shall be determined according to a methodology as follows:

	Observation/School Visit			
	Highly Effective (H)	Effective (E)	Developing (D)	Ineffective (I)
Student Performance	Highly Effective (H)	H	E	D
	Effective (E)	H	E	D
	Developing (D)	E	E	D
	Ineffective (I)	D	D	I

(b) Notwithstanding subdivision (a) of this section, a teacher or principal who is rated using both subcomponents in the student performance category and receives a rating of Ineffective in such category shall be rated Ineffective overall; provided, however, that if the measure used in the second subcomponent is a State-provided growth score on a state-created or administered test, a teacher or principal who receives a rating of Ineffective in the student performance category shall not be eligible to receive a rating of Effective or Highly Effective overall;

(c) The district shall ensure that the process by which weights and scoring ranges are assigned to subcomponents and categories is transparent and available to those being rated before the beginning of each school year. Such process must ensure that it is possible for a teacher or principal to obtain any number of points in the applicable scoring ranges, including zero, in each subcomponent. In the event that a teacher/principal earns a score of 1 on all rated components of the practice rubric across all observations, a score of 0 will be assigned. The superintendent, district superintendent or chancellor and the representative of the collective bargaining unit (where one exists) shall certify in the district's plan that the evaluation process shall use the weights and scoring ranges provided by the commissioner.

§ 30-3.7. Prohibited elements. Pursuant to Education Law § 3012-d(7), the following elements shall no longer be eligible to be used in any evaluation subcomponent pursuant to this Subpart:

(a) evidence of student development and performance derived from lesson plans, other artifacts of teacher practice, and student portfolios, except for student portfolios measured by a State-approved rubric where permitted by the department;

(b) use of an instrument for parent or student feedback;

(c) use of professional goal-setting as evidence of teacher or principal effectiveness;

(d) any district or regionally-developed assessment that has not been approved by the department; and

(e) any growth or achievement target that does not meet the minimum standards as set forth in regulations of the commissioner adopted hereunder.

§ 30-3.8. Approval process for student assessments.

(a) Approval of student assessments for the evaluation of classroom teachers and building principals. An assessment provider who seeks to place an assessment on the list of approved student assessments under this section shall submit to the Commissioner a written application in a form and within the time prescribed by the Commissioner.

(b) The commissioner shall evaluate a student assessment(s) for inclusion on the Department's list(s) of approved student assessments for use in the required and/or optional subcomponents of the student performance category, based on the criteria outlined in the RFQ or request for proposals ("RFP").

(c) Termination of approval. Approval shall be withdrawn for good cause, including, but not limited to, a determination by the commissioner that:

(1) the assessment does not comply with one or more of the criteria for approval set forth in Subpart or in the RFQ or RFP;

(2) the Department determines that the assessment is not identifying meaningful and/or observable differences in performance levels across schools and classrooms; and/or

(3) high quality academic research calls into question the correlation between high performance on the assessment and positive student learning outcomes.

§ 30-3.9. Approval process for approved teacher and principal practice rubrics.

(a) A provider who seeks to place a teacher or principal practice rubric on the list of approved rubrics under this section shall submit to the commissioner a written application in a form and within the time prescribed by the commissioner.

(b) Teacher practice rubric. The commissioner shall evaluate a rubric for inclusion on the department's list of approved practice rubrics for classroom teachers pursuant to a request for qualification ("RFQ") process. Such proposals shall meet the criteria outlined by the commissioner in the RFQ process.

(c) Principal practice rubric. The commissioner shall evaluate a rubric for inclusion on the department's list of approved practice rubrics for building principals pursuant to a request for qualification ("RFQ") process. Such proposals shall meet the criteria outlined by the commissioner in the RFQ process.

(d) Termination of approval of a teacher or principal scoring rubric. Approval for inclusion on the department's list of approved rubrics may be withdrawn for good cause, including, but not limited to, a determination by the commissioner that the rubric:

(1) does not comply with one or more of the criteria for approval set forth in this section or the criteria set forth in the request for qualification;

(2) the department determines that the practice rubric is not identifying meaningful and/or observable differences in performance levels across schools and classrooms; and/or

(3) high-quality academic research calls into question the correlation between high performance on this rubric and positive student learning outcomes.

(e) The Department's lists of approved rubrics established pursuant to section 30-2.7 of the Part shall continue in effect until superseded by a list generated from a new RFQ issued pursuant to this section or the list is abolished by the commissioner as unnecessary.

§ 30-3.10. Training of evaluators and lead evaluators.

(a) The governing body of each district shall ensure that evaluators, including impartial and independent observers and peer observers, have appropriate training before conducting a teacher or principal's evaluation under this section. The governing body shall also ensure that any lead evaluator has been certified by such governing body as a qualified lead evaluator before conducting and/or completing a teacher's or principal's evaluation in accordance with the requirements of this Subpart, except as otherwise provided in this subdivision. Nothing herein shall be construed to prohibit a lead evaluator who is properly certified by the Department as a school administrator or superintendent of schools from conducting classroom observations or school visits as part of an annual professional performance review under this Subpart prior to completion of the training required by this section provided such training is successfully completed prior to completion of the evaluation.

(b) To qualify for certification as a lead evaluator, individuals shall successfully complete a training course that meets the minimum requirements prescribed in this subdivision. The training course shall provide training on:

(1) the New York State Teaching Standards and their related elements and performance indicators and the Leadership standards and their related functions, as applicable;

(2) evidence-based observation techniques that are grounded in research;

(3) application and use of the student growth percentile model and any other growth model approved by the Department as defined in section 30-3.2 of this Subpart;

(4) application and use of the State-approved teacher or principal rubric(s) selected by the district for use in evaluations, including training on the effective application of such rubrics to observe a teacher or principal's practice;

(5) application and use of any assessment tools that the district utilizes to evaluate its classroom teachers or building principals;

(6) application and use of any locally selected measures of student growth used in the optional subcomponent of the student performance category used by the district to evaluate its teachers or principals;

(7) use of the statewide instructional reporting system;

(8) the scoring methodology utilized by the department and/or the district to evaluate a teacher or principal under this Subpart, including the weightings of each subcomponent within a category; how overall scores/ratings are generated for each subcomponent and category and application and use of the evaluation matrix(es) prescribed by the commissioner for the four designated rating categories used for the teacher's or principal's overall rating and their category ratings; and

(9) specific considerations in evaluating teachers and principals of English language learners and students with disabilities.

(c) Independent evaluators and peer evaluators shall receive training on the following elements:

(1) the New York State Teaching Standards and their related elements and performance indicators and the Leadership standards and their related functions, as applicable;

(2) evidence-based observation techniques that are grounded in research; and

(3) application and use of the State-approved teacher or principal rubric(s) selected by the district for use in evaluations, including training on the effective application of such rubrics to observe a teacher or principal's practice;

(d) Training shall be designed to certify lead evaluators. Districts shall describe in their annual professional performance review plan the duration and nature of the training they provide to evaluators and lead evaluators and their process for certifying lead evaluators under this section.

(e) Districts shall also describe in their annual professional performance review plan their process for ensuring that all evaluators maintain inter-rater reliability over time (such as data analysis to detect disparities on the part of one or more evaluators; periodic comparisons of a lead evaluator's assessment with another evaluator's assessment of the same classroom teacher or building principal; annual calibration sessions across evaluators) and their process for periodically recertifying all evaluators.

(f) Any individual who fails to receive required training or achieve certification or re-certification, as applicable, by a district pursuant to the requirements of this section shall not conduct or complete an evaluation under this Subpart.

§ 30-3.11. Teacher or principal improvement plans.

(a) Upon rating a teacher or a principal as Developing or Ineffective through an annual professional performance review conducted pursuant to Education Law section 3012-d and this Subpart, a district shall formulate and commence implementation of a teacher or principal improvement plan for such teacher or principal by October 1 in the school year following the school year for which such teacher's or principal's performance is being measured or as soon as practicable thereafter.

(b) Such improvement plan shall be developed by the superintendent or his or her designee in the exercise of their pedagogical judgment and shall include, but need not be limited to, identification of needed areas of improvement, a timeline for achieving improvement, the manner in which the improvement will be assessed, and, where appropriate, differentiated activities to support a teacher's or principal's improvement in those areas.

§ 30-3.12. Appeal procedures.

(a) An annual professional performance review plan under this Subpart shall describe the appeals procedure utilized by a district through which an evaluated teacher or principal may challenge their annual professional performance review. Pursuant to Education Law § 3012-d, a teacher or principal may only challenge the following in an appeal:

(1) the substance of the annual professional performance review; which shall include the following:

(i) in the instance of a teacher or principal rated Ineffective on the student performance category but rated Highly Effective on the observation/school visit category based on an anomaly, as determined locally.

(2) the district's adherence to the standards and methodologies required for such reviews, pursuant to Education Law § 3012-d and this Subpart;

(3) the adherence to the regulations of the commissioner and compliance with any applicable locally negotiated procedures, as required under Education Law § 3012-d and this Subpart; and

(4) district's issuance and/or implementation of the terms of the teacher or principal improvement plan under Education Law § 3012-d and this Subpart.

(b) Appeal procedures shall provide for the timely and expeditious resolution of any appeal.

(c) An evaluation that is the subject of an appeal shall not be sought to be offered in evidence or placed in evidence in any proceeding conducted pursuant to Education Law §§ 3020-a and 3020-b or any locally negotiated alternate disciplinary procedure until the appeal process is concluded.

(d) Nothing in this section shall be construed to alter or diminish the authority of the governing body of a district to grant or deny tenure to or terminate probationary teachers or probationary building principals during the pendency of an appeal pursuant to this section for statutorily and constitutionally permissible reasons, including the teacher's or principal's performance that is the subject of the appeal.

(e) Nothing in this Subpart shall be construed to authorize a teacher or principal to commence the appeal process prior to receipt of his or her rating from the district.

§ 30-3.13. Monitoring and consequences for non-compliance.

(a) The department will annually monitor and analyze trends and patterns in teacher and principal evaluation results and data to identify districts and/or schools where evidence suggests that a more rigorous evaluation system is needed to improve educator effectiveness and student learning outcomes. The department will analyze data submitted pursuant to this Subpart to identify:

(1) schools or districts with unacceptably low correlation results between student growth on the student performance category and the teacher observation/principal school visit category used by the district to evaluate its teachers and principals; and/or

(2) schools or districts whose teacher and principal overall ratings and subcomponent scores and/or ratings show little differentiation across educators and/or the lack of differentiation is not justified by equivalently consistent student achievement results; and/or schools or districts that show a pattern of anomalous results in the student performance and observation/school visits categories.

(b) A district identified by the department in one of the categories enumerated above may be highlighted in public reports and/or the commissioner may order a corrective action plan, which may include, but not be limited to, a timeframe for the district to address any deficiencies or the plan will be rejected by the Commissioner, changes to the district's target setting process, a requirement that the district arrange for additional professional development, that the district provide additional in-service training and/or utilize independent trained evaluators to review the efficacy of the evaluation system.

(c) Corrective action plans may require changes to a collective bargaining agreement.

§ 30-3.14. Prohibition against Student Being Instructed by Two Consecutive Ineffective Teachers.

(a) A student may not be instructed, for two consecutive school years, in the same subject by any two teachers in the same district, each of whom received a rating of Ineffective under an evaluation conducted pursuant to this section in the school year immediately prior to the school year in which the student is placed in the teacher's classroom; provided, that if a district deems it impracticable to comply with this subdivision, the district shall seek a teacher-specific waiver from the department from such requirement, on a form and timeframe prescribed by the commissioner.

(b) If a district assigns a student to a teacher rated Ineffective in the same subject for two consecutive years, the district must seek a waiver from this requirement for the specific teacher in question. The commissioner may grant a waiver from this requirement if:

(1) the district cannot make alternative arrangements and/or reassign a teacher to another grade/subject because a hardship exists (for example, too few teachers with higher ratings are qualified to teach such subject in that district); and

(2) the district has an improvement and/or removal plan in place for the teacher at issue that meets certain guidelines prescribed by the commissioner.

§ 30-3.15. Applicability of the provisions in Education Law § 3012-c. The provisions of Education Law § 3012-c shall apply to annual professional performance reviews pursuant to this Subpart as follows:

(a) the provisions of paragraphs (d) and (k) of subdivision (2), subdivision (4), subdivision (5) and subdivision (9) of Education Law § 3012-c that apply are set forth in the applicable language of this Subpart;

(b) the provisions of paragraphs (k-1), (k-2) and (l) of subdivision (2) of Education Law § 3012-c shall apply without any modification;

(c) the provisions of subdivision (5-a) of Education Law § 3012-c shall apply without modification except:

(1) Any reference in subdivision (5-a) to a proceeding pursuant to Education Law § 3020-a based on a pattern of ineffective teaching shall be deemed to be a reference to a proceeding pursuant to Education Law § 3020-b against a teacher or principal who receives two or more consecutive composite Ineffective ratings; and in accordance with Education Law § 3020(3) and (4)(a), notwithstanding any inconsistent language in subdivision (5-a), any alternate disciplinary procedures contained in a collective bargaining agreement that becomes effective on or after July 1, 2015 shall provide that two consecutive Ineffective ratings pursuant to annual professional performance reviews conducted in accordance with the provisions of Education Law § 3012-c or 3012-d shall constitute prima facie evidence of incompetence that can only be overcome by clear and convincing evidence that the employee is not incompetent in light of all surrounding circumstances, and if not successfully overcome, the finding, absent extraordinary circumstances, shall be just cause for removal, and that three consecutive Ineffective ratings pursuant to annual professional performance reviews conducted in accordance with the provisions of Education Law § 3012-c or 3012-d shall constitute prima facie evidence of incompetence that can only be overcome by clear and convincing evidence that the calculation of one or more of the teacher's or principal's underlying components on the annual professional performance reviews pursuant to Education Law § 3012-c or 3012-d was fraudulent, and if not successfully overcome, the finding, absent extraordinary circumstances, shall be just cause for removal.

(d) the provisions of subdivision (10) of Education Law § 3012-c shall apply without modification, except that there is no composite effectiveness score under Education Law § 3012-d.

§ 30-3.16. Challenges to State-Provided Growth Scores.

(a) A teacher/principal shall have the right to challenge their State-provided growth score under this Subpart; provided that the teacher/principal provides sufficient documentation that he/she meets at least one of the following criteria in their annual evaluation:

(1) a teacher/principal was rated Ineffective on his/her State-provided growth score and Highly Effective on the Observation/School Visit category in the current year and was rated either Effective or Highly Effective on his/her State-provided growth score in the previous year; or

(2) a high school principal of a building that includes at least all of grades 9-12, was rated Ineffective on the State-provided growth score but such percent of students as shall be established by the Commissioner in his/her school/program within four years of first entry into grade 9 received results on department-approved alternative examinations in English Language Arts and/or mathematics as described in section 100.2(f) of this Title (including, but not limited to, advanced placement examinations, and/or International Baccalaureate examinations, SAT II, etc.) scored at proficiency (i.e., a Level 3 or higher).

(b) A teacher/principal shall submit an appeal to the Department, in a manner prescribed by the Commissioner, within 20 days of receipt of his/her overall annual professional performance review rating or the effective date of this section, whichever is later, and submit a copy of the appeal to the school district and/or BOCES. The school district and/or BOCES shall have ten days from receipt of a copy of such appeal to submit a reply to the Department.

(c) Based on the documentation received, if the Department overturns a teacher's/principal's rating on the State-provided growth score, the district/BOCES shall substitute the teacher's/principal's results on the back-up SLO developed by the district/BOCES for such teacher/principal. If a back-up SLO was not developed, then the teacher's/principal's overall composite score and rating shall be based on the portions of their annual professional performance review not affected by the nullification of the State-provided growth score. Provided, however, that following a successful appeal under paragraph (1) of subdivision (a) of this section, if a back-up SLO is used a teacher/principal shall not receive a score/rating higher than developing on such SLO.

(d) An evaluation that is the subject of an appeal shall not be sought to be offered in evidence or placed in evidence in any proceeding conducted pursuant to Education Law sections 3020-a and 3020-b or any locally negotiated alternate disciplinary procedure until the appeal process is concluded.

(e) Nothing in this section shall be construed to alter or diminish the authority of the governing body of a district to grant or deny tenure to or terminate probationary teachers or probationary building principals during the pendency of an appeal pursuant to this section for statutorily and constitutionally permissible reasons, including the teacher's/principal's performance that is the subject of the appeal.

(f) Nothing in this Subpart shall be construed to authorize a teacher/principal to commence the appeal process prior to receipt of his/her overall rating from the district/BOCES.

(g) During the pendency of an appeal under this section, nothing shall be construed to alter the obligation of a school district/BOCES to develop and implement a teacher improvement plan or principal improvement plan during the pendency of an appeal.

(h) Nothing in this section shall be construed to limit any rights of a teacher/principal under section 30-2.11 of this Subpart.

(i) Notwithstanding any other provision of rule or regulation to the contrary, a high school principal of a building that includes at least all of grades 9-12 who meets either of the criteria in paragraphs (1) or (2) of this subdivision shall not receive a State-provided growth score and shall instead use back-up SLOs:

(1) the principal would be rated Ineffective or Developing on the State-provided growth score but the graduation rate of the students in that school building exceeded 90%, and the proportion of the student population included in either the ELA Regents Median Growth Percentile or the Algebra Regents Median Growth Percentile was less than ten percent of the total enrollment for the school; or the principal

(2) has no Combined Median Growth Percentile rating or score, and the proportion of the student population included in the ELA Regents Median Growth Percentile and Algebra Regents Median Growth Percentile was less than five percent of the total enrollment for the school in one subject, and less than ten percent of the total enrollment in the other subject.

(3) If a back-up SLO was not developed, then the principal's overall composite score and rating shall be based on the remaining portions of their annual professional performance review.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. EDU-27-15-00019-P, Issue of July 8, 2015. The emergency rule will expire January 22, 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:

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 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.

Section 1 of Subpart E of Part EE of Chapter 56 of the Laws of 2015 requires the Commissioner of Education to adopt regulations of the Commissioner no later than June 30, 2015, to implement a statewide annual teacher and principal evaluation system in New York state pursuant to Education Law § 3012-d, after consulting with experts and practitioners in the fields of education, economics and psychometrics and with the Secretary of the United States Department of Education on weights, measures and ranking of evaluation categories and subcomponents. Section 3 of Subpart C of Chapter 20 of the Laws of 2015 amends Education Law § 3012-d to require the State-provided growth score to be based on such model, which shall take into consideration certain student characteristics, as determined by the commissioner, including but not limited to students with disabilities, poverty, English language learner status and prior academic history and which shall identify educators whose students' growth is well above or well below average compared to similar students for a teacher's or principal's students after the certain student characteristics above are taken into account.

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.

3. NEEDS AND BENEFITS:

On April 13, 2015, the Governor signed Chapter 56 of the Laws of 2015 to add a new Education Law § 3012-d, to establish a new evaluation system for classroom teachers and building principals.

The new law requires the Commissioner to adopt regulations necessary to implement the evaluation system by June 30, 2015, after consulting with experts and practitioners in the fields of education, economics and psychometrics. It also required the Department to establish a process to accept public comments and recommendations regarding the adoption of regulations pursuant to the new law and consult in writing with the Secretary of the United States Department of Education on weights, measures and ranking of evaluation categories and subcomponents. It further required the release of the response from the Secretary upon receipt thereof, but in any event, prior to the publication of the regulations.

By letter dated April 28, 2015, the Department sought guidance from the Secretary of the United States Department of Education on the weights, measures and ranking of evaluation, as required under the new law and the Secretary responded.

In accordance with the requirements of the statute, the Department created an email box to accept comments on the new evaluation system (eval2015@nysed.gov). The Department has received and reviewed over 4,000 responses and has taken these comments into consideration in formulating the proposed amendments. In addition, the Board of Regents convened on May 7, 2015 to hold a Learning Summit, wherein the Board of Regents hosted a series of panels to provide recommendations to the Board on the new evaluation system. Such panels included experts in education, economics, and psychometrics and State-wide stakeholder groups including but not limited to NYSUT, UFT, School Boards, NYSCOSS and principal and parent organizations. A video recording and the submitted materials for the Learning Summit are available on the Department's website at <http://www.nysed.gov/learning-summit>. The national experts and the representatives of stakeholder groups who presented at the Learning Summit are listed at <http://www.nysed.gov/content/learning-summit-presenter-biographies>. The materials submitted by the national experts and stakeholder groups are listed at <http://www.nysed.gov/content/learning-summit-submitted-materials>.

The proposed amendment reflects areas of consensus among the groups, and in areas where there were varying recommendations, the Department attempted to reconcile those differences to reflect best practices while also taking into consideration recommendations in the Testing Reduction Report regarding the reduction of unnecessary testing. The Department distilled the various recommendations received at the Learning Summit into a powerpoint presentation presented to the Board of Regents at their May 20, 2015 meeting, which is posted at <http://www.regents.nysed.gov/common/regents/files/meetings/May%202015/APPR.pdf>.

Based on the statutory language in Education Law § 3012-d and Subpart C of the Chapter 20 of the Laws of 2015, the State-provided growth model used under Education Law § 3012-c has been continued under the new regulations promulgated under Education Law § 3012-d. The growth model used under Education Law § 3012-c was based on recommendations from the Regents Task Force on Teacher and Leader Effectiveness, which can be found at <http://www.regents.nysed.gov/common/regents/files/documents/meetings/2011Meetings/April2011/RegentsTaskforceonTeacherandPrincipalEffectiveness.pdf> and the recommendations of the Metrics Workgroup of the Task Force and a Technical Advisory Committee, comprised of psychometric experts in the field. Additional research supporting evaluations, including the use of a growth model, can be found on our website at <https://www.engageny.org/resource/research-supporting-all-components-of-teacherprincipal-evaluation>. A variety of other research materials/analyses regarding the growth model can be found on the Department's website at <http://www.engageny.org/resource/resources-about-state-growth-measures>.

Proposed amendment

The proposed rule conforms the regulations to the provisions of the 2015 legislation by making the following major changes to Subpart 30-2 of the Rules of the Board of Regents.

The title of section 30-2 and section 30-2.1 are amended to clarify that Subpart 30-2 only applies to APPRs conducted prior to the 2015-2016 school year or APPRs conducted pursuant to a CBA entered into on or before April 1, 2015 that remains in effect on or after April 1, 2015 until a subsequent agreement is reached.

Section 30-2.1(d) is amended to clarify that a school district or BOCES has an unfettered statutory right to terminate a probationary teacher or principal for any statutorily and constitutionally permissible reason, including but not limited to misconduct, and until a tenure decision is made, the performance of a teacher or principal in the classroom or school. Section 30-2.11 also clarifies that a school district or BOCES may terminate a probationary teacher or principal during an appeal for any

statutorily and constitutionally permissible reason, including a teacher's or principal's performance.

A new Subpart 30-3 is added to implement the new evaluation system.

Section 30-3.1 clarifies that the new evaluation system only applies to CBA's entered into after April 1, 2015 unless the agreement relates to the 2014-2015 school year only. The section further clarifies that nothing in the new Subpart shall be construed to abrogate any conflicting provisions of any CBA in effect on or after April 1, 2015 during the term of such agreement and until entry into a successor CBA agreement. The section further clarifies that APPRs shall be a significant factor for employment decisions and teacher and principal development, consistent with the prior law. The section also clarifies the unfettered right to terminate a probationary teacher or principal for any statutorily and constitutionally permissible reason. This section also provides that the Board will convene workgroup(s) comprised of stakeholders and experts in the field to provide recommendations to the Board on assessments and evaluations that could be used for APPRs in the future.

Section 30-3.2 defines several terms used in the Subpart.

Section 30-3.3 prescribes the requirements for APPR plans submitted under the new Subpart.

New Teacher Evaluation Requirements

Section 30-3.4 describes the standards and criteria for conducting APPRs of classroom teachers under the new law. The new law requires teachers to be evaluated based on two categories: the student performance category and the teacher observation category.

Student performance category

The first category has two subcomponents, one mandatory and the other optional. For the first mandatory component, teachers shall be evaluated as follows:

- For teachers whose courses end in a State created or administered test for which there is a State-provided growth model and at least 50% of a teacher's students are covered under the State-provided growth measure, such teachers shall have a State-provided growth score based on such model.

- For a teachers whose course does not end in a State created or administered test or where less than 50% of the teacher's students are covered under the State-provided growth measure, such teachers shall have a Student Learning Objective ("SLO") consistent with a goal setting process determined or developed by the Commissioner that results in a student growth score; provided that for any teacher whose course ends in a State created or administered assessment for which there is no State-provided growth model, such assessment must be used as the underlying assessment for such SLO.

The second optional subcomponent shall be comprised of the one or more the following options, as determined locally:

A second State-provided growth score on a State-created or administered test; provided that the State provided growth measure is different than that used in the required subcomponent of the student performance category, which may include one or more of the following measures:

- a teacher-specific growth score computed by the State based on percentage of students who achieve a State-determined level of growth (e.g., percentage of students whose growth is above the median for similar students);

- school-wide growth results based on a State-provided school-wide growth score for all students attributable to the school who took the State English language arts or math assessment in grades 4-8; or

- school-wide, group, team, or linked growth results using available State-provided growth scores that are locally-computed;

- A growth score based on a state designed supplemental assessment calculated using a State provided or approved growth model.

The law requires the Commissioner to establish weightings and scoring ranges for the subcomponents of the student performance category. The proposed amendment applies the following weights to each of the subcomponents:

- If a district does not locally select to use the optional second student growth subcomponent, then the mandatory subcomponent shall be weighted at 100%.

- If the optional second student growth subcomponent is selected, then the mandatory subcomponent shall be weighted at a minimum of 80% and the optional second subcomponent shall be weighted at no more than 20%; provided, however, that if the optional second subcomponent does not include traditional standardized tests, the weightings shall be established locally, provided that the mandatory student growth subcomponent shall be weighted at a minimum of 50% and the optional student growth subcomponent shall be weighted no more than 50%.

Each measure used in the student performance category (State provided growth score, SLOs, State-designed supplemental assessments) must result in a score between 0 and 20. The State will generate scores of 0-20 for measures using a State-provided growth score. Districts shall calculate scores for SLOs in accordance with the table provided in the proposed

amendment; provided however that for teachers with courses with small "n" sizes as defined by the Commissioner in guidance, districts shall calculate scores for SLOs using a methodology specified by the Commissioner in guidance. For all other measures that are not State-provided growth measures, scores of 0-20 shall be computed locally in accordance with the State provided or approved growth model used.

Teacher observation category

The second subcomponent shall be comprised of three subcomponents; two mandatory and one optional. The two mandatory subcomponents shall be based on:

- one observation that shall be conducted by a principal or other trained administrator; and

- a second observation that shall be conducted by one or more impartial independent trained evaluator(s) selected and trained by the district. An independent trained evaluator may be employed within the district, but may not be assigned to the same school building as the teacher being evaluated.

One of the mandatory observations must be unannounced. The third optional subcomponent may include:

- classroom observations conducted by a trained peer teacher rated Effective or Highly Effective on his or her overall rating in the prior school year from the same school or from another school in the district.

The law also requires the Commissioner to establish the frequency and duration of observations in regulations. The proposed amendment allows the frequency and duration of observations to be established locally.

This section also requires all observations to be conducted using a teacher practice rubric approved by the commissioner pursuant to a Request for Qualification ("RFQ") process, unless the district has an approved variance from the Commissioner and prescribes parameters for the observations category.

The law further requires the Commissioner to establish weightings and scoring ranges for the subcomponents of the teacher observations category. The proposed amendment provides that the weighting of the subcomponents within the teacher observation category shall be established locally within the following constraints:

- observations conducted by a principal or other trained administrator shall be weighted at a minimum of 80%.

- observations conducted by independent impartial observers shall be weighted at a minimum of 10%.

- if a district selects to use the optional third observation subcomponent, then the weighting assigned to the optional observations conducted by peers shall be established locally within the constraints outlined above.

The overall observation score shall be converted into an overall rating pursuant to the ranges identified in the proposed amendment.

New Principal Evaluation Requirements

Section 30-3.5 describes the standards and criteria for conducting APPRs of building principals under the new law. The new law requires the Commissioner to establish a principal evaluation system that is aligned to the new teacher evaluation system set forth in Education Law § 3012-d.

To implement the new law, the proposed amendment requires building principals to be evaluated based on two categories: the student performance category and the school visit category.

The first category has two subcomponents, one mandatory and the other optional. For the first mandatory component, teachers shall be evaluated as follows:

- For principals with at least 30% of their students covered under a State-provided growth measure, such principal shall have a State-provided growth score based on such model; except for if: (1) the principal would be rated Ineffective or Developing on the State-provided growth score but the graduation rate of the students in that school building exceeded 90%, and the proportion of the student population included in either the ELA Regents Median Growth Percentile or the Algebra Regents Median Growth Percentile was less than ten percent of the total enrollment for the school; or the principal

- (2) has no Combined Median Growth Percentile rating or score, and the proportion of the student population included in the ELA Regents Median Growth Percentile and Algebra Regents Median Growth Percentile was less than five percent of the total enrollment for the school in one subject, and less than ten percent of the total enrollment in the other subject.

- For principals where less than 30% of their students are covered under a State-provided growth measure, such principals shall have a SLO consistent with a goal setting process determined or developed by the Commissioner that results in a student growth score; provided that for any teacher whose course ends in a State created or administered assessment for which there is no State-provided growth model, such assessment must be used as the underlying assessment for such SLO.

If the district opts to use the second optional subcomponent, it shall be comprised of one or more of the following measures:

- A second State-provided growth score on a State-created or administered test; provided that the State provided growth measure is different

than that used in the required subcomponent of the student performance category, which may include one or more of the following measures:

- a principal-specific growth score computed by the State based on percentage of students who achieve a State-determined level of growth (e.g., percentage of students whose growth is above the median for similar students); and/or

- school-wide, group, team, or linked growth results using available State-provided growth scores that are locally-computed.

- A growth score based on a state designed supplemental assessment calculated using a State provided or approved growth model.

The law requires the Commissioner to establish weightings and scoring ranges for the subcomponents of the student performance category. The proposed amendment applies the following weights to each of the subcomponents:

- If a district does not locally select to use the optional second student growth subcomponent, then the mandatory subcomponent shall be weighted at 100%.

- If the optional second student growth subcomponent is selected, then the mandatory subcomponent shall be weighted at a minimum of 80% and the optional second subcomponent shall be weighted at no more than 20%; provided, however, that if the optional second subcomponent does not include traditional standardized tests, the weightings shall be established locally, provided that the mandatory student growth subcomponent shall be weighted at a minimum of 50% and the optional student growth subcomponent shall be weighted no more than 50%.

Each measure used in the student performance category (State provided growth score, SLOs, State-designed supplemental assessments) must result in a score between 0 and 20. The State will generate scores of 0-20 for measures using a State-provided growth score. Districts shall calculate scores for SLOs in accordance with the table provided in the proposed amendment; provided however that for teachers with courses with small “n” sizes as defined by the Commissioner in guidance, districts shall calculate scores for SLOs using a methodology specified by the Commissioner in guidance. For all other measures that are not State-provided growth measures, scores of 0-20 shall be computed locally in accordance with the State provided or approved growth model used.

Principal school visit category

The principal school visit category shall be comprised of three subcomponents; two mandatory and one optional. The two mandatory subcomponents shall be based on:

- one observation shall be conducted by the principal’s supervisor or other trained administrator; and

- a second observation shall be conducted by one or more impartial independent trained evaluator(s) selected and trained by the district. An independent trained evaluator may be employed within the district, but may not be assigned to the same school building as the principal being evaluated.

One of the mandatory school visits by the principal’s supervisor must be unannounced.

The third optional subcomponent may include:

- School visits conducted by a trained peer administrator rated Effective or Highly Effective on his or her overall rating in the prior school year from the same school or from another school in the district.

The law also requires the Commissioner to establish the frequency and duration of school visits in regulations. The proposed amendment requires the frequency and duration of observations to be set locally.

The section also requires all observations to be conducted using a principal practice rubric approved by the commissioner pursuant to a Request for Qualification (“RFQ”) process, unless the district has an approved variance from the Commissioner.

This section further prescribes parameters for the school visits category. The law requires the Commissioner to establish weightings and scoring ranges for the subcomponents of the school visits category. The proposed amendment provides that the weighting of the subcomponents within the principal school visits category shall be established locally within the following constraints:

- School visits conducted by the principal’s supervisor or other trained administrator shall be weighted at a minimum of 80%.

- School visits conducted by independent impartial trained evaluators shall be weighted at a minimum of 10%.

- If a district selects to use the optional third observation subcomponent, then the weighting assigned to the optional school visits conducted by peers shall be established locally within the constraints outlined above.

The overall school visit category score shall be converted into an overall rating pursuant to the ranges identified in the proposed amendment.

Section 30-3.6 describes how the overall rating is computed, based on the evaluation matrix established by the new law, which combines the teacher’s or principal’s ratings on the student performance category and the observation/school visit category:

		Observation/School Visit			
		Highly Effective (H)	Effective (E)	Developing (D)	Ineffective (I)
Student Performance	Highly Effective (H)	H	H	E	D
	Effective (E)	H	E	E	D
	Developing (D)	E	E	D	I
	Ineffective (I)	D*	D*	I	I

*If a teacher is rated ineffective on the student performance category and a State-designed supplemental assessment was included as an optional subcomponent of the student performance category, the teacher can be rated no higher than ineffective overall pursuant to Education Law §§ 5(a) and 7.

This section also provides that it must be possible to obtain each point in the scoring ranges, including 0, for each subcomponent and category. It further requires that the superintendent, district superintendent or Chancellor and the president of the collective bargaining representative, where one exists, must certify in the APPR plan that the evaluation system will use the weights and scoring ranges provided by the Commissioner and that the process by which weights and scorings are assigned to subcomponents and categories is transparent and available to those being rated before the beginning of each school year.

Section 30-3.7 lists the prohibited elements set forth in Education Law § 3012-d, which precludes districts/BOCES from using the following as part of a teacher’s and/or principal’s evaluation:

- evidence of student development and performance derived from lesson plans, other artifacts of teacher practice, and student portfolios, except for student portfolios measured by a State-approved rubric where permitted by the department;

- use of an instrument for parent or student feedback;
- use of professional goal-setting as evidence of teacher or principal effectiveness;

- any district or regionally-developed assessment that has not been approved by the department; and

- any growth or achievement target that does not meet the minimum standards as set forth in regulations of the commissioner adopted hereunder.

Sections 30-3.8 and 30-3.9 set forth the approval processes for student assessments and teacher and principal practice rubrics.

Section 30-3.10 sets forth the training requirements for evaluators and lead evaluators; which now requires evaluators and lead evaluations to be trained on certain prescribed elements relating to observations and the applicable teacher/principal practice rubrics pursuant to Education Law § 3012-d(15).

Section 30-3.11 addresses teacher and principal improvement plans, which now allows the superintendent in the exercise of his or her pedagogical judgment to develop and implement the improvement plans pursuant to Education Law § 3012-d(15).

Section 30-3.12 addresses local appeal procedures. Currently, the regulations set forth the grounds for an appeal which includes the ability of a teacher or principal to challenge the substance of their APPR in an appeal. The proposed amendment defines the substance of an APPR to include appeals in circumstances where a teacher or principal is rated Ineffective on the student performance category, but rated Highly Effective on the observation/school visit category based on an anomaly, as determined locally pursuant to Education Law § 3012-d(15).

Section 30-3.13, which addresses monitoring and consequences for non-compliance, which now allows the Department to require changes to a CBA pursuant to Education Law § 3012-d(15).

Section 30-3.14 codifies the statutory requirement that no student be assigned to two teachers in the same subject in two consecutive school years, each of whom received a rating of Ineffective pursuant to an evaluation conducted pursuant to Education Law § 3012-d in the school year immediately prior to the year in which the student is placed in the teacher’s classroom. The proposed amendment provides for a teacher-specific waiver from the Department from such requirement where it is impracticable to comply with this requirement.

Section 30-3.15 describes the extent to which provisions of Education Law § 3012-c(2)(d), (k), (k-1), (k-2) and (l), (4), (5), (5-a), (9) and (10) are carried over into the new evaluation system, as required by Education Law § 3012-d(15).

Revisions to the Proposed Amendment following the public comment period

Following the 45-day public comment period required under the State Administrative Procedure Act, the proposed amendment was revised in several places as follows:

First, the Department has decided to reexamine the State growth model, which will take additional time. In the interim, the Department has amended Subpart 30-2 and 30-3 to prescribe an appeals process whereby certain teachers or principals who were rated Ineffective on their State-provided growth score may appeal to the Department based on certain anomalies described in the regulation. The appeals process would apply to growth scores for the 2014-2015 school year and thereafter until the growth model has been re-examined by the Department and appropriate experts in the field.

The Department has also revised the regulation to provide for a hardship waiver from the requirement for an independent observer for rural school districts and for school districts with one registered school building who would be unduly burdened if the district were required to retain an independent evaluator. A school district would need to demonstrate that due to the size and limited resources of the school district it is unable to obtain an independent evaluator within a reasonable proximity to the school district. In lieu of an independent evaluator, the school district would be required to provide a second observation conducted by a trained evaluator who is different than the supervisor or evaluator who conducted the first observation.

Also, in response to concerns relating to a teacher's/principal's privacy, the Department revised the provisions in the June regulations relating to teacher/principal privacy to eliminate the requirement that parents be provided with the scores/ratings on the student performance and observation categories and instead, are requiring that Education Law § 3012-c apply without modification, except that there is no composite effectiveness score under Education Law § 3012-d.

The Department also received several comments on the use of artifacts. Education Law § 3012-d(10)(b) requires implementation of the observation category to be subject to local negotiation. Therefore, while no additional changes were made in response to these comments, the regulations adopted by the Board at its June meeting recognize that parts of the rubric that are not observable during classroom observations may be incorporated into the observation score where they are observed during any optional pre- or post-observation review or other natural conversations between teachers and their evaluators.

The Department also made the following technical amendments to the proposed amendment:

The Department modified section 100.2(o) of the Commissioner's regulation to conform to Education Law § 3012-d.

The Department clarified that a teacher's and principal's score and rating on the observation/school visit category and in the student performance category, if available, shall be computed and provided to the teacher or principal, in writing, by no later than the last day of the school year for which the teacher or principal is being measured, but in no case later than September 1st of the school year next following the school year for which the teacher or principal's performance is measured. This will ensure that a teacher's or principal's score on SLOs used for the required subcomponent and their scores on the optional subcomponent, if used, are provided on or before September 1st.

The Department further clarified that nothing in this Subpart shall be construed to limit the discretion of a board of education or superintendent of schools or other trained administrator to conduct observations/school visits of a teacher/principal in addition to those required under this section for non-evaluative purposes.

Consistent with the requirements for the teacher evaluation system, the Department revised the proposed amendment to eliminate references to a supervisor or other trained administrator from the requirement for an unannounced school visit for principals and instead just generally provides that at least one mandatory school visit shall be unannounced in an effort to be aligned to the teacher evaluation system.

4. COSTS:

a. Costs to State government: The rule implements 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. The new appeal process for the State-provided growth score will be performed by existing staff and therefore, the Department believes there will be no additional costs to the State government.

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 proposed rule may result in additional costs on school districts and

BOCES related to collective bargaining. However, Education Law § 3012-d(10) explicitly requires collective bargaining relating to the decision on whether to use the optional second subcomponent in the student performance category and which measure is to be used in such subcomponent, and collective bargaining relating to how to implement the observation/school visit category in accordance with the Taylor Law. Since collective bargaining is already required by the statute and it is impossible to ascertain in advance what issues might trigger additional bargaining in more than 700 school districts and BOCES in the State, the State Education Department has no basis for determining whether and to what extent provisions of the proposed rule might result in additional costs attributable to collective bargaining beyond those required by statute.

The costs discussed below are based on the following assumptions: (1) an estimated hourly rate for teachers of \$53.18 (based on an average annual teacher salary of \$76,572.00 divided by 1,440 hours per school year (180 days, 8 hours each day)); (2) an estimated hourly rate for principals of \$67.20 (based on an average annual principal salary of \$118,269.00 divided by 1,760 hours per school year (220 days, 8 hours each day)); and (3) an estimated hourly rate for superintendents of \$86.59 (based on an average annual superintendent of schools salary of \$166,244.00 divided by 1,920 hours per school year (240 days, 8 hours each day)). The Department anticipates that the proposed rule will impose the following costs on school districts/BOCES. The estimated costs below assume that school districts and BOCES will need to pay for extra time for personnel at current rates. However, most districts and BOCES are or should be performing these activities currently, but the State does not have data on the amount of hours currently dedicated to these activities.

Required Student Performance Category

The statute requires that a teacher or principal's evaluation be based on one required and one optional measure of student performance. For the required subcomponent, for teachers whose courses end in a State created or administered test for which there is a State-provided growth model and at least 50% of a teacher's students are covered under the State-provided growth measure, such teachers shall have a State-provided growth score based on such model. There are no additional costs beyond those imposed by statute for evaluating a teacher based on State assessments. For the required subcomponent, for principals with at least 30% of their students covered under a State-provided growth measure, such principal shall have a State-provided growth score and there are no additional costs beyond those imposed by statute.

For a teacher whose course does not end in a State created or administered test or where less than 50% of the teacher's students are covered under the State-provided growth measure, such teachers shall have a Student Learning Objective ("SLO") consistent with a goal setting process determined or developed by the Commissioner that results in a student growth score; provided that for any teacher whose course ends in a State created or administered assessment for which there is no State-provided growth model, such assessment must be used as the underlying assessment for such SLO. For a principal where less than 30% of their students are covered under a State-provided growth measure, such principals shall have a SLO consistent with a goal setting process determined by the Commissioner that results in a student growth score; provided that for any principal whose course building or program includes courses that ends in a State created or administered assessment for which there is no State-provided growth model, such assessment must be used as the underlying assessment for such SLO. The Department estimates that for teachers or principals who require SLOs, a teacher or principal will spend approximately 3 hours to set his/her goals for the year and that a principal/superintendent will take approximately 1 hour per year to work with a teacher/principal on the goal setting process. Based on the estimated hourly rates described above, the Department estimates that the goal-setting process will cost a school district/BOCES \$226.74 per teacher (3 teacher hours to set goals plus 1 principal hour to review goals with teacher) and \$288.19 per principal (3 principal hours to set goals plus 1 superintendent hour to review goals with principal). Moreover, districts and BOCES should have been setting SLOs for teachers and principals since 2012-2013 when districts and BOCES were first required to set SLOs under the evaluation system; except for the New York City School District, whose plan was imposed on them for the 2013-2014 school year pursuant to Education Law § 3012-c.

The SLO process also requires the use of a student assessment. In grades/subjects where no State created or administered assessment exists for such grades/subjects, the district/BOCES must use the SLO process with either an approved third-party assessment (at a cost per student of approximately \$2.50-\$14.00 per student), an approved district, regional, or BOCES developed assessment (which the Department expects would have minimal, if any costs), or a State assessment (which the Department expects would have no additional cost).

Optional Student Performance Category

For teachers, the second optional subcomponent shall be comprised of one or more the following options, as determined locally:

- A second State-provided growth score on a State-created or administered test; provided that the State provided growth measure is different than that used in the required subcomponent of the student performance category, which may include one or more of the following measures:

- a teacher-specific growth score computed by the State based on percentage of students who achieve a State-determined level of growth (e.g., percentage of students whose growth is above the median for similar students);

- school-wide growth results based on a State-provided school-wide growth score for all students attributable to the school who took the State English language arts or math assessment in grades 4-8; or

- school-wide, group, team, or linked growth results using available State-provided growth scores that are locally-computed;

- A growth score based on a State designed supplemental assessment calculated using a State provided or approved growth model.

Since the second subcomponent is optional, there are no additional costs imposed by the statute or regulation for this subcomponent. However, if a district/BOCES elects to use a State-designed supplemental assessment, the Department estimates that the cost of purchasing an assessment may cost approximately \$2.50-\$14.00 per student, depending on the particular assessment selected. If a district/BOCES elects to use the second subcomponent and utilizes a second State-provided growth score, there should be no additional costs.

For principals, the second optional subcomponent shall be comprised of the one or more the following options, as determined locally:

- A second State-provided growth score on a State-created or administered test; provided that the State provided growth measure is different than that used in the required subcomponent of the student performance category, which may include one or more of the following measures:

- a principal-specific growth score computed by the State based on percentage of students who achieve a State-determined level of growth (e.g., percentage of students whose growth is above the median for similar students); or

- school-wide, group, team, or linked growth results using available State-provided growth scores that are locally-computed;

- A growth score based on a State designed supplemental assessment calculated using a State provided or approved growth model.

Since the second subcomponent is optional, there are no additional costs imposed by the statute or regulation for this subcomponent. However, if a district/BOCES elects to use a State-designed supplemental assessment, the Department estimates that the cost of purchasing an assessment may cost approximately \$2.50-\$14.00 per student, depending on the particular assessment selected. If a district/BOCES elects to use the second subcomponent and utilizes a second State-provided growth score, there should be no additional costs.

Teacher Observation/Principal School Visit Category

For the teacher observation/principal school visit category of the evaluation, the proposed amendment requires that ratings be based on at least two classroom observations for teachers and at least two school visits for principals. The proposed amendment requires at least one observation for teachers and at least one school visit for principal to be conducted by the supervisor/other trained administrator. The proposed amendment also requires at least one observation for teachers and at least one school visit for principals by trained independent evaluator(s) selected by the district. For teacher observations, the Department estimates the following costs:

Teacher Observations: While the regulation does not specifically prescribe how a district must conduct its observations, based on models currently in use, the Department expects a teacher will spend approximately 3 hours per classroom observation for pre- and post-conference meetings with the principal/evaluator and the 1 hour in the observation itself, which would equate to 6 hours per year (1 hour for the pre-conference, 1 hour for the observation, and 1 hour for the post-observation). Depending on the model used, these estimates could decrease to 1 hour and 10 minutes for classroom observations that include a post-conference and walkthrough observation with the principal/evaluator, which would equate to 2 hours and 20 minutes for the year. Based on the more extended observation model, the Department expects that a principal/evaluator would spend approximately 1 hour for a teacher classroom observation and 3 additional hours for pre-conference and post-conference meetings associated with the conference (1 hour for each pre-conference, 1 hour for preparation for post-conference, and 1 hour in post-conference), which would equate to 4 hours per observation or 8 hours per teacher per year. Therefore, for each teacher, a school district or BOCES would spend approximately \$856.68 per year on classroom observations, under the proposed rule. The regulations allow for districts and BOCES to identify trained independent evaluators from within the district and, therefore, these estimates remain accurate as a yearly estimate for classroom observations. However, this cost may vary depending on what external independent evaluators the district selects.

Moreover, the Department has also revised the regulation to provide for

a hardship waiver from the requirement for an independent observer for rural school districts and for school districts with one registered school who be unduly burdened if they were required to retain an independent evaluator. A school district would need to demonstrate that due to the size and limited resources of the school district it is unable to find an independent evaluator within a reasonable proximity to the school district. In lieu of an independent evaluator, the school district would be required to have a second evaluation conducted by a trained evaluator, who is different from the supervisor or evaluator who conducted the first evaluation.

Since the use of peer observers is optional, there are no additional costs imposed by the statute or regulation for this subcomponent. However, if a district/BOCES elects to use peer observers, the Department estimates that the use of a peer observer for teachers may cost approximately \$372.26 per observation (total time for teacher observation cycle plus total time for peer observer in the teacher observation cycle times the teacher hourly rate), and will be dependent upon the particular parameters determined locally. Principal Assessment: The Department expects that a principal will spend approximately 3 hours preparing for a school visit by a supervisor/other trained administrator and that a supervisor/other trained administrator will spend approximately 3 hours assessing and observing a principal's practice per visit. Therefore, for each principal, a school district or BOCES would spend approximately \$1325.94 per year on school site visits, under the proposed rule. The regulations allow for districts and BOCES to identify trained independent evaluators from within the district, therefore the estimate of \$1325.94 remains accurate as a yearly estimate for school visits. This cost may vary upon the use of external independent evaluators.

Since the use of peer observers is optional, there are no additional costs imposed by the statute or regulation for this subcomponent. However, if a district/BOCES elects to use peer observers, the Department estimates that the use of a peer observer for principals may cost approximately \$604.80 per site visit (total time for principal observation cycle plus total time for peer observer in the principal observation cycle times the principal hourly rate), and will depend upon the particular parameters determined locally.

The proposed amendment also requires that the observations/school visits be based on a teacher or principal practice rubric approved by the Department or a rubric approved through a variance process. The majority of rubrics on the State's approved list are available to districts/BOCES at no cost. While some rubrics may offer training for a fee and others may require proprietary training, any costs incurred for training are costs imposed by the statute. Most rubric providers do not require a school district/BOCES to receive training through the provider and some providers even provide free online training. The Department estimates that districts/BOCES can obtain a teacher or principal practice in the following price range: \$0-\$360 per educator evaluated. Some practice rubrics may charge an additional fee for training on the rubric, estimated to cost approximately \$0-\$8,000, although most rubric providers do not require a user to receive training through the rubric provider.

Reporting and Data Collection

The proposed amendment requires that school districts or BOCES report information to the Department on enrollment and attendance data and any other student, teacher, school, course and teacher/student linkage data. The majority of this data is required to be reported under the America COMPETES Act (20 U.S.C. 9871). Therefore, no additional costs are imposed by the proposed amendment. To the extent such information is not required to be reported under federal law, the Department expects that most districts/BOCES already compile this information and, therefore, these reporting requirements are minimal and should be absorbed by existing district or BOCES resources.

The proposed amendment also requires that every teacher and principal be required to verify the subjects and/or student rosters assigned to them. This verification is part of the normal BEDS data verification process and therefore the Department believes that any costs imposed by this requirement in the regulation are minimal, if any. As for the additional reporting requirements contained in section 30-3.3 of the Rules of the Board of Regents, school districts or BOCES are required to report many of these requirements under the existing APPR regulations (section 30-2.3 of the Rules of the Board of Regents). Therefore, reporting of such information would not impose any additional costs on a school district or BOCES.

Vested Interest

The proposed amendment also requires that districts certify that teachers and principals not have a vested interest in the test results of students whose assessments they score. The Department believes that most districts already have this security mechanism in place, since it is a current requirement for evaluations conducted pursuant to Education Law § 3012-c. However, in the event a district currently allows a teacher to score their own assessment, the Department expects that districts/BOCES can assign other teachers or faculty to score such assessments. Therefore, the Department believes that any costs imposed by this requirement in the regulation are minimal, if any.

Scoring

The statute requires that a teacher receive an overall evaluation rating based on their ratings on the two categories (student performance and teacher observation/principal school visit). The proposed amendment sets forth the scoring ranges for the rating categories in these two categories and the overall rating category is prescribed by statute. The proposed amendment does not impose any additional costs beyond those imposed by statute.

Training

The statute requires that all evaluators be properly trained before conducting an evaluation. The proposed amendment requires that a lead evaluator be certified by the district/BOCES before conducting and/or completing a teacher's or principal's evaluation and that evaluators be properly trained. Since the training is required by statute, the only additional cost imposed are associated with the district or BOCES' certification and recertification of lead evaluators, which costs are expected to be negligible and capable of absorption using existing staff and resources.

Teacher and Principal Improvement Plans and Appeal Procedures

The statute, in subdivision 15 of § 3012-d, requires the Commissioner to determine the extent to which subdivisions 4, 5 and 5-a of § 3012-c should apply to the new evaluation system under § 3012-d. Subdivision 4 of § 3012-c requires school districts/BOCES to develop teacher and principal improvement plans for teachers rated Ineffective or Developing. Subdivision 5 of § 3012-c requires school districts and BOCES to develop an appeals procedure through which a teacher or principal may challenge their APPR. Subdivision 5-a of § 3012-c establishes special appeals procedures for the New York City School District. The proposed amendment does not impose any additional costs on districts/BOCES relating to the development of TIP/PIPs or an appeal procedure, beyond those currently imposed by statute under Education Law § 3012-c(4) and (5). The only changes made to the TIP/PIP requirement are with respect to its timing and the clarification that the superintendent or his/her designee, in the exercise of their pedagogical judgment develops the TIP/PIP. Neither change should generate additional costs. The only change made to the appeals provision is the clarification that an appeal from the substance of the evaluation, which is a ground for appeal under Education Law § 3012-c(5), includes an instance in which the teacher or principal receives a Highly Effective rating on the observation/school visit category and an Ineffective rating on the student performance category and challenges the result based on an anomaly, as determined locally. If a district/BOCES locally determines that an appeal based on an anomaly may be taken where such an appeal could not be brought previously, the Department believes this additional grounds for an appeal could be incorporated into the district's/BOCES' current appeal process and therefore no additional costs should incur. The new appeal process for the State-provided growth score will be performed by existing staff and therefore, the Department believes there will be no additional costs to the State government.

(c) Costs to private regulated parties: none, except that if a teacher/principal chooses to appeal his/her State-provided growth score, he/she must file an appeal within 20 days of receipt of his/her score or within 20 days of the effective date of the regulation, whichever is later.

(d) Costs to regulating agency for implementation and continued administration: See above.

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:

Section 30-3.3 of the proposed amendment requires that each school district shall adopt an APPR plan for its classroom teachers and building principals and submit such plan to the Commissioner for approval. The Commissioner shall approve or reject the plan. The Commissioner may reject a plan that does not rigorously adhere to the regulations and the law. The regulations also provide that if any material changes are made to the plan, the district must submit the material changes by March 1 of each school year, on a form prescribed by the Commissioner, to the Commissioner for approval. This section also requires that the APPR plan describe the school district's or BOCES' process for ensuring that the Department receives accurate teacher and student data, including certain identified information; the assessment development, security and scoring processes utilized by the school district or BOCES, which includes a requirement that any process and assessment or measures are not disseminated to students before administration and that teachers and principals do not have a vested interest in the outcome of the assessments they score; describe the details of the evaluation system used by the district or BOCES; how the district or BOCES will provide timely and constructive feedback to teachers and building principals and the appeal procedures used by the district or BOCES.

If a school district or BOCES seeks to use a teacher or principal practice rubric that is either a close adaptation of a rubric on the approved list, or a

rubric that was self-developed or developed by a third-party or a newly developed rubric, the school district or BOCES must seek a variance from the Department for the use of such rubric.

The proposed amendment also requires that the process by which points are assigned in the various subcomponents and the scoring ranges for the subcomponents must be transparent and available to those being rated before the beginning of each school year.

The proposed amendment requires that the entire annual professional performance review be completed and provided to the teacher or principal as soon as practicable but in no case later than September 1st of the school year next following the school year for which the teacher or principal's performance is measured. The teacher's and principal's score and rating on the observation/school visit category and in the student performance category, if available, shall be computed and provided to the teacher or principal, in writing, by no later than the last day of the school year for which the teacher or principal is being measured, but in no case later than September 1st of the school year next following the school year for which the teacher or principal's performance is measured.

A provider seeking to place a practice rubric in the list of approved rubrics, or an assessment on the list of approved assessments, shall submit to the Commissioner a written application that meets the requirements of sections 30-2.7 and 30-2.8, respectively. An approved rubric or approved assessment may be withdrawn for good cause. The governing body of each school district is required to ensure that evaluators have appropriate training before conducting an evaluation under this section and the lead evaluator must be appropriately certified and periodically recertified.

If a teacher or principal is rated "Developing" or "Ineffective," the school district or BOCES is required to develop and implement a teacher or principal improvement plan (TIP or PIP) that complies with section 30-3.11. Such plan shall be developed by the Superintendent or his or her designee, as part of his/her pedagogical judgement, and include identification of needed areas of improvement, a timeline for achieving improvement, the manner in which the improvement will be assessed and, where appropriate, differentiated activities to support improvement in those areas.

In accordance with the requirements of the statute, the proposed amendment also requires a school district or BOCES to develop an appeals procedure through which a teacher or principal may challenge their annual professional performance review.

Education Law § 3012-d also requires the Commissioner to annually monitor and analyze trends and patterns in teacher and principal evaluation results and data to identify districts, BOCES and/or schools where evidence suggests a more rigorous evaluation system is needed to improve educator effectiveness and student learning outcomes. A school district or BOCES identified by the Department in one of the categories enumerated above may be highlighted in public reports and/or the Commissioner may order a corrective action plan.

The proposed amendment also prohibits a student from being instructed by two teachers in the same subject, in two consecutive years, by teachers who are rated ineffective. If a school district assigns a student to a teacher in the same subject for two consecutive years, and the teacher is rated ineffective for two consecutive years, the school district must seek a waiver from the Commissioner for the specific teacher if (1) the district cannot make alternative arrangements to reassign the teacher to another grade/class due to a hardship and (2) the district has an improvement or removal plan in place for the teacher that meets guidelines prescribed by the Commissioner. The regulation also establishes an appeals process for teachers/principals who wish to challenge their State provided growth score. Teachers/ principals would be required to submit an appeal within 20 days of their receipt of a State-provided growth score or within 20 days of the effective date of the regulation, whichever is later, and school districts would have 10 days to reply.

7. DUPLICATION:

The rule does not duplicate existing State or Federal requirements.

8. ALTERNATIVES:

As explained in the Needs and Benefits section of this Statement, the Department considered the over 4,000 comments it received before the regulations were adopted and reviewed the materials submitted by stakeholders and experts at the Learning Summit, which are available on the Department's website at <http://www.nysed.gov/content/learning-summit-submitted-materials>. The Department presented its recommendations based on its analysis of the materials and presentations at the Learning Summit and sought feedback on various components of the new evaluation system from the Board of Regents at its May meeting. The Department presented a powerpoint presentation or slide deck to the Board of Regents, posted on our website at <http://www.regents.nysed.gov/common/regents/files/meetings/May%202015/APPR.pdf>, which explained the guiding principles and rationale for the Department's recommendations (see pp. 7-10). It further explained the 1-4 rubric scoring ranges recommended by NYSED, NYSUT and the NYC-Commissioner

imposed rubric ranges for observations under Ed. Law § 3012-c (p.12) and the differences in differentiation that are produced using the NYSUT recommended and the Commissioner imposed NYC ranges (p.13).

The Department also provided recommendations for the number, frequency and duration of observations and the subcomponent weights for the observation category and recommendations on observation rubrics for the Board of Regents to consider, balancing the feedback it received from the field (p. 16, 18, 20).

It then produced the current scoring ranges for SLOs out of a 0-20 scale and the current method for determining points within the 0-20 scoring range for the State-provided growth score. The Department presented NYCDOE's and NYSUT's suggested cut scores (pp. 21-25) and recommended that the Board maintain the existing normative method to establish growth scores for the required and optional subcomponents of the student performance category. The Department further recommended that the Board maintain the full current list of characteristics in the growth model and that it explore with stakeholders and experts future options, new co-variates and possible adjustments to normative method and/or criterion referenced measures of growth (p. 26). The Department provided further recommendations on the optional subcomponent of the student performance category and the weightings for the student performance category (p. 27-30).

The Department then recommended that the principal system be aligned to the teacher evaluation system (p. 33) and provided recommendations to the Board on which provisions in Education Law § 3012-c should be continued under Education Law § 3012-d(15) (pg. 34-35). Recommendations were also provided on the waiver to assign students to an ineffective teacher for two consecutive years and the Hardship Waiver for November 15 approval deadline (p. 37).

After receiving input from the Board of Regents and stakeholders, the Department modified many of its May recommendations, which are reflected in red in the slide deck presented to the Board at its June meeting (<http://www.regents.nysed.gov/common/regents/files/meetings//Revised%20Version%20of%20PowerPoint%20Presentation.pdf>). The green text in the slide deck represents changes made to the recommendations during the June 2015 Regents meeting.

In response to field feedback, the Department revised its recommended rubric scoring ranges (pg. 7) to provide a range of permissible cut scores that reflected evidence of standards consistent with the four levels of the observation rubrics. The Department further recommended that the actual cut scores within the ranges be determined locally. The Department also changed its recommendations on the subcomponent weightings on the observation category (pg. 8) to lower the weightings for independent observers and provide for more local flexibility by setting minimum weights. The Department also changed its recommendations on the frequency and duration of observations to instead provide a statewide minimum standard of two observations, with the frequency and duration of such observations to be determined locally. Based on comment, the Department also changed its recommendation to require all annual observations to use the same rubric across all observer types (p. 11). The Department further clarified its recommendation around adjustments in performance measures for student characteristic and for small numbers of students (p. 15). The Department also changed its recommendations on scoring ranges for growth scores (p. 18) and the weightings for the student performance category (p. 19) when the optional subcomponent is used.

In response to feedback from the Board, the Department also adjusted its recommendations to include as possible grounds for a local appeal in instances where the student performance and observation categories produce anomalous results.

The Department further amended its recommendations regarding the continuation of the corrective action provisions in Education Law § 3012-c to § 3012-d.

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 rule implements, and otherwise conforms the Commissioner's Regulations to, Subparts D and E of Part EE of Ch.56, L.2015 and Ch. 20, L. 2015, relating to Annual Professional Performance Review (APPR) of classroom teachers and building principals employed by school districts and boards of cooperative educational services (BOCES) in order to implement new Education Law § 3012-d. 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 fur-

ther 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:

See Needs and Benefits and Paperwork sections of the Regulatory Impact Statement submitted herewith for an analysis of the compliance requirements for school districts and boards of cooperative educational services.

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 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 Regulatory Impact Statement submitted herewith.

6. MINIMIZING ADVERSE IMPACT:

The rule is necessary to implement, and otherwise conform the Commissioner's Regulations to, Subparts D and E of Part EE of Chapter 56 of the Laws of 2015 and Chapter 20 of the Laws of 2015 relating to the Annual Professional Performance Review (APPR) of classroom teachers and building principals. Since these provisions of the Education Law apply equally to all school districts and BOCES throughout the State, it was not possible to establish different compliance and reporting requirements.

The proposed rule reflects areas of consensus among stakeholders, and in areas where there were varying recommendations, the Department attempted to reconcile those differences to reflect best practices while also taking into consideration recommendations in the Testing Reduction Report regarding the reduction of unnecessary testing.

The Department also considered the comments from the school districts and BOCES during the 45-day public comment period under the State Administrative Procedure Act. As a result of these comments, the Department provided for a hardship waiver from the requirement for an independent observer for rural school districts and for school districts with one registered school who be unduly burdened if they were required to retain an independent evaluator. A school district would need to demonstrate that due to the size and limited resources of the school district it is unable to find an independent evaluator within a reasonable proximity to the school district. In lieu of an independent evaluator, the school district would be required to have a second evaluation conducted by a trained evaluator, who is different from the supervisor or evaluator who conducted the first evaluation.

7. LOCAL GOVERNMENT PARTICIPATION:

The new law requires the Commissioner to adopt regulations necessary to implement the evaluation system by June 30, 2015, after consulting with experts and practitioners in the fields of education, economics and psychometrics. It also required the Department to establish a process to accept public comments and recommendations regarding the adoption of regulations pursuant to the new law and consult in writing with the Secretary of the United States Department of Education on weights, measures and ranking of evaluation categories and subcomponents. It further required the release of the response from the Secretary upon receipt thereof, but in any event, prior to the publication of the regulations.

By letter dated April 28, 2015, the Department sought guidance from the Secretary of the United States Department of Education on the weights, measures and ranking of evaluation, as required under the new law and the Secretary responded.

In accordance with the requirements of the statute, the Department created an email box to accept comments on the new evaluation system (eval2015@nysed.gov). The Department has received and reviewed over 4,000 responses and has taken these comments into consideration in formulating the proposed amendments. In addition, the Department held a Learning Summit on May 7, 2015, wherein the Board of Regents hosted a series of panels to provide recommendations to the Board on the new evaluation system. Such panels included experts in education, economics, and psychometrics and State-wide stakeholder groups including but not limited to NYSUT, UFT, School Boards, NYSCOSS and principal and parent organizations. Since the new law was enacted in April, the Department also met with individual stakeholder groups to discuss their recommendations on the new evaluation system.

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

Pursuant to State Administrative Procedure Act section 207(1)(b), the

State Education Department proposes that the initial review of this rule shall occur in the fifth calendar year after the year in which the rule is adopted, instead of in the third calendar year. The justification for a five year review period is that the proposed amendment is necessary to implement State statute. Accordingly, there is no need for a shorter review period.

The Department invites public comment on the proposed five year review period for this rule. Comments should be sent to the agency contact listed in item 10. of the Notice of Proposed Rule Making published herewith.

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:

See the Needs and Benefits and Paperwork sections of the Regulatory Impact Statement submitted herewith for the reporting, recordkeeping, and other compliance requirements for school districts and BOCES, including those located in rural areas of the State. The rule does not impose any additional professional services requirements on local governments beyond those imposed by, or inherent in, the statute.

3. COSTS:

See the Costs section of the Regulatory Impact Statement submitted herewith for an analysis of the costs of the proposed rule, which include costs for school districts and BOCES across the State, including those located in rural areas.

4. MINIMIZING ADVERSE IMPACT:

The rule is necessary to implement, and otherwise conform the Commissioner's Regulations to, Subparts D and E of Part EE of Chapter 56 of the Laws of 2015, relating to the Annual Professional Performance Review (APPR) of classroom teachers and building principals employed by school districts and boards of cooperative educational services (BOCES) in order to implement new Education Law § 3012-d. Because the statute upon which the proposed amendment is based applies to all school districts and BOCES in the State, it is not possible to establish differing compliance or reporting requirements or timetables or to exempt schools in rural areas from coverage by the proposed amendment.

The proposed rule reflects areas of consensus among stakeholders, and in areas where there were varying recommendations, the Department attempted to reconcile those differences to reflect best practices while also taking into consideration recommendations in the Testing Reduction Report regarding the reduction of unnecessary testing.

The Department also considered the comments from the school districts and BOCES during the 45-day public comment period under the State Administrative Procedure Act. As a result of these comments, the Department provided for a hardship waiver from the requirement for an independent observer for rural school districts and for school districts with one registered school who be unduly burdened if they were required to retain an independent evaluator. A school district would need to demonstrate that due to the size and limited resources of the school district it is unable to find an independent evaluator within a reasonable proximity to the school district. In lieu of an independent evaluator, the school district would be required to have a second evaluation conducted by a trained evaluator, who is different from the supervisor or evaluator who conducted the first evaluation.

5. RURAL AREA PARTICIPATION:

The new law requires the Commissioner to adopt regulations necessary to implement the evaluation system by June 30, 2015, after consulting with experts and practitioners in the fields of education, economics and psychometrics. It also required the Department to establish a process to accept public comments and recommendations regarding the adoption of regulations pursuant to the new law and consult in writing with the Secretary of the United States Department of Education on weights, measures and ranking of evaluation categories and subcomponents. It further required the release of the response from the Secretary upon receipt thereof, but in any event, prior to the publication of the regulations.

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In accordance with the requirements of the statute, the Department created an email box to accept comments on the new evaluation system (eval2015@nysed.gov). The Department has received and reviewed over 4,000 responses and has taken these comments into consideration in formulating the proposed amendments. In addition, the Department held a Learning Summit on May 7, 2015, wherein the Board of Regents hosted a series of panels to provide recommendations to the Board on the new

evaluation system. Such panels included experts in education, economics, and psychometrics and State-wide stakeholder groups including but not limited to NYSUT, UFT, School Boards, NYSCOSS and principal and parent organizations. Since the new law was enacted in April, the Department has also been separately meeting with individual stakeholder groups and experts in psychometrics to discuss their recommendations on the new evaluation system.

During the 45-day public comment, the Department also received comments from representatives of various school districts and BOCES located across the State, including those located in rural areas of the State. In an effort to address some of these concerns, the Department has revised the regulation in various places as discussed in the Regulatory Impact Statement, as submitted herewith.

Job Impact Statement

The purpose of proposed rule is to implement Subparts D and E of Part EE of Chapter 56 of the Laws of 2015 relating to Annual Professional Performance Reviews of classroom teachers and building principals employed by school districts and boards of cooperative educational services in order to implement Education Law § 3012-d. 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 Revised Rule Making in the State Register on October 7, 2015, the State Education Department (SED) received the following comments:

1. COMMENT:

We received some comments requesting the trigger for an appeal of a State-provided growth score be expanded to include the following:

First, the definition should be expanded to include teachers who receive an Effective rating on their observations and an Ineffective growth score. Teachers receiving an Effective score on their observations are deemed by their lead evaluator to be an effective teacher. A two rating category difference between the growth score and the observation rating should be enough to trigger an appeal.

Second, any teacher who receives a group measure score based on a principal's growth score should have the same ability to appeal as the principal does. Simple fairness says if the growth score is not correct for the principal it cannot be correct for the teachers in the building. When the group measure was part of the state growth SLO process, the teacher had no say in the decision to use the measure and the measure may not be related to their subject area.

Third, any teacher teaching students that are in the 95th percentile of scores or the 5th percentile of scores who receives an Ineffective should be eligible to appeal their growth score. This change would address the questions raised by teachers of students falling into the extremes of performance where the tests do not always have enough items to measure growth properly at either end of the scale.

Fourth, it was suggested that the appeals process be expanded for teachers who receive a growth rating of Ineffective or Developing in the prior year and the results in both years were based on the NYSAA and NYSESLAT.

Fifth, one commenter suggested that the appeals process be expanded to include teachers who have fewer than 20 assessment results who were continuously enrolled.

DEPARTMENT RESPONSE:

The process for teachers to challenge State-provided growth scores was added to the regulations to address certain limited circumstances where there is a significant fluctuation in growth scores from one year to the next and other non-statistical measures of effectiveness strongly indicate that the teacher was otherwise Highly Effective and that the score on the State-provided growth score was an anomaly. Accordingly, the Department believes that to be eligible for an appeal, it is appropriate to require that a teacher receive a rating of Highly Effective in the Other Measures subcomponent.

With respect to scores based on school-wide/group/team measures, the appeal process was intended to allow teachers or principals to challenge only State-provided growth scores. In the case of school-wide/group/team measures, these scores are not generated by the State, but instead are assigned by the district. Therefore, these scores cannot be challenged through the State appeal process. However, depending on a district/BOCES local appeal process, such scores may be appealed locally.

Regarding allowing appeals in instances where the students in a teacher's class or principal's building have a very low or high proficiency level on the underlying assessment, the Department does not recommend changes to the State appeal process because the State-provided growth model does not measure proficiency, but instead growth, as required by Education Law §§ 3012-c and 3012-d. Moreover, the Department's

regulations provide for a workgroup to be convened to examine evaluations, including the growth model. The Department believes that the impact of students with very high and very low scores may have on the growth model is an appropriate topic for the workgroup to consider.

With respect to the comment that the appeals process be expanded for teachers who receive a growth rating of Ineffective or Developing in the prior year and the results in both years were based on the NYSAA and NYSESLAT, the summative results of the State-provided growth model do not include results from the NYSAA or NYSESLAT. Therefore, the Department does not recommend any changes to the appeal process.

Another commenter suggested that the appeals process be expanded to include teachers with fewer than 20 assessment results who were continuously enrolled. A State-provided growth score is not generated for teachers who have fewer than 16 assessment scores. The Department, after consultation with its vendor, believes that a minimum "n" size of 16 is appropriate and that no changes to the proposed amendment are needed.

Another commenter suggests that the appeals process should be available to any teacher who is rated Developing on a growth measure, and whose composite rating has resulted in a rating of Ineffective or Developing because of potential adverse consequences related to obtaining tenure. The appeals process was intended to address certain limited circumstances where there is a significant fluctuation in growth scores from one year to the next and other non-statistical measures of effectiveness strongly indicate that the teacher was otherwise Highly Effective and that the score on the State-provided growth score was an anomaly. The Department does not believe such a change would be consistent with the intent of the appeals process.

2. COMMENT:

The emergency regulations define a growth model as a statistical calculation. This definition severely limits what can be submitted for approval to SED to growth models such as the model currently used by SED under the state growth category. As the Regents have acknowledged with the growth score appeals process, these types of models have significant limitations and can produce serious anomalies. Districts and local unions would like to have options in this category that teachers can understand and have confidence in. Statistical growth models do not offer this type of option. On the State growth side of the calculation, SED has acknowledged for teachers not covered by the growth model, which is 80 percent of teachers, that student learning objectives that utilize a target setting methodology is a comparable measure of growth. This option should be made available in the second optional assessment category to give districts and local unions a real choice. We urge you to change the definition of growth model to allow more options in this category.

DEPARTMENT RESPONSE:

The Department's regulations provide for a workgroup to be convened to examine evaluations and review the existing State growth model. The Department believes that the definition of "growth model" in the optional subcomponent is a topic best left to further study by the Department and the workgroup.

3. COMMENT:

The SLO scoring bands contained in the emergency regulations will significantly change the SLO process in many school districts around the State. In the observation category, districts were given a range on the scoring bands for the rubrics to allow for local flexibility and to maintain the current process which has been working well. The same type of option should be available for the SLO scoring bands to create less disruption. A change in the scoring bands will require the districts to re-train teachers and administrators on the SLO process. We urge you to allow districts to avoid these new training costs by giving them the option to continue their current SLO scoring bands.

DEPARTMENT RESPONSE:

After lengthy discussion and debate at the June Board of Regents meeting, and after taking into account the recommendations from the May Learning Summit and other stakeholder feedback, the Board of Regents chose to adopt the SLO scoring ranges. Further, these ranges mimic the ranges that the Department has recommended through guidance under Education Law § 3012-c.

4. COMMENT:

Section 3012-c(4) required that TIPs be developed locally through collective bargaining. The emergency regulations attempt to change this provision and remove TIPs from the bargaining process. However, section 3012-d did not give SED the authority to modify the TIPs provision in this way. In addition, TIPs are a mandatory subject of bargaining because they are procedures related to both the evaluation process under 3012-d and the disciplinary process under 3020-b. Also, virtually every plan in the state has a collectively bargained TIPs process, and even if these agreements include non-mandatory provisions, such provisions are now mandatorily negotiable pursuant to the Taylor Law. SED cannot alter the mandatory nature of a subject of bargaining through regulation, so districts that refuse to bargain over TIPs will be violating the Taylor Law. If the regulation

remains in its current form, it is likely that bargaining over the new APPR will be disrupted and there will be significant delays in getting plans completed. We therefore urge you to amend the regulations to simply continue the statutory provisions from section 3012-c regarding TIPs.

DEPARTMENT RESPONSE:

Pursuant to Education Law § 3012-d(15), the Commissioner shall determine the extent to which Teacher Improvement Plans and/or Principal Improvement plans of § 3012-c apply to § 3012-d. The Department believes that the changes made in the regulation to TIP/PIPs, were within its statutory authority to change.

5. COMMENT:

The emergency regulations purport to give SED the power to require changes to collective bargaining agreements as part of a corrective action plan. However, section 3012-d did not give SED the authority to modify the terms of the corrective action provision as written in 3012-c in this manner. In addition, the Taylor Law precludes SED from dictating the terms of a collective bargaining agreement or requiring changes in a collectively bargained APPR plan that has been approved by SED. Such actions if taken by SED could also unconstitutionally impair duly negotiated agreements. We therefore urge you to amend the regulations to delete the reference to requiring changes to collective bargaining agreements.

DEPARTMENT RESPONSE:

Pursuant to Education Law § 3012-d(15), the Commissioner shall determine the extent to which the corrective action requirements of § 3012-c apply to § 3012-d. The Department believes that the changes made in the regulation to corrective action were within its statutory authority to change.

6. COMMENT:

Current APPR guidance requires teachers who administer the NYSAA or NYSESLAT to their students to use these assessments as the summative assessment for their SLOs. Since these exams were not created for this purpose, we are requesting local flexibility in determining the summative assessment to be used for the SLOs for these teachers. We urge you to provide this flexibility by amending current guidance.

DEPARTMENT RESPONSE:

Education Law § 3012-d(4)(a)(1)(B) states that any teacher whose course ends in a state-created or administered assessment for which there is no state-provided growth model must use that assessment as the underlying evidence for the SLO. The Department believes that the current regulations and guidance are consistent with this statutory requirement.

7. COMMENT:

An area of principal concern relates to that part of the September emergency Rule that proposes the addition of a new section 30-3.16. That section would allow teachers and principals to challenge their state-provided growth score and obtain a revised APPR rating if they are successful in such challenge.

Specifically, section 30-3.16(c) provides that:

... if the Department overturns a teacher's/principal's rating on the State-provided growth score, the district/BOCES shall substitute the teacher's/principal's results on the back-up SLO developed by the district/BOCES for such teacher/principal. If a back-up SLO was not developed, then the teacher's/principal's overall composite score and rating shall be based on the portions of their annual professional performance review not affected by the nullification of the State-provided growth score... (emphasis added).

Pursuant to the text of the bolded language, it would be reasonable to conclude that the development of back-up SLOs is not mandatory. In contrast, however, the plain terms of section 30-3.4(b)(1)(iv) expressly state that:

Districts shall develop back-up SLOs for all teachers whose courses end in a State created or administered test for which there is a State-provided growth model to use in the event that no State-provided growth score can be generated for such teachers.

Clearly, the apparent conflict between both sections of the proposed Rule thus creates confusion regarding the mandatory/non-mandatory nature of back-up SLOs. Are school districts required to develop back-up SLOs or not? If SLOs are required by section 30-3.4(b)(1)(iv), then there should be no language in section 30-3.16 that can be interpreted to suggest the contrary.

Thus, the Association urges that, to avoid confusion over the proper implementation of the proposed rules, the Board of Regents adopt revisions that remove the ambiguities presented by the language discussed above.

DEPARTMENT RESPONSE:

Section 30-3.4(b)(1)(iv) requires districts to develop back-up SLOs for all teachers whose courses end in a State created or administered test for which there is a State-provided growth model to use in the event that no State-provided growth score can be generated for such teachers. Section 30-3.4(b)(1)(iv) applies to annual professional performance review plans negotiated pursuant to Education Law § 3012-d. However, the appeals process described in section 30-3.16 applies to APPRs conducted in the

2015-2016 school year and thereafter. Therefore, there may be some rare circumstances under Education Law § 3012-c where the district did not develop back-up SLOs even though the Department recommended that they be set. Therefore, no change is needed.

8. COMMENT:

The Westchester Putnam School Boards Association strongly supports a two-year moratorium on the implementation of 3012-d and the concurrent establishment of a panel of experts (including school district practitioners) to provide guidance on the development of a reliable, valid, educationally sound accountability system. This new accountability system must serve the best interests of our children's K-12 education; it should be clear in intent, yet broad enough to allow SED to develop and implement a system that has the flexibility to address the diverse needs of our school districts. And its implementation must not be linked to state aid payments.

DEPARTMENT RESPONSE:

The Department has considered this comment. However since this comment seeks legislative amendments, no response is necessary.

9. COMMENT:

Based on the current interpretation of Subpart section 30-3.4(b)(1)(iii), identified below, my district is being encouraged to link some teachers in our K-2 Primary School to state assessments used in our 3-6 Intermediate School. I do not believe the current interpretation of Subpart section 30-3.4(b)(1)(iii) makes sense because will not measure the true contribution of some of our teachers.

The language in this subpart does not indicate that SLOs for teachers whose courses do not end in a state test need to be tied to "course specific" assessments... it indicates the option of "using SLOs" based on "approved assessments" or linked to state assessments. In our case, it does not make sense for instance, to link our K-2 Physical Education teacher to any state assessment used in a building where he does not teach. It does make sense, however, to link him to the students in the building where he works using the state approved assessment results, as measured by SLOs, since he will have more of a direct impact on their learning for the given year. For instance, he may use a Common Core Tier 2 Vocabulary word wall during PE classes that will directly impact the performance of K-2 students on the actual state-approved third party STAR Reading assessment that his students will take at the end of the year for ELA... as measured by the SLOs created by each teacher in the building. The K-2 Principal will be tied to the SLOs for all students in the building, and I believe the regulation language above provides enough latitude to do the same for those K-2 teachers whose course does not end in a State test. However, that does not seem to be how it is being interpreted.

DEPARTMENT RESPONSE:

Education Law § 3012-d(6)(d) requires that all district or regionally-developed assessments that are intended to be used for APPR purposes be approved by the Department. As part of the Assessment Request for Qualifications (RFQ) process, applicants must specify the grades and subjects for which their assessments meet all of the required criteria. Accordingly, if an assessment provider only indicates that their assessment can be used to measure student learning in certain grades and subjects as part of their RFQ application, the Department can only approve the assessment for use in those grades and subjects.

10. COMMENT:

The "observable" aspect of these regulations has been confusing to those in the field. As a group the leaders at this conference were befuddled by the idea that aspects of the NY State Learning Standards could be eliminated at the local level from the evaluation process. The guidance that was reiterated today was that it is a local decision for each district to determine what is observable in their rubric. Many of us would respectfully ask for this language to be reconsidered.

Each approved rubric was approved because it corresponded back to the NY State Teaching Standards. Every leader in my work groups today said they could very easily make a case for observability in each of the seven NY State Teaching Standards.

We discussed that it made much more sense to us to say that all the NY State Teaching Standards need to be observed and rated but that it is a local decision, based upon the varying rubrics, to determine which rubric sub-components are observable.

The current language allows for far too much inconsistency in the scoring and comparability of the teacher performance half. For instance, my BOCES weighted the professional responsibilities aspects of the rubric at 20%. Meanwhile, a neighboring district removed these teaching standards from their evaluations all together and their teachers will not be rated on any of those standards.

DEPARTMENT RESPONSE:

Rubric providers will be asked to identify the observable teaching standards in the rubrics in the new RFQ being issued by the Department. With regard to consideration of the observable standards and their respective indicators, Education Law § 3012-d(6) prohibits the use of artifacts of

teacher practice in any subcomponent of a teacher's evaluation. Accordingly, sections 30-3.4(d)(2)(ix) and (x) of the Rules of the Board of Regents limit observations to only those subcomponents of the practice rubric that are observable, while at the same time recognizing that parts of the rubric that are not observable during classroom observations may be incorporated into the observation score where they are observed during any optional pre- or post-observation review or other natural conversations between teachers and their evaluators. The intention of the regulatory language is provide flexibility to districts and BOCES to implement observation procedures that provide meaningful feedback to educators on their practice while maintaining fidelity to the requirements of Education Law § 3012-d.

11. COMMENT:

There appears to be confusion over what constitutes an "observation cycle" Some interpret this as an entire school year with a teacher's scores growing in a fluid manner throughout the year. Others interpret an observation cycle to be attached to an observation type (i.e. in our district the observation cycle for an announced observation begins with the pre-observation, ends with the post-observation and is contractually completed in an 18 day window). It is our interpretation that after the 18 days of this cycle, the score earned for this observation type remains static. The teacher will receive additional scores from their other observation types during additional observation cycles throughout the school year. The scores from the observation cycles will be averaged and then weighted by observer type in determining the 1-4 score to be put into the matrix.

DEPARTMENT RESPONSE:

Neither the law nor the regulations mention or define "observation cycle" and Education Law § 3012-d(10)(b) requires districts and BOCES to collectively bargain how to implement the provisions of the teacher observation/principal school visit category.. Therefore, the parameters for what will or will not be included as part of the observation process shall be determined locally.

12. COMMENT:

Out of the 90 students in my charge, 9 chose to sit for the NYS Math assessment. Because I did not have at least 16 students take the assessment, I could not generate an individual state provided growth score. The back up plan my district put in place was for me, and others just like me, to receive the principal's score. His score is derived from all the students who took both the ELA and Math assessments. This negatively impacts me, as the score I received does not correlate with the students I teach. This is a problem for me because I am now rated in my growth component as a developing teacher. This rating is based on student performance of students I do not teach.

It is important to note that I could not appeal the score the district assigned to me because according to the NYSED growth score appeal process, if I received a building level score, I was not eligible for the appeal. However, my administrative colleagues may appeal their scores. How is this fair? How does the Board of Regents rationalize this system of evaluation?

DEPARTMENT RESPONSE:

See response to comment #1. With respect to scores based on school-wide/group/team measures, the appeal process was intended to allow teachers or principals to challenge only State-provided growth scores. In the case of school-wide/group/team measures, these scores are not generated by the State, but instead are assigned by the district. Therefore, these scores cannot be challenged through the State appeal process. However, depending on a district/BOCES local appeal process, such scores may be appealed locally.

13. COMMENT: Another commenter asks the Department to define an independent evaluator to mean:

- a. the evaluator must not work or have previously worked in the school where the teacher being observed works;
- b. the evaluator must not work or have previously worked for or with the principal or any assistant principal of the school where the teacher being observed works;
- c. the evaluator's own performance review or any salary, rate of pay or benefit must not be based on or affected in any way by the ratings given to teachers; and
- d. the evaluator may not confer with the teacher's supervisor during the school supervisor.

DEPARTMENT RESPONSE:

Education Law § 3012-d(4)(b)(2) requires that teachers be evaluated based on a classroom observation by an impartial independent trained evaluator or evaluators selected by the district. The statute allows an independent trained evaluator to be employed in the same district, but not the same building. The proposed amendment is consistent with the statute. The Department has received numerous comments from districts, requesting flexibility from this requirement and the proposed amendment allows certain districts in limited situations to apply for a hardship waiver from this requirement. In light of the numerous comments received requesting

flexibility from this requirement, the Department does not believe that more stringent requirements are needed.

14. COMMENT:

One comment suggests that the Department make explicit that “other natural conversations” refer to conversations about an observed lesson or other parts of the rubric that relate to the lesson observed that may not have been directly observed.

DEPARTMENT RESPONSE:

The proposed amendment provides districts/BOCES with the flexibility to observe the New York State Teaching Standards/Domains that are part of the rubric but not observable during the classroom observation during any optional pre-observation conference or post-observation review or other natural conversations between the teacher and the evaluator and incorporated into the observation score. In an effort to provide districts/BOCES with flexibility, the Department does not believe that a single definition of “other natural conversations” is necessary.

15. COMMENT:

Another commenter suggests that the Department expand the district waiver regarding placement of students by allowing the teacher improvement plan to constitute the improvement plan that allows a district to be eligible for a waiver from the requirement that no student be placed in the classes of teachers with Ineffective ratings for two years. In addition, the waiver should be automatically granted in schools that have only one teacher of a subject.

DEPARTMENT RESPONSE:

Section 30-3.14 of the proposed amendment allows the Commissioner to grant a waiver from the statutory prohibition of a student receiving a teacher rated ineffective for two consecutive years if a district cannot make alternative arrangements and/or reassign a teacher to another grade/subject because a hardship exists (for example, too few teachers with higher ratings are qualified to teach such subject in that district); and the district has an improvement and/or removal plan in place for the teacher at issue that meets certain guidelines prescribed by the Commissioner. The Department will consider whether a TIP is acceptable when drafting its guidelines. Moreover, the waiver may already be granted for districts that only have one teacher in a certain subject area if they have an improvement and/or removal plan in place. Therefore, the Department does not believe a change is needed.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Voluntary Institutional Accreditation for Title IV Purposes

I.D. No. EDU-49-15-00013-P

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

Proposed Action: Amendment of Subpart 4-1 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207(not subdivided), 210(not subdivided), 214(not subdivided), 215(not subdivided), 305(1) and (2)

Subject: Voluntary institutional accreditation for Title IV purposes.

Purpose: To clarify existing standards and procedures that must be met by institutions of higher education seeking voluntary accreditation by the Board of Regents and the Commissioner of Education.

Substance of proposed rule (Full text is posted at the following State website: <http://www.regents.nysed.gov/meetings/2015/2015-11/higher-education>): The Commissioner of Education proposes to amend Section 4-1 of the Commissioner’s regulations, relating to voluntary institutional accreditation for Title IV purposes.

The following is a summary of the major substantive changes to the proposed rule.

Clause (j) of subparagraph (iv) of paragraph (1) of subdivision (i) of section 4-1.4 is amended to remove the requirement to compute statistics on student retention and graduation consistent with data reported to the Department through its higher education data system.

Paragraph (2) of subdivision (a) of section 4-1.5 is amended to remove the requirement of the Department to notify the institution of timelines for commencement of the comprehensive review for institutions seeking renewal of accreditation under the outdated transitional procedures.

Paragraph (3) of subdivision (a) of section 4-1.5 is amended to remove the requirement that the institution submit a copy of the institutional assessment plan developed pursuant to section 52.2(e)(3) with each self-study.

Paragraph (4) of subdivision (a) of section 4-1.5 is amended to clarify the basis for initiating a site visit.

Paragraph (6) of subdivision (a) of section 4-1.5 is amended to revise the title of the draft compliance review report to compliance Report.

Paragraph (7) of subdivision (a) of section 4-1.5 is amended to clarify that the compliance review report is referred to as the Department’s recommendation and that such report shall include a copy of the compliance report and the institution’s response to such report.

Subparagraphs (i) and (ii) of paragraph (8) of subdivision (a) of section 4-1.5 are amended to clarify that a written response to the department’s recommendation may be submitted to the Department.

Subparagraph (iii) of paragraph (8) of subdivision (a) of section 4-1.5 is amended to clarify the components of the record before the advisory council.

Subparagraph (iv) of paragraph (8) of subdivision (a) of section 4-1.5 is amended to clarify that the advisory council, upon conclusion of its review, shall prepare a recommendation with a report of the findings based upon the record and testimony considered by the advisory council.

Subparagraph (v) of paragraph (8) of subdivision (a) of section 4-1.5 is amended to revise the language in accordance with 4-1.5(a)(8)(iv), above.

Subparagraph (i) of paragraph (9) of subdivision (a) of section 4-1.5 is amended to clarify that the institution and the deputy commissioner have a right to appeal the recommendation of the advisory council.

Subparagraph (ii) of paragraph (9) of subdivision (a) of section 4-1.5 is amended to revise the language in accordance with 4-1.5(a)(8)(iv), above and to add that notice of the institution’s intent to appeal must be made in writing, by first-class mail, express delivery, or personal service.

Subparagraph (iii) of paragraph (9) of subdivision (a) of section 4-1.5 is amended to revise the language in accordance with 4-1.5(a)(8)(iv), above.

Clause (a) of Subparagraph (iii) of paragraph (9) of subdivision (a) of section 4-1.5 is amended to revise the language in accordance with 4-1.5(a)(8)(iv), above.

Clause (b) of Subparagraph (iii) of paragraph (9) of subdivision (a) of section 4-1.5 is amended to revise the language in accordance with 4-1.5(a)(8)(iv), above.

Subparagraph (iv) of paragraph (9) of subdivision (a) of section 4-1.5 is amended to clarify that the Commissioner shall consider new financial information submitted by the institution as part of its appeal if the only remaining deficiency noted by the agency is the institution’s failure to meet any agency standard pertaining to finances.

Paragraph (10) of subdivision (a) of section 4-1.5 is amended to clarify the record on appeal to the Board of Regents. Additionally, that paragraph is amended to clarify the right to appeal from an adverse accreditation action or probationary accreditation by the Board of Regents is only in limited circumstances where such determination is arbitrary or capricious or affected by an error of law or facts.

Subparagraph (i) of paragraph (11) of subdivision (a) of section 4-1.5 is amended to clarify the institution’s right to be represented by counsel during such an appeal.

Subparagraph (ii) of paragraph (11) of subdivision (a) of section 4-1.5 is amended to clarify that an appeal may be commenced by the filing of an appeal with the Board of Regents within 20 days of the determination of adverse accreditation action or granting probationary accreditation.

Subparagraph (iv) of paragraph (11) of subdivision (a) of section 4-1.5 is amended to revise the requirement to forward the appeal to the institutional accreditation appeals board within 20 days of receipt of such appeal.

Subparagraph (v) of paragraph (11) of subdivision (a) of section 4-1.5 is added to provide for the filing of a written response by the Board of Regents within 30 days of receipt of the appeal.

Subparagraph (vi) of paragraph (11) of subdivision (a) of section 4-1.5 is amended to require the institutional accreditation appeals board to provide 10 days written notice of the time and place of the appeal to the institution and the Commissioner and the Board of Regents.

Clauses (a), (b) and (c) of subparagraph (vii) of paragraph (11) of subdivision (a) of section 4-1.5 are amended to provide the rules for the hearing procedures, the conduct of the hearing and the record of the hearing.

Subparagraph (viii) of paragraph (11) of subdivision (a) of section 4-1.5 is amended to provide that the institutional accreditation appeals board decision to affirm, reverse, remand or amend the Board of Regents’ determination of adverse accreditation action or granting probationary accreditation shall be by a majority vote.

Subclauses (4) and (5) of clause (b) of subparagraph (ix) of paragraph (11) of subdivision (a) of section 4-1.5 is amended to revise the language in accordance with 4-1.5(a)(8), above.

Subclause (6) of clause (b) of subparagraph (ix) of paragraph (11) of subdivision (a) of section 4-1.5 is amended to apply the same procedures prescribed in 4-1.5 (a).

Subclause (9) of clause (b) of subparagraph (ix) of paragraph (11) of subdivision (a) of section 4-1.5 is amended to apply the same procedures prescribed in 4-1.5 (a)(10).

Subclause (4) of clause (c) of subparagraph (ix) of paragraph (11) of subdivision (a) of section 4-1.5 is amended to revise the title of the draft probationary review report to the probationary review report.

Subclause (5) of clause (c) of subparagraph (ix) of paragraph (11) of subdivision (a) of section 4-1.5 is amended to revise the language in accordance with 4-1.5 (a)(11), above.

Item (iii) of subclause (6) of clause (c) of subparagraph (ix) of paragraph (11) of subdivision (a) of section 4-1.5 is amended to add that the advisory council shall also review any other documentation upon which the department's recommendation was based.

Item (iv) of subclause (5) of clause (c) of subparagraph (ix) of paragraph (11) of subdivision (a) of section 4-1.5 is amended to clarify that the advisory council's recommendation must be based on the record and the testimony before the council.

Subclause (7) of clause (c) of subparagraph (ix) of paragraph (11) of subdivision (a) of section 4-1.5 is amended to revise the language in accordance with 4-1.5 (a)(11), above.

Subclause (9) of clause (c) of subparagraph (ix) of paragraph (11) of subdivision (a) of section 4-1.5 is amended to apply the same procedures prescribed in 4-1.5 (a)(10).

Clause (d) of subparagraph (ix) of paragraph (11) of subdivision (a) of section 4-1.5 is amended to replace references to substantive change review report to Department recommendation and substitute the word "decision" with "determination" and other technical amendments.

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

Data, views or arguments may be submitted to: 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.

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 grants to the Board of Regents the authority to register domestic and foreign institutions in terms of New York standards.

Section 214 of the Education Law provides that higher educational institutions that are incorporated in New York State shall be members of The University of the State of New York.

Section 215 of the Education Law authorizes the Commissioner of Education to visit, examine, and inspect schools or institutions under the educational supervision of the State and require reports from such schools.

Subdivision (1) of section 305 of the Education Law empowers the Commissioner of Education to enforce all laws relating to the educational system of the State and execute all educational policies determined by the Board of Regents.

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

2. LEGISLATIVE OBJECTIVES:

The proposed amendment carries out the legislative objectives of the above-referenced statutes by clarifying existing standards and procedures that must be met by institutions of higher education seeking voluntary accreditation by the Board of Regents and the Commissioner of Education.

3. NEEDS AND BENEFITS:

Institutional accreditation is distinct from the Regents authority to authorize colleges and register programs of study. All New York degree-granting institutions must be authorized by the Regents to operate as a college or university. The Department also reviews and registers individual credit-bearing programs according to the standards prescribed in the Commissioner's Regulations. Together, the Regents approval to confer degrees and Department program registration make up the State authorization process.

The U.S. Department of Education also requires institutions to be accredited to receive Title IV funding. This process was established to ensure that financial aid funds are distributed only to institutions that meet a common set of standards. Institutional accreditation entails a complete review of the entire college or university and its ability to meet standards defined by the U.S. Department of Education (USDE) to ensure the sound investment of financial aid funds and the quality of the student's education. It requires a thorough self-examination by the institution and a peer review on-site visit that is intended to identify areas where improvement may be needed and support an institution's compliance with accreditation standards.

The ability to serve as an accrediting agency is granted by USDE. The Regents and Commissioner are the only state agency authorized by USDE

as an institutional accrediting agency. The Regents have held this authorization since 1952. All accrediting agencies must be recognized by USDE and must re-apply periodically to renew their recognition. The Board of Regents and Commissioner of Education recently underwent a thorough review by USDE and the Secretary of Education continued the Regents authority as a nationally recognized institutional accrediting agency until 2017.

As an accrediting agency, our ongoing responsibilities include periodic review of the standards for accreditation included in Subpart 4-1 of the Rules of the Board of Regents. In conducting that review, the Department identified areas where proposed revisions are needed (most of which are of a technical nature) to provide clarity to institutions accredited by the Regents and Commissioner about the accreditation process.

The amendments are being proposed to make a technical change to delete an outdated reference that requires institutions to report statistics on retention and graduation rates in a manner consistent with data reported to the Department through its higher education data system and to make several technical revisions in the procedures for accreditation to clarify steps in the process and make clear the basis upon which accreditation recommendations and determinations are made. The amendments also clarify details about the appeals process that is available to institutions that receive adverse accreditation actions or probationary accreditation by the Regents, making the appeal process more aligned with what is required by other accrediting bodies, such as Middle States.

4. COSTS:

(a) Costs to State government. This amendment will not impose any additional costs on State government over and above the current costs for accrediting institutions pursuant to Subpart 4-1 of the Rules of the Board of Regents. The Department will use existing personnel and resources to review institutions for accreditation under this Subpart.

(b) Costs to local government. None.

(c) Costs to private regulated parties. The proposed amendment requires institutions seeking or maintaining accreditation by the Board of Regents to archive all print and online catalogs annually and to retain all archived copies permanently. The Department believes that currently accredited institutions are already performing these tasks and, therefore, there will be no additional cost to the institution. The other requirements of the proposed amendment will not impose additional costs on institutions of higher education.

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

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment concerns the institutional accreditation of institutions of higher education. It does not impose any program, service, duty, or responsibility on local governments.

6. PAPERWORK:

The proposed amendment imposes minimal additional paperwork for institutions voluntarily applying to the Board of Regents and the Commissioner of Education for institutional accreditation.

Since the amendment proposes minimal reporting and recordkeeping requirements, the State Education Department expects that existing faculty and staff at colleges will have the necessary expertise to satisfy the requirements of the proposed amendment as part of their ongoing responsibilities.

7. DUPLICATION:

The standards and procedures for voluntary institutional accreditation build on requirements and standards for the registration of undergraduate and graduate programs set forth in Part 52 of the Regulations of the Commissioner of Education. In some cases, additional requirements are imposed for accreditation but these standards do not conflict with program registration standards.

8. ALTERNATIVES:

There are no viable alternatives to the proposed amendment, and none were considered.

9. FEDERAL STANDARDS:

The proposed amendment is consistent with Federal requirements, which specify subject categories for which an accrediting agency, approved by U.S. Secretary of Education, must have standards and procedures for the accreditation of higher education institutions, and the requirement of periodic review of the standards by the accrediting agency.

10. COMPLIANCE SCHEDULE:

The amendment would be effective on its stated effective date.

Regulatory Flexibility Analysis

The proposed amendment clarifies existing standards and procedures that must be met by institutions of higher education seeking voluntary accreditation by the Board of Regents and the Commissioner of Education and therefore does not have any adverse economic impact or impose any compliance requirements on small businesses or local governments.

Because it is evident from the nature of the proposed amendment that it will have no impact on small businesses or local governments, no further steps were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis is not required and one has not been prepared.

Rural Area Flexibility Analysis

1. Types and estimate of number of rural areas:

The proposed amendment clarifies existing standards and procedures that must be met by institutions of higher education seeking voluntary accreditation by the Board of Regents and the Commissioner of Education.

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

The proposed amendment will not establish additional reporting or recordkeeping requirements. The proposed amendment will not require regulated parties, including those located in rural areas, to hire professional services in order to comply.

3. Costs:

The amendment will not impose additional costs on regulated parties, including those located in rural areas of New York State. The proposed amendment will not increase costs, and may provide cost-savings to regulated parties.

4. Minimizing adverse impact:

The proposed amendment clarifies existing standards and procedures that must be met by institutions of higher education seeking voluntary accreditation by the Board of Regents and the Commissioner of Education. Accordingly, it is neither appropriate nor warranted to establish different requirements for entities located in rural areas. Because of the nature of the proposed rule, alternative approaches for rural areas were not considered.

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 proposed amendment clarifies existing standards and procedures that must be met by institutions of higher education seeking voluntary accreditation by the Board of Regents and the Commissioner of Education. The State Education Department expects that the proposed amendment will not have a negative impact on the number of jobs or employment opportunities at higher education institutions or in any other field, and that higher education institutions will use existing staff to satisfy accreditation requirements as part of their on-going responsibilities. Therefore, the amendment will have no impact on jobs or employment opportunities at these institutions. Because it is evident from the nature of the proposed amendment that it will have no impact on jobs and employment opportunities, no further steps were needed to ascertain these facts and none were taken. Accordingly, a job impact statement was not required and one was not prepared.

rules and regulations adopted by the Superintendent, the legislature intended to help ensure that servicers conduct their business in a manner acceptable to the Department. However, since the passage of the Mortgage Lending Reform Law, foreclosures continue to pose a significant threat to New York homeowners. The Department continues to receive complaints from homeowners and housing advocates that mortgage loan servicers' response to delinquencies and their efforts at loss mitigation are inadequate. These rules are intended to provide clear guidance to mortgage loan servicers as to the procedures and standards they should follow with respect to loan delinquencies. The rules impose a duty of fair dealing on loan servicers in their communications, transactions and other dealings with borrowers. In addition, the rule sets standards with respect to the handling of loan delinquencies and loss mitigation. The rule further requires specific reporting on the status of delinquent loans with the Department so that it has the information necessary to assess loan servicers' performance.

In addition to addressing the pressing issue of mortgage loan delinquencies and loss mitigation, the rule addresses other areas of significant concern to homeowners, including the handling of borrower complaints and inquiries, the payment of taxes and insurance, crediting of payments and handling of late payments, payoff balances and servicer fees. The rule also sets forth prohibited practices such as engaging in deceptive practices or placing homeowners' insurance on property when the servicers has reason to know that the homeowner has an effective policy for such insurance.

Subject: Business conduct of mortgage loan servicers.

Purpose: To implement the purpose and provisions of the Mortgage Lending Reform Law of 2008 with respect to mortgage loan servicers.

Substance of emergency rule: Section 419.1 contains definitions of terms that are used in Part 419 and not otherwise defined in Part 418, including "Servicer", "Qualified Written Request" and "Loan Modification".

Section 419.2 establishes a duty of fair dealing for Servicers in connection with their transactions with borrowers, which includes a duty to pursue loss mitigation with the borrower as set forth in Section 419.11.

Section 419.3 requires compliance with other State and Federal laws relating to mortgage loan servicing, including Banking Law Article 12-D, RESPA, and the Truth-in-Lending Act.

Section 419.4 describes the requirements and procedures for handling to consumer complaints and inquiries.

Section 419.5 describes the requirements for a servicer making payments of taxes or insurance premiums for borrowers.

Section 419.6 describes requirements for crediting payments from borrowers and handling late payments.

Section 419.7 describes the requirements of an annual account statement which must be provided to borrowers in plain language showing the unpaid principal balance at the end of the preceding 12-month period, the interest paid during that period and the amounts deposited into and disbursed from escrow. The section also describes the Servicer's obligations with respect to providing a payment history when requested by the borrower or borrower's representative.

Section 419.8 requires a late payment notice be sent to a borrower no later than 17 days after the payment remains unpaid.

Section 419.9 describes the required provision of a payoff statement that contains a clear, understandable and accurate statement of the total amount that is required to pay off the mortgage loan as of a specified date.

Section 419.10 sets forth the requirements relating to fees permitted to be collected by Servicers and also requires Servicers to maintain and update at least semi-annually a schedule of standard or common fees on their website.

Section 419.11 sets forth the Servicer's obligations with respect to handling of loan delinquencies and loss mitigation, including an obligation to make reasonable and good faith efforts to pursue appropriate loss mitigation options, including loan modifications. This Section includes requirements relating to procedures and protocols for handling loss mitigation, providing borrowers with information regarding the Servicer's loss mitigation process, decision-making and available counseling programs and resources.

Section 419.12 describes the quarterly reports that the Superintendent may require Servicers to submit to the Superintendent, including information relating to the aggregate number of mortgages serviced by the Servicer, the number of mortgages in default, information relating to loss mitigation activities, and information relating to mortgage modifications.

Section 419.13 describes the books and records that Servicers are required to maintain as well as other reports the Superintendent may require Servicers to file in order to determine whether the Servicer is complying with applicable laws and regulations. These include books and records regarding loan payments received, communications with borrowers, financial reports and audited financial statements.

Section 419.14 sets forth the activities prohibited by the regulation, including engaging in misrepresentations or material omissions and plac-

Department of Financial Services

EMERGENCY RULE MAKING

Business Conduct of Mortgage Loan Servicers

I.D. No. DFS-49-15-00012-E

Filing No. 1022

Filing Date: 2015-11-24

Effective Date: 2015-11-26

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

Action taken: Addition of Part 419 to Title 3 NYCRR.

Statutory authority: Banking Law, art. 12-D

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

Specific reasons underlying the finding of necessity: The legislature required the registration of mortgage loan servicers as part of the Mortgage Lending Reform Law of 2008 (Ch. 472, Laws of 2008, hereinafter, the "Mortgage Lending Reform Law") to help address the existing foreclosure crisis in the state. By registering servicers and requiring that servicers engage in the business of mortgage loan servicing in compliance with

ing insurance on a mortgage property without written notice when the Servicer has reason to know the homeowner has an effective policy in place.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire February 21, 2016.

Text of rule and any required statements and analyses may be obtained from: Hadas A. Jacobi, NYS Department of Financial Services, 1 State Street, New York, NY 10004, (212) 480-5890, email: hadas.jacobi@dfs.ny.gov

Regulatory Impact Statement

1. Statutory Authority.

Article 12-D of the Banking Law, as amended by the Legislature in the Mortgage Lending Reform Law of 2008 (Ch. 472, Laws of 2008, hereinafter, the "Mortgage Lending Reform Law"), creates a framework for the regulation of mortgage loan servicers. Mortgage loan servicers are individuals or entities which engage in the business of servicing mortgage loans for residential real property located in New York. That legislation also authorizes the adoption of regulations implementing its provisions. (See, e.g., Banking Law Sections 590(2) (b-1) and 595-b.)

Subsection (1) of Section 590 of the Banking Law was amended by the Mortgage Lending Reform Law to add the definitions of "mortgage loan servicer" and "servicing mortgage loans". (Section 590(1)(h) and Section 590(1)(i).)

A new paragraph (b-1) was added to Subdivision (2) of Section 590 of the Banking Law. This new paragraph prohibits a person or entity from engaging in the business of servicing mortgage loans without first being registered with the Superintendent. The registration requirements do not apply to an "exempt organization," licensed mortgage banker or registered mortgage broker.

This new paragraph also authorizes the Superintendent to refuse to register an MLS on the same grounds as he or she may refuse to register a mortgage broker under Banking Law Section 592-a(2).

Subsection (3) of Section 590 was amended by the Subprime Law to clarify the power of the banking board to promulgate rules and regulations and to extend the rulemaking authority regarding regulations for the protection of consumers and regulations to define improper or fraudulent business practices to cover mortgage loan servicers, as well as mortgage bankers, mortgage brokers and exempt organizations. The functions and powers of the banking board have since been transferred to the Superintendent of Financial Services, pursuant to Part A of Chapter 62 of the Laws of 2011, Section 89.

New Paragraph (d) was added to Subsection (5) of Section 590 by the Mortgage Lending Reform Law and requires mortgage loan servicers to engage in the servicing business in conformity with the Banking Law, such rules and regulations as may be promulgated by the Banking Board or prescribed by the Superintendent, and all applicable federal laws, rules and regulations.

New Subsection (1) of Section 595-b was added by the Mortgage Lending Reform Law and requires the Superintendent to promulgate regulations and policies governing the grounds to impose a fine or penalty with respect to the activities of a mortgage loan servicer. Also, the Mortgage Lending Reform Law amends the penalty provision of Subdivision (1) of Section 598 to apply to mortgage loan servicers as well as to other entities.

New Subdivision (2) of Section 595-b was added by the Mortgage Lending Reform Law and authorizes the Superintendent to prescribe regulations relating to disclosure to borrowers of interest rate resets, requirements for providing payoff statements, and governing the timing of crediting of payments made by the borrower.

Section 596 was amended by the Mortgage Lending Reform Law to extend the Superintendent's examination authority over licensees and registrants to cover mortgage loan servicers. The provisions of Banking Law Section 36(10) making examination reports confidential are also extended to cover mortgage loan servicers.

Similarly, the books and records requirements in Section 597 covering licensees, registrants and exempt organizations were amended by the Mortgage Lending Reform Law to cover servicers and a provision was added authorizing the Superintendent to require that servicers file annual reports or other regular or special reports.

The power of the Superintendent to require regulated entities to appear and explain apparent violations of law and regulations was extended by the Mortgage Lending Reform Law to cover mortgage loan servicers (Subdivision (1) of Section 39), as was the power to order the discontinuance of unauthorized or unsafe practices (Subdivision (2) of Section 39) and to order that accounts be kept in a prescribed manner (Subdivision (5) of Section 39).

Finally, mortgage loan servicers were added to the list of entities subject to the Superintendent's power to impose monetary penalties for violations

of a law, regulation or order. (Paragraph (a) of Subdivision (1) of Section 44).

The fee amounts for mortgage loan servicer registration and branch applications are established in accordance with Banking Law Section 18-a.

2. Legislative Objectives.

The Mortgage Lending Reform Law was intended to address various problems related to residential mortgage loans in this State. The law reflects the view of the Legislature that consumers would be better protected by the supervision of mortgage loan servicing. Even though mortgage loan servicers perform a central function in the mortgage industry, there had previously been no general regulation of servicers by the state or the Federal government.

The Mortgage Lending Reform Law requires that entities be registered with the Superintendent in order to engage in the business of servicing mortgage loans in this state. The new law further requires mortgage loan servicers to engage in the business of servicing mortgage loans in conformity with the rules and regulations promulgated by the Banking Board and the Superintendent.

The mortgage servicing statute has two main components: (i) the first component addresses the registration requirement for persons engaged in the business of servicing mortgage loans; and (ii) the second authorizes the Superintendent to promulgate appropriate rules and regulations for the regulation of servicers in this state.

Part 418 of the Superintendent's Regulations, initially adopted on an emergency basis on July 1 2009, addresses the first component of the mortgage servicing statute by setting standards and procedures for applications for registration as a mortgage loan servicer, for approving and denying applications to be registered as a mortgage loan servicer, for approving changes of control, for suspending, terminating or revoking the registration of a mortgage loan servicer as well as setting financial responsibility standards for mortgage loan servicers.

Part 419 addresses the business practices of mortgage loan servicers in connection with their servicing of residential mortgage loans. This part addresses the obligations of mortgage loan servicers in their communications, transactions and general dealings with borrowers, including the handling of consumer complaints and inquiries, handling of escrow payments, crediting of payments, charging of fees, loss mitigation procedures and provision of payment histories and payoff statements. This part also imposes certain recordkeeping and reporting requirements in order to enable the Superintendent to monitor servicers' conduct and prohibits certain practices such as engaging in deceptive business practices.

Collectively, the provisions of Part 418 and 419 implement the intent of the Legislature to register and supervise mortgage loan servicers.

3. Needs and Benefits.

The Mortgage Lending Reform Law adopted a multifaceted approach to the lack of supervision of the mortgage loan industry, particularly with respect to servicing and foreclosure. It addressed a variety of areas in the residential mortgage loan industry, including: i. loan originations; ii. loan foreclosures; and iii. the conduct of business by residential mortgage loans servicers.

Until July 1, 2009, when the mortgage loan servicer registration provisions first became effective, the Department regulated the brokering and making of mortgage loans, but not the servicing of these mortgage loans. Servicing is vital part of the residential mortgage loan industry; it involves the collection of mortgage payments from borrowers and remittance of the same to owners of mortgage loans; to governmental agencies for taxes; and to insurance companies for insurance premiums. Mortgage servicers also act as agents for owners of mortgages in negotiations relating to loss mitigation when a mortgage becomes delinquent. As "middlemen," moreover, servicers also play an important role when a property is foreclosed upon. For example, the servicer may typically act on behalf of the owner of the loan in the foreclosure proceeding.

Further, unlike in the case of a mortgage broker or a mortgage lender, borrowers cannot "shop around" for loan servicers, and generally have no input in deciding what company services their loans. The absence of the ability to select a servicer obviously raises concerns over the character and viability of these entities given the central part of they play in the mortgage industry. There also is evidence that some servicers may have provided poor customer service. Specific examples of these activities include: pyramiding late fees; misapplying escrow payments; imposing illegal prepayment penalties; not providing timely and clear information to borrowers; erroneously force-placing insurance when borrowers already have insurance; and failing to engage in prompt and appropriate loss mitigation efforts.

More than 2,000,000 loans on residential one-to-four family properties are being serviced in New York. Of these over 9% were seriously delinquent as of the first quarter of 2012. Despite various initiatives adopted at the state level and the creation of federal programs such as Making Home Affordable to encourage loan modifications and help at risk homeowners, the number of loans modified, have not kept pace with the number of

foreclosures. Foreclosures impose costs not only on borrowers and lenders but also on neighboring homeowners, cities and towns. They drive down home prices, diminish tax revenues and have adverse social consequences and costs.

As noted above, Part 418, initially adopted on an emergency basis on July 1 2009, relates to the first component of the mortgage servicing statute – the registration of mortgage loan servicers. It was intended to ensure that only those persons and entities with adequate financial support and sound character and general fitness will be permitted to register as mortgage loan servicers. It also provided for the suspension, revocation and termination of licensees involved in wrongdoing and establishes minimum financial standards for mortgage loan servicers.

Part 419 addresses the business practices of mortgage loan servicers and establishes certain consumer protections for homeowners whose residential mortgage loans are being serviced. These regulations provide standards and procedures for servicers to follow in their course of dealings with borrowers, including the handling of borrower complaints and inquiries, payment of taxes and insurance premiums, crediting of borrower payments, provision of annual statements of the borrower's account, authorized fees, late charges and handling of loan delinquencies and loss mitigation. Part 419 also identifies practices that are prohibited and imposes certain reporting and record-keeping requirements to enable the Superintendent to determine the servicer's compliance with applicable laws, its financial condition and the status of its servicing portfolio.

Since the adoption of Part 418, 67 entities have been approved for registration or have pending applications and nearly 400 entities have indicated that they are a mortgage banker, broker, bank or other organization exempt from the registration requirements.

All Exempt Organizations, mortgage bankers and mortgage brokers that perform mortgage loan servicing with respect to New York mortgages must notify the Superintendent that they do so, and are required to comply with the conduct of business and consumer protection rules applicable to mortgage loan servicers.

These regulations will improve accountability and the quality of service in the mortgage loan industry and will help promote alternatives to foreclosure in the state.

4. Costs.

The requirements of Part 419 do not impose any direct costs on mortgage loan servicers. Although mortgage loan servicers may incur some additional costs as a result of complying with Part 419, the overwhelming majority of mortgage loan servicers are banks, operating subsidiaries or affiliates of banks, large independent servicers or other financial services entities that service millions, and even billions, of dollars in loans and have the experience, resources and systems to comply with these requirements. Moreover, any additional costs are likely to be mitigated by the fact that many of the requirements of Part 419, including those relating to the handling of residential mortgage delinquencies and loss mitigation (419.11) and quarterly reporting (419.12), are consistent with or substantially similar to standards found in other federal or state laws, federal mortgage modification programs or servicers own protocols.

For example, Fannie Mae and Freddie Mac, which own or insure approximately 90% of the nation's securitized mortgage loans, have similar guidelines governing various aspects of mortgage servicing, including handling of loan delinquencies. In addition, over 100 mortgage loan servicers participate in the federal Making Home Affordable (MHA) program which requires adherence to standards for handling of loan delinquencies and loss mitigation similar to those contained in these regulations. Those servicers not participating in MHA have, for the most part, adopted programs which parallel many components of MHA.

Reporting on loan delinquencies and loss mitigation has likewise become increasingly common. The OCC publish quarterly reports on credit performance, loss mitigation efforts and foreclosures based on data provided by national banks and thrifts. And, states such as Maryland and North Carolina have adopted similar reporting requirements to those contained in section 419.12.

Many of the other requirements of Part 419 such as those related to handling of taxes, insurance and escrow payments, collection of late fees and charges, crediting of payments derive from federal or state laws and reflect best industry practices. The periodic reporting and bookkeeping and record keeping requirements are also standard among financial services businesses, including mortgage bankers and brokers (see, for example section 410 of the Superintendent's Regulations).

The ability by the Department to regulate mortgage loan servicers is expected to reduce costs associated with responding to consumers' complaints, decrease unnecessary expenses borne by mortgagors, and should assist in decreasing the number of foreclosures in this state.

The regulations will not result in any fiscal implications to the State. The Department is funded by the regulated financial services industry. Fees charged to the industry will be adjusted periodically to cover Department expenses incurred in carrying out this regulatory responsibility.

5. Local Government Mandates.

None.

6. Paperwork.

Part 419 requires mortgage loan servicers to keep books and records related to its servicing for a period of three years and to produce quarterly reports and financial statements as well as annual and other reports requested by the Superintendent. It is anticipated that the quarterly reporting relating to mortgage loan servicing will be done electronically and would therefore be virtually paperless. The other recordkeeping and reporting requirements are consistent with standards generally required of mortgage bankers and brokers and other regulated financial services entities.

7. Duplication.

The regulation does not duplicate, overlap or conflict with any other regulations. The various federal laws that touch upon aspects of mortgage loan servicing are noted in Section 9 "Federal Standards" below.

8. Alternatives.

The Mortgage Lending Reform Law required the registration of mortgage loan servicers and empowered the Superintendent to prescribe rules and regulations to guide the business of mortgage servicing. The purpose of the regulation is to carry out this statutory mandate to register mortgage loan servicers and regulate the manner in which they conduct business. The Department circulated a proposed draft of Part 419 and received comments from and met with industry and consumer groups. The current Part 419 reflects the input received. The alternative to these regulations is to do nothing or to wait for the newly created federal bureau of consumer protection to promulgate national rules, which could take years, may not happen at all or may not address all the practices covered by the rule. Thus, neither of those alternatives would effectuate the intent of the legislature to address the current foreclosure crisis, help at-risk homeowners vis-à-vis their loan servicers and ensure that mortgage loan servicers engage in fair and appropriate servicing practices.

9. Federal Standards.

Currently, mortgage loan servicers are not required to be registered by any federal agencies, and there are no comprehensive federal rules governing mortgage loan servicing. Federal laws such as the Real Estate Settlement Procedures Act of 1974, 12 U.S.C. § 2601 et seq. and regulations adopted thereunder, 24 C.F.R. Part 3500, and the Truth-in-Lending Act, 15 U.S.C. section 1600 et seq. and Regulation Z adopted thereunder, 12 C.F.R. section 226 et seq., govern some aspects of mortgage loan servicing, and there have been some recent amendments to those laws and regulations regarding mortgage loan servicing. For example, Regulation Z, 12 C.F.R. section 226.36(c), was recently amended to address the crediting of payments, imposition of late charges and the provision of payoff statements. In addition, the recently enacted Dodd-Frank Wall Street Reform and Protection Act of 2010 (Dodd-Frank Act) establishes requirements for the handling of escrow accounts, obtaining force-placed insurance, responding to borrower requests and providing information related to the owner of the loan.

Additionally, the newly created Bureau of Consumer Financial Protection established by the Dodd-Frank Act may soon propose additional regulations for mortgage loan servicers.

10. Compliance Schedule.

Similar emergency regulations first became effective on October 1, 2010.

Regulatory Flexibility Analysis

1. Effect of the Rule:

The rule will not have any impact on local governments. The Mortgage Lending Reform Law of 2008 (Ch. 472, Laws of 2008, hereinafter, the "Mortgage Lending Reform Law") requires all mortgage loan servicers, whether registered or exempt from registration under the law, to service mortgage loans in accordance with the rules and regulations promulgated by the Banking Board or Superintendent. The functions and powers of the Banking Board have since been transferred to the Superintendent of Financial Services, pursuant to Part A of Chapter 62 of the Laws of 2011, Section 89. Of the 67 entities which have been approved for registration or have pending applications and the nearly 400 entities which have indicated that they are exempt from the registration requirements, it is estimated that very few are small businesses.

2. Compliance Requirements:

The provisions of the Mortgage Lending Reform Law relating to mortgage loan servicers has two main components: it requires the registration by the Department of servicers who are not a bank, mortgage banker, mortgage broker or other exempt organizations (the "MLS Registration Regulations"), and it authorizes the Department to promulgate rules and regulations that are necessary and appropriate for the protection of consumers, to define improper or fraudulent business practices, or otherwise appropriate for the effective administration of the provisions of the Mortgage Lending Reform Law relating to mortgage loan servicers (the "Mortgage Loan Servicer Business Conduct Regulations").

The provisions of the Mortgage Lending Reform Law requiring registration of mortgage loan servicers which are not mortgage bankers, mortgage brokers or exempt organizations became effective on July 1, 2009. Part 418 of the Superintendent's Regulations, initially adopted on an emergency basis on July 1 2009, sets for the standards and procedures for applications for registration as a mortgage loan servicer, for approving and denying applications to be registered as a mortgage loan servicer, for approving changes of control, for suspending, terminating or revoking the registration of a mortgage loan servicer as well as the financial responsibility standards for mortgage loan servicers.

Part 419 implements the provisions of the Mortgage Lending Reform Law by setting the standards by which mortgage loan servicers conduct the business of mortgage loan servicing. The rule sets the standards for handling complaints, payments of taxes and insurance, crediting of borrower payments, late payments, account statements, delinquencies and loss mitigation, fees and recordkeeping.

3. Professional Services:

None.

4. Compliance Costs:

The requirements of Part 419 do not impose any direct costs on mortgage loan servicers. Although mortgage loan servicers may incur some additional costs as a result of complying with Part 419, the overwhelming majority of mortgage loan servicers are banks, operating subsidiaries or affiliates of banks, large independent servicers or other financial services entities that service millions, and even billions, of dollars in loans and have the experience, resources and systems to comply with these requirements. Moreover, any additional costs are likely to be mitigated by the fact that many of the requirements of Part 419, including those relating to the handling of residential mortgage delinquencies and loss mitigation (419.11) and quarterly reporting (419.12), are consistent with or substantially similar to standards found in other federal or state laws, federal mortgage modification programs or servicers own protocols.

For example, Fannie Mae and Freddie Mac, which own or insure approximately 90% of the nation's securitized mortgage loans, have similar guidelines governing various aspects of mortgage servicing, including handling of loan delinquencies. In addition, over 100 mortgage loan servicers participate in the federal Making Home Affordable (MHA) program which requires adherence to standards for handling of loan delinquencies and loss mitigation similar to those contained in these regulations. Those servicers not participating in MHA have, for the most part, adopted programs which parallel many components of MHA.

Reporting on loan delinquencies and loss mitigation has likewise become increasingly common. The OCC publishes quarterly reports on credit performance, loss mitigation efforts and foreclosures based on data provided by national banks and thrifts. And, states such as Maryland and North Carolina have adopted similar reporting requirements to those contained in section 419.12.

Many of the other requirements of Part 419 such as those related to handling of taxes, insurance and escrow payments, collection of late fees and charges, crediting of payments derive from federal or state laws and reflect best industry practices. The periodic reporting and bookkeeping and record keeping requirements are also standard among financial services businesses, including mortgage bankers and brokers (see, for example section 410 of the Superintendent's Regulations).

Compliance with the rule should improve the servicing of residential mortgage loans in New York, including the handling of mortgage delinquencies, help prevent unnecessary foreclosures and reduce consumer complaints regarding the servicing of residential mortgage loans.

5. Economic and Technological Feasibility:

For the reasons noted in Section 4 above, the rule should impose no adverse economic or technological burden on mortgage loan servicers that are small businesses.

6. Minimizing Adverse Impacts:

As noted in Section 1 above, most servicers are not small businesses. Many of the requirements contained in the rule derive from federal or state laws, existing servicer guidelines utilized by Fannie Mae and Freddie Mac and best industry practices.

Moreover, the ability by the Department to regulate mortgage loan servicers is expected to reduce costs associated with responding to consumers' complaints, decrease unnecessary expenses borne by mortgagors, help borrowers at risk of foreclosure and decrease the number of foreclosures in this state.

7. Small Business and Local Government Participation:

The Department distributed a draft of proposed Part 419 to industry representatives, received industry comments on the proposed rule and met with industry representatives in person. The Department likewise distributed a draft of proposed Part 419 to consumer groups, received their comments on the proposed rule and met with consumer representatives to discuss the proposed rule in person. The rule reflects the input received from both industry and consumer groups.

Rural Area Flexibility Analysis

Types and Estimated Numbers: Since the adoption of the Mortgage Lending Reform Law of 2008 (Ch. 472, Laws of 2008, hereinafter, the "Mortgage Lending Reform Law"), which required mortgage loan servicers to be registered with the Department unless exempted under the law, 67 entities have pending applications or have been approved for registration and nearly 400 entities have indicated that they are a mortgage banker, broker, bank or other organization exempt from the registration requirements. Only one of the non-exempt entities applying for registration is located in New York and operating in a rural area. Of the exempt organizations, all of which are required to comply with the conduct of business contained in Part 419, approximately 400 are located in New York, including several in rural areas. However, the overwhelming majority of exempt organizations, regardless of where located, are banks or credit unions that are already regulated and are thus familiar with complying with the types of requirements contained in this regulation.

Compliance Requirements: The provisions of the Mortgage Lending Reform Law relating to mortgage loan servicers has two main components: it requires the registration by the Department of servicers that are not a bank, mortgage banker, mortgage broker or other exempt organization (the "MLS Registration Regulations"), and it authorizes the Department to promulgate rules and regulations that are necessary and appropriate for the protection of consumers, to define improper or fraudulent business practices, or otherwise appropriate for the effective administration of the provisions of the Mortgage Lending Reform Law relating to mortgage loan servicers (the "MLS Business Conduct Regulations").

The provisions of the Mortgage Lending Reform Law of 2008 requiring registration of mortgage loan servicers which are not mortgage bankers, mortgage brokers or exempt organizations became effective on July 1, 2009. Part 418 of the Superintendent's Regulations, initially adopted on an emergency basis on July 1, 2010, sets forth the standards and procedures for applications for registration as a mortgage loan servicer, for approving and denying applications to be registered as a mortgage loan servicer, for approving changes of control, for suspending, terminating or revoking the registration of a mortgage loan servicer as well as the financial responsibility standards for mortgage loan servicers.

Part 419 implements the provisions of the Mortgage Lending Reform Law of 2008 by setting the standards by which mortgage loan servicers conduct the business of mortgage loan servicing. The rule sets the standards for handling complaints, payments of taxes and insurance, crediting borrower payments, late payments, account statements, delinquencies and loss mitigation and fees. This part also imposes certain recordkeeping and reporting requirements in order to enable the Superintendent to monitor servicers' conduct and prohibits certain practices such as engaging in deceptive business practices.

Costs: The requirements of Part 419 do not impose any direct costs on mortgage loan servicers. The periodic reporting requirements of Part 419 are consistent with those imposed on other regulated entities. In addition, many of the other requirements of Part 419, such as those related to the handling of loan delinquencies, taxes, insurance and escrow payments, collection of late fees and charges and crediting of payments, derive from federal or state laws, current federal loan modification programs, servicing guidelines utilized by Fannie Mae and Freddie Mac or servicers' own protocols. Although mortgage loan servicers may incur some additional costs as a result of complying with Part 419, the overwhelming majority of mortgage loan servicers are banks, credit unions, operating subsidiaries or affiliates of banks, large independent servicers or other financial services entities that service millions, and even billions, of dollars in loans and have the experience, resources and systems to comply with these requirements. Of the 67 entities that have been approved for registration or that have pending applications, only one is located in a rural area of New York State. Of the few exempt organizations located in rural areas of New York, virtually all are banks or credit unions. Moreover, compliance with the rule should improve the servicing of residential mortgage loans in New York, including the handling of mortgage delinquencies, help prevent unnecessary foreclosures and reduce consumer complaints regarding the servicing of residential mortgage loans.

Minimizing Adverse Impacts: As noted in the "Costs" section above, while mortgage loan servicers may incur some higher costs as a result of complying with the rules, the Department does not believe that the rule will impose any meaningful adverse economic impact upon private or public entities in rural areas. In addition, it should be noted that Part 418, which establishes the application and financial requirements for mortgage loan servicers, authorizes the Superintendent to reduce or waive the otherwise applicable financial responsibility requirements in the case of mortgage loans servicers that service not more than 12 mortgage loans or more than \$5,000,000 in aggregate mortgage loans in New York and which do not collect tax or insurance payments. The Superintendent is also authorized to reduce or waive the financial responsibility requirements in other cases for good cause. The Department believes that this will ameliorate any burden on mortgage loan servicers operating in rural areas.

Rural Area Participation: The Department issued a draft of Part 419 in December 2009 and held meetings with and received comments from industry and consumer groups following the release of the draft rule. The Department also maintains continuous contact with large segments of the servicing industry through its regulation of mortgage bankers and brokers and its work in the area of foreclosure prevention. The Department likewise maintains close contact with a variety of consumer groups through its community outreach programs and foreclosure mitigation programs. The Department has utilized this knowledge base in drafting the regulation.

Job Impact Statement

Article 12-D of the Banking Law, as amended by the Mortgage Lending Reform Law (Ch. 472, Laws of 2008), requires persons and entities which engage in the business of servicing mortgage loans after July 1, 2009 to be registered with the Superintendent. Part 418 of the Superintendent's Regulations, initially adopted on an emergency basis on July 1, 2009, sets forth the application, exemption and approval procedures for registration as a mortgage loan servicer, as well as financial responsibility requirements for applicants, registrants and exempted persons.

Part 419 addresses the business practices of mortgage loan servicers in connection with their servicing of residential mortgage loans. Thus, this part addresses the obligations of mortgage loan servicers in their communications, transactions and general dealings with borrowers, including the handling of consumer complaints and inquiries, handling of escrow payments, crediting of payments, charging of fees, loss mitigation procedures and provision of payment histories and payoff statements. This part also imposes certain recordkeeping and reporting requirements in order to enable the Superintendent to monitor services' conduct and prohibits certain practices such as engaging in deceptive business practices.

Compliance with Part 419 is not expected to have a significant adverse effect on jobs or employment activities within the mortgage loan servicing industry. The vast majority of mortgage loan servicers are sophisticated financial entities that service millions, if not billions, of dollars in loans and have the experience, resources and systems to comply with the requirements of the rule. Moreover, many of the requirements of the rule reflect derive from federal or state laws and reflect existing best industry practices.

New York State Gaming Commission

NOTICE OF ADOPTION

To Allow Harness Tracks to Run Races Solely for New York-Bred Horses and Provide That Conditions May be Written for Such Races

I.D. No. SGC-40-15-00003-A

Filing No. 1021

Filing Date: 2015-11-24

Effective Date: 2015-12-09

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

Action taken: Amendment of section 4108.8 of Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 103(2), 104(1), (19) and 307-a

Subject: To allow harness tracks to run races solely for New York-bred horses and provide that conditions may be written for such races.

Purpose: To conform current rules to new legislation allowing harness tracks in New York to run races limited to New York bred horses.

Text or summary was published in the October 7, 2015 issue of the Register, I.D. No. SGC-40-15-00003-P.

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

Text of rule and any required statements and analyses may be obtained from: Kristen M. 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

Initial Review of Rule

As a rule that does not require a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2020, which is no later than the 5th year after the year in which this rule is being adopted.

Assessment of Public Comment

The Commission received two public comments, both in support of the rule. One was from the Empire State Harness Horsemen's Alliance, an organization comprising Standardbred horsemen's associations throughout New York, which stated that the proposed rule would assist the promotion of Standardbred breeding in New York. A stable owner in western New York stated that the rule proposal would increase opportunities for New York-bred Standardbred horses to race in New York.

Department of Law

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Disclosure Requirements for Condominium Offerors Renting, Rather Than Selling, Unsold Condominium Units

I.D. No. LAW-49-15-00011-P

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

Proposed Action: Addition of section 20.1(c)(8); and amendment of section 20.3(c)(1), (d)(4), (n)(1) and (t)(1) of Title 13 NYCRR.

Statutory authority: General Business Law, section 352-e(6)

Subject: Disclosure requirements for condominium offerors renting, rather than selling, unsold condominium units.

Purpose: To clarify a condominium offeror's disclosure obligations in a newly-constructed, vacant, or non-residential condominium.

Text of proposed rule: A new section 20.1(c)(8) is added to title 13 to read as follows:

(8) *Interim lessee means a purchaser under the plan who takes occupancy to his or her contracted-for unit prior to closing title. The rights and obligations of the interim lessee must be set forth in a writing executed by both sponsor and purchaser.*

Section 20.3(c)(1) of title 13 is amended to read as follows:

(1) Disclose whether sponsor is reserving the right to rent rather than sell units *after the plan has been consummated* and whether sponsor is limiting its right to rent rather than sell *after the plan has been consummated* based on objective articulable criteria, such as a significant decline in market prices of a specific percentage and the conditions upon which the sponsor would resume sales. If sponsor has obtained construction financing, disclose the terms of the construction loan as they apply to the sponsor's obligation to market the units for sale, including any minimum number or percentage of units which must be under contract before the plan can be declared effective, the existence of either a minimum release price set by the lender or a required minimum payment per sale which must be made to the lender in order for the lender to release its lien from the unit being sold, and limits or requirements imposed by the lender for sponsor to rent rather than sell under specified market conditions. If sponsor is reserving an unconditional right to rent rather than sell, the cover of the plan must state in bold print:

BECAUSE SPONSOR IS RETAINING THE UNCONDITIONAL RIGHT TO RENT RATHER THAN SELL UNITS AFTER THE PLAN HAS BEEN CONSUMMATED, THIS PLAN MAY NOT RESULT IN THE CREATION OF A CONDOMINIUM IN WHICH A MAJORITY OF THE UNITS ARE OWNED BY OWNER-OCCUPANTS OR INVESTORS UNRELATED TO THE SPONSOR. (SEE SPECIAL RISKS SECTION OF THE PLAN.)

Further disclose, in the Special Risks section, that because sponsor is not limiting the conditions under which it will rent rather than sell units *after the plan has been consummated*, there is no commitment to sell more units than the 15 percent necessary to declare the plan effective and owner-occupants may never gain effective control and management of the condominium.

Section 20.3(d)(4) of title 13 is amended to read as follows:

(4) Disclose sponsor's intent with regard to the sale of units offered for sale in the plan. Disclose whether sponsor represents that it will endeavor in good faith to sell units rather than rent *after the plan has been consummated*. If sponsor makes a bulk sale of all or some of its unsold units, the transferee successor sponsor is bound by sponsor's representations regarding its commitment to sell units. If sponsor has obtained construction financing, disclose the terms of the construction loan as they apply to the sponsor's obligation to market the units for sale, including any minimum number or percentage of units which must be under contract

before the plan can be declared effective, the existence of either a minimum release price set by the lender or a required minimum payment per sale which must be made to the lender in order for the lender to release its lien from the unit being sold, and limits or requirements imposed by the lender for sponsor to rent rather than sell under specified market conditions. If sponsor has not obtained construction financing or if the construction loan agreement does not include provisions on the terms set forth in the previous sentence, disclose any conditions under which sponsor reserves the right to rent rather than sell *after the plan has been consummated* based on objective articulable criteria, such as a significant decline in market prices of a specific percentage and the conditions under which sponsor would resume sales. If sponsor retains unconditional discretion to rent rather than sell units *after the plan has been consummated*, include on the cover of the plan the warning set forth in section 20.3(c)(1) above and discuss as a special risk.

Section 20.3(n)(1) of title 13 is amended to read as follows:

(1) State whether the owner of the building may rent any unit [that is vacant before the closing] *to a purchaser under the plan as an interim lessee, including prior to consummation of the plan.*

Section 20.3(t)(1) of title 13 is amended to read as follows:

(1) Disclose sponsor's intent with regard to the sale of the units offered in Schedule A, including whether sponsor will endeavor in good faith to sell all of the units in a reasonably timely manner. Disclose any conditions under which sponsor retains the right to rent rather than sell *after the plan has been consummated* based on objective, articulable criteria, such as a significant decline in market prices of a specific percentage and the conditions under which sponsor would resume sales. Disclose any obligations imposed on sponsor by the construction lender with regard to selling and/or renting units. If sponsor retains unconditional discretion to rent rather than sell units *after the plan has been consummated*, include on the cover of the plan the warning set forth in paragraph (c)(1) of this section and discuss as a special risk.

Text of proposed 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

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. New York General Business Law ("G.B.L.") Article 23-A regulates the advertisement, sale, purchase, and investment advice given to securities and other investment vehicles, including real estate syndication offerings such as condominiums. See N.Y.S. C.L.S. G.B.L. §§ 352(1) and 352-e. G.B.L. Section 352-e(2-b) authorizes the Department of Law to "adopt, promulgate, amend and rescind suitable rules and regulations" to carry out the legislative mandates of G.B.L. Section 352-e. See also N.Y.S. C.L.S. G.B.L. § 352-e(6).

2. Legislative Objectives. G.B.L. Section 352-e(1) mandates that before any person may engage in a public offering of cooperative interests in realty, including condominiums, he or she must file with the Department of Law an offering plan that contains "the detailed terms of the transaction" and "such additional information...as will afford potential investors, purchasers and participants an adequate basis upon which to found their judgment." Pursuant to this authority, the Department of Law's governing regulations, Part 20 of Title 13 of the New York Compilation of Codes, Rules & Regulations ("N.Y.C.R.R."), mandate that offerors of newly-constructed, vacant, or non-residential condominiums disclose in their offering plans if they are reserving a right to rent, rather than sell, units in a condominium, and certain risks to purchasers associated therewith. Because these risks can be substantial, the regulations specify both the form and content of these disclosures. See 13 N.Y.C.R.R. §§ 20.3(c)(1); 20.3(d)(4); 20.3(n)(1); and 20.3(t)(1). In recent years, however, the purpose and wording of these disclosures have been misinterpreted. The Department of Law therefore proposes to modify the mandatory disclosure language in 13 N.Y.C.R.R. Part 20 to clarify its content, enhance its adequacy, and dispel any confusion about its purpose.

3. Needs and Benefits. The operational and financial control of a condominium, as well as the ability of its unit owners to resell their units, can be imperiled if an offeror unilaterally elects to rent, rather than sell, most of its condominium units after its offering plan has been consummated. Accordingly, as mentioned above, the Department of Law's existing 13 N.Y.C.R.R. Part 20 regulations mandate that offerors of newly-constructed, vacant, or non-residential condominiums disclose in their offering plans if they are reserving a right to rent, rather than sell, units in a condominium, and certain risks to purchasers associated therewith. See 13 N.Y.C.R.R. §§ 20.3(c)(1); 20.3(d)(4); 20.3(n)(1); and 20.3(t)(1).

However, as mentioned above, the purpose and wording of these mandatory disclosures have been misinterpreted in recent years. Specifi-

cally, counsel for some condominium offerors have advanced a novel interpretation of the language as it presently exists: that it grants the offeror permission to rent units in a newly-constructed or vacant building offer before the offering plan is consummated. Most troublingly, this interpretation recently has been proffered to create confusion about a building's legal status when the condominium offeror has neither consummated nor abandoned its offering plan, but instead operates the building as a rental property while obtaining certain legal, financial, and tax benefits (including Real Property Tax Law Section 421-a benefits) intended only for consummated condominiums. The Department of Law became particularly aware of this problem during its investigation into compliance with the rent-stabilization provisions of Real Property Tax Law Section 421-a.

Such a reading of these requirements is in conflict with G.B.L. Section 352-e and 13 N.Y.C.R.R. Part 20, both of which require additional disclosures and protections for tenants of an occupied residential rental building. See G.B.L. §§ 352-eeee(2); 352-eee(2); and 352-e(2-a)(b). In addition, both G.B.L. Section 352-e and 13 N.Y.C.R.R. Part 20 contemplate that a condominium offeror shall either consummate its public offering, or, in certain circumstances, withdraw or abandon its offering plan. See 13 N.Y.C.R.R. §§ 20.1(l)(2) and 20.5(g).

The Department of Law therefore proposes to modify the mandatory disclosure language in its 13 N.Y.C.R.R. Part 20 regulations in order to: (i) clarify what risk a purchaser assumes when reading the mandatory disclosure language; (ii) advance the statutory objective of G.B.L. Section 352-e; (iii) reduce the potential for abuse stemming from a misinterpretation of the existing regulations' purpose; (iv) clarify that only interim renting by a purchaser in contract is permitted in a newly-constructed or vacant building offer before the offering plan is consummated, unless the offering plan is abandoned; and (v) give greater effect to those other provisions in 13 N.Y.C.R.R. Part 20 which contemplate the eventual consummation, withdrawal, or abandonment of an offering plan.

4. Costs.

(a) Costs to regulated parties. Under the proposed regulatory revisions, certain condominium offerors that may have misinterpreted the existing regulations to permit renting of residential units by non-interim lessees prior to the time an offering plan is consummated would be required to file an amendment either: (i) amending and restating their offering plan to include the legally required disclosures and protections for tenants of an occupied residential rental building, (ii) withdrawing their offering plan, or (iii) abandoning their offering plan. Such condominium offerors would incur one-time costs associated with such a filing, including a \$225.00 amendment filing fee as prescribed by G.B.L. Section 352-e(7) and the legal fees associated with preparing the amendment.

The proposed regulatory revisions do not prevent a condominium offeror who has not rented any residential units prior to consummation of the offering plan (other than to a purchaser in contract pursuant to the terms of an interim lease or interim rental agreement) from consummating the offering plan. Such offerors would not incur any additional costs as a result of the proposed regulatory revisions.

(b) Costs to the agency, the state and local governments. The Department of Law believes that it may incur nominal administrative costs related to processing amendments withdrawing or abandoning offering plans. The Department of Law foresees no costs to any other state or local governments.

(c) Information and methodology upon which the estimate is based. The estimated costs to regulated parties, the agency, and state and local governments is based on the assessment of the Attorney General, in reliance upon data and information maintained by the Department of Law's Real Estate Finance Bureau.

5. Local government mandates. The proposed regulatory revisions do not impose any programs, services, duties, or responsibilities on any county, city, town, village, school district, fire district, or other special district.

6. Paperwork. Besides the aforementioned paperwork associated with filing an amendment to withdraw or abandon an offering plan, the proposed regulatory revisions require no additional reporting or paperwork requirements.

7. Duplication. The proposed regulatory revisions will not duplicate any existing state or federal rule.

8. Alternatives. The Department of Law has considered various alternatives to its proposed regulatory revisions. In particular, the Department of Law issued a guidance document on this topic, as defined by the State Administrative Procedures Act Section 102(14), on March 4, 2014 (and amended on July 10, 2015). Nevertheless, the Department of Law has concluded that the proposed revisions are necessary because they are the most effective means of simultaneously supplying more meaningful disclosure to condominium purchasers, achieving the statutory objective of G.B.L. Section 352-e, and reducing the unintended consequences that stem from a misinterpretation of the existing regulations.

9. Federal Standards. The proposed regulatory revisions do not exceed

any minimum standards of the federal government for the same or similar subject.

10. Compliance Schedule. The proposed regulatory revisions will go into effect upon their filing with the Secretary of State and the publication of a Notice of Adoption in the New York State Register. Once adopted, the revised regulations will apply to any and all offering plans submitted to the Department of Law pursuant to 13 N.Y.C.R.R. Part 20. No additional time is required to enable regulated parties to achieve compliance with the proposed regulatory revisions.

Regulatory Flexibility Analysis

1. Effect of rule. The proposed regulatory revisions will clarify the existing disclosure obligations of certain condominium offerors, supply prospective purchasers with more adequate risk disclosure, reduce regulatory misinterpretation and certain unintended consequences stemming therefrom, and clarify when interim renting is permitted. The proposed regulatory revisions may affect certain small businesses: specifically, condominium offerors that may have misinterpreted the existing regulations as permitting renting prior to the time an offering plan is consummated. However, the majority of offering plans submitted to the Department of Law are sponsored by single-purpose limited liability companies that are directly affiliated with larger entities. The State Administrative Procedure Act ("S.A.P.A.") Section 102(8) defines a small business as, "[a]ny business which is resident in this state, independently owned and operated and that employs 100 or less people." Accordingly, the Department of Law believes that very few small businesses, as defined by S.A.P.A. Section 102(8), will be affected by the proposed regulatory revisions.

Under the proposed regulatory revisions, the aforementioned condominium offerors would be required to file an amendment either: (i) amending and restating their offering plan, (ii) withdrawing their offering plan, or (iii) abandoning their offering plan. The proposed regulatory revisions do not prevent a condominium offeror who has not rented any residential units prior to consummation of the offering plan (other than to a purchaser in contract pursuant to the terms of an interim lease or interim rental agreement) from consummating the offering plan. The proposed regulatory revisions will have no adverse effect on any local or state government, and require no action on their part.

2. Compliance requirements. The proposed regulatory revisions do not require local governments to undertake any new reporting or record keeping procedures.

As mentioned above, certain condominium offerors that may have misinterpreted the existing regulations as permitting renting prior to the time an offering plan is consummated would be required to file an amendment either: (i) amending and restating their offering plan, (ii) withdrawing their offering plan, or (iii) abandoning their offering plan. Such condominium offerors would incur one-time costs associated with such a filing, including a \$225.00 amendment filing fee as prescribed by New York General Business Law ("G.B.L.") Section 352-e(7) and the legal fees associated with preparing the amendment.

The proposed regulatory revisions do not impose any additional compliance requirements on condominium offerors who have not rented any residential units prior to consummation of the offering plan (other than to a purchaser in contract pursuant to the terms of an interim lease or interim rental agreement). Nothing in the proposed regulatory revisions prevents such offerors from consummating their offering plan.

3. Professional services. Local governments will not need to employ any professional services to comply with the proposed regulatory revisions. The proposed regulatory revisions will require certain condominium offerors to incur the professional costs associated with the preparation of an amendment to the offering plan, such as the aforementioned legal fees.

4. Compliance costs. The Department of Law foresees no initial capital costs nor any additional annual costs to local governments as a result of compliance with the proposed regulatory revisions. The Department of Law also foresees no annual cost to regulated businesses as a result of continuing compliance with the proposed regulatory revisions.

In terms of initial capital costs to regulated businesses, the proposed regulatory revisions would require certain condominium offerors that may have misinterpreted the existing regulations as permitting renting prior to the time an offering plan is consummated to file an amendment either: (i) amending and restating their offering plan, (ii) withdrawing their offering plan, or (iii) abandoning their offering plan. Such condominium offerors would incur one-time costs associated with such a filing, including a \$225.00 amendment filing fee as prescribed by G.B.L. Section 352-e(7) and the legal fees associated with preparing the amendment. These costs will not vary depending on the type and/or size of the regulated business. Condominium offerors who have not rented any residential units prior to consummation (other than to a purchaser in contract pursuant to the terms of an interim lease or interim rental agreement) will not incur any additional costs as a result of the proposed regulatory revisions.

5. Economic and technological feasibility. Compliance with the proposed regulatory revisions is technologically feasible for small businesses and local governments, as the proposed regulatory revisions contain no technological requirements. Compliance is also economically feasible; the proposed regulatory revisions impose no demonstrable costs on local governments and impose minimal costs to certain small businesses (as detailed above).

6. Minimizing adverse impact. The proposed regulatory revisions do not affect local governments, and therefore have no adverse economic impact on them. The adverse economic impact on small businesses will be minimal: other than the aforementioned potential filing and legal fees, the proposed regulatory revisions will have no adverse economic impact on small businesses.

The Department of Law has considered various approaches fashioning the proposed regulatory revisions, including those set forth in S.A.P.A. Section 202-b(1). In particular, the Department of Law issued a guidance document on this topic, as defined by S.A.P.A. Section 102(14), on March 4, 2014 (and amended on July 10, 2015). Nevertheless, the Department of Law has concluded that the proposed regulatory revisions are the most effective means of simultaneously supplying more meaningful disclosure to condominium purchasers, achieving the statutory objective of G.B.L. Section 352-e, and reducing the unintended consequences that stem from a misinterpretation of the existing regulations.

7. Federal standards. The proposed regulatory revisions do not exceed any minimum standards of the federal government for the same or similar subject.

8. Small business and local government participation. To ensure that small businesses and local governments have an opportunity to participate in the rule making process as required by S.A.P.A. Section 202-b(6), a copy of the proposed regulatory revisions will be sent to members of the Bar who represent offerors and purchasers of condominiums. Copies of the proposed regulatory revisions regulations will also be posted on the Department of Law's website.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas. The proposed regulatory revisions apply uniformly throughout the state, including all rural areas. Executive Law, Article 19-F Rural Affairs Act, Section 481(7) defines a rural area as a county with a population of less than 200,000. New York currently has 44 rural areas. However, the vast majority of the offering plans submitted to the Department of Law are for properties in New York City and its suburbs. Accordingly, the impact of the proposed regulatory revisions on both rural condominium offerors and rural condominium purchasers is likely to be very minimal.

2. Reporting, recordkeeping, and other compliance requirements. The proposed regulatory revisions do not require new obligations in terms of reporting or recordkeeping in rural areas.

Under the proposed regulatory revisions, certain condominium offerors operating in rural areas that may have misinterpreted the existing regulations to permit renting of residential units by non-interim lessees prior to the time an offering plan is consummated would be required to file an amendment either: (i) amending and restating their offering plan to include the legally required disclosures and protections for tenants of an occupied residential rental building, (ii) withdrawing their offering plan, or (iii) abandoning their offering plan. Such condominium offerors would incur one-time costs associated with such a filing, including a \$225.00 amendment filing fee as prescribed by New York General Business Law ("G.B.L.") Section 352-e(7) and the legal fees associated with preparing the amendment.

The proposed regulatory revisions do not prevent a condominium offeror who has not rented any residential units prior to consummation of the offering plan (other than to a purchaser in contract pursuant to the terms of an interim lease or interim rental agreement) from consummating the offering plan. Therefore, such offerors are not subject to any additional reporting, record keeping, or other compliance requirements as a result of the proposed regulatory revisions.

3. Costs. The Department of Law foresees no initial capital costs nor any additional annual costs to rural public entities as a result of compliance with the proposed regulatory revisions. The Department of Law also foresees no annual cost to rural private entities as a result of continuing compliance with the proposed regulatory revisions.

In terms of initial capital costs to private entities operating in rural areas, certain condominium offerors operating in rural areas that may have misinterpreted the existing regulations to permit renting of residential units by non-interim lessees prior to the time an offering plan is consummated would be required to file an amendment either: (i) amending and restating their offering plan to include the legally required disclosures and protections for tenants of an occupied residential rental building, (ii) withdrawing their offering plan, or (iii) abandoning their offering plan. Such condominium offerors would incur one-time costs associated with such a filing, including a \$225.00 amendment filing fee as prescribed by

G.B.L. Section 352-e(7) and the legal fees associated with preparing the amendment. These costs will not vary depending on the type and/or size of the regulated business. Condominium offerors who have not rented any residential units prior to consummation (other than to a purchaser in contract pursuant to the terms of an interim lease or interim rental agreement) will not incur any additional costs as a result of the proposed regulatory revisions.

4. Minimizing adverse impact. The proposed regulatory revisions do not affect local governments in rural areas, and therefore will have no adverse economic impact on them. The adverse economic impact on small businesses will be minimal: other than the aforementioned potential filing and legal fees, the proposed regulatory revisions should have no adverse economic impact on the very few condominium offerors operating in rural areas.

The Department of Law has considered various approaches fashioning the proposed regulatory revisions, including those set forth in the State Administrative Procedure Act (“S.A.P.A.”) Section 202-bb(2). In particular, the Department of Law issued a guidance document on this topic, as defined by S.A.P.A. Section 102(14), on March 4, 2014 (and amended on July 10, 2015). Nevertheless, the Department of Law has concluded that the proposed regulatory revisions are the most effective means of simultaneously supplying more meaningful disclosure to condominium purchasers, achieving the statutory objective of G.B.L. Section 352-e, and reducing the unintended consequences that stem from a misinterpretation of the existing regulations.

5. Rural area participation. To ensure that persons and entities in rural areas have an opportunity to participate in the rule making process as required in S.A.P.A. Section 202-bb(7), a copy of the proposed regulatory revisions will be sent to members of the Bar who represent offerors and purchasers of condominiums. Copies of the proposed regulatory revisions will also be posted on the Department of Law’s website.

Office of Mental Health

NOTICE OF ADOPTION

Implementation of the Protection of People with Special Needs Act and Reforms to Incident Management

I.D. No. OMH-39-15-00002-A

Filing No. 1016

Filing Date: 2015-11-23

Effective Date: 2015-12-09

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

Action taken: Amendment of Parts 501 and 550; repeal of Part 524; and addition of new Part 524 to Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 7.07, 7.09 and 31.04

Subject: Implementation of the Protection of People with Special Needs Act and reforms to incident management.

Purpose: To enhance protections for people with mental illness served in the OMH system.

Substance of final rule: The Office of Mental Health (OMH) is adopting as final the repeal of 14 NYCRR Part 524 (Incident Management Programs) and addition of a new 14 NYCRR Part 524 (Incident Management Programs), as well as the amendments to 14 NYCRR Part 501 (Mental Health Services – General Provisions) and Part 550 (Criminal History Record Checks). The regulations are intended to conform OMH’s regulations to Chapter 501 of the Laws of 2012 (Protection of People with Special Needs Act or PPSNA). Specifically, the amendments:

- Amend 14 NYCRR Part 501 by adding a new Subdivision (a) to Section 501.5, “Obsolete or Outdated References,” that replaces any reference throughout OMH regulations to the Commission on Quality of Care and Advocacy for Persons with Disabilities with a reference to the Justice Center for the Protection of People with Special Needs.

- Repeal and revise 14 NYCRR Part 524 (Incident Management) to incorporate categories of “reportable incidents” as established by the PPSNA and includes enhanced provisions regarding incident investigations. The amendments make changes related to definitions, reporting, investigation, notification and committee review of events and situations that occur in providers of mental health services licensed or operated by OMH. It is OMH’s expectation that implementation of these amendments will enhance safeguards for persons with mental illness,

which, in turn, will allow individuals to focus on their recovery. The amendments also require distribution of the Code of Conduct, developed by the Justice Center, to all employees. Providers must maintain signed documentation from such employees, indicating that they have received, and understand, the Code.

- Revise 14 NYCRR Part 550 to facilitate and implement the consolidation of the criminal background check function in the Justice Center, and to make other conforming changes to the criminal background check function established by the PPSNA.

OMH has made minor, non-substantive changes to the final adopted rule. They are as follows:

- Added clarifying language to Section 524.7(b) to ensure that falls are to be reported as significant incidents only when they occur in inpatient or residential settings. This is already within the definition of “Falls”, but staff found it confusing when paired with the “or under staff supervision” language found there.

- Added language to Section 524.8(g) to provide consistency with provisions in OASAS regulations with respect to allegations of abuse or neglect which appear to be impossible or incredible.

- Streamlined redundant language in Section 524.9(c)(1) regarding investigations.

- Removed the phrase “45 days from completion” from Section 524.13(b)(4), which was outdated and added clarifying language to reflect the current practice of 45 days from acceptance of the report by the Justice Center.

Final rule as compared with last published rule: Nonsubstantive changes were made in sections 524.7(b), 524.8(g), 524.9(c)(1) and 524.13(b)(4).

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

Revised Regulatory Impact Statement

A revised Regulatory Impact Statement is not included with this notice as the changes made to the final adopted rule do not necessitate a change to this document. The changes are non-substantive and serve to provide clarification and improve readability.

Revised Regulatory Flexibility Analysis

A revised Regulatory Flexibility Analysis for Small Businesses and Local Governments is not included with this notice as the changes made to the final adopted rule do not necessitate a change to this document. The changes are non-substantive and serve to provide clarification and improve readability. The amendments to 14 NYCRR Parts 501, 524 and 550 will not have an adverse economic impact upon small businesses or local governments.

Revised Rural Area Flexibility Analysis

A revised Rural Area Flexibility Analysis is not included with this notice as the changes made to the final adopted rule do not necessitate a change to this document. The changes are non-substantive and serve to provide clarification and improve readability. The amendments to 14 NYCRR Parts 501, 524 and 550 will not have an adverse economic impact upon rural areas.

Revised Job Impact Statement

A revised Job Impact Statement is not included with this notice as the changes made to the final adopted rule do not necessitate a change to this document. The changes are non-substantive and serve to provide clarification and improve readability.

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 comments from a provider and a trade organization in response to OMH’s proposed rule making amending 14 NYCRR Parts 501, 524 and 550 – Implementation of the Protection of People with Special Needs Act and Reforms to Incident Management.

The comments are addressed below:

Comment: The terms Employee or Staff are defined in Section 524.4(c) as an administrator, employee, consultant, volunteer or student affiliated with a mental health provider as such term is defined in this Section, or a person employed by an entity which has a contract with such a program or provider, but shall not include employees or volunteers who are also patients of the mental health provider. The commenter stated that there are services where consumers are expected to be an integral part of the program operation with substantial contact with the program clients, such as the Peer Support Specialist. The commenter sought confirmation that these individuals would not be included as employees if they also receive services from the agency.

Response: This comment does not require a change to the regulations and will be addressed in guidance for providers.

Comment: The term Neglect in Section 524.5(n) states... (1) failure to provide supervision, including lack of proper supervision that results in conduct between persons receiving services that would constitute abuse if committed by a custodian." In most Treatment Apartments for Adults under Part 595 of 14 NYCRR, there is no staff supervision. Staff visit to provide psychiatric rehabilitation services. Provider is unclear how an interaction between roommates would be considered neglect by staff and seeks clarification.

Response: This definition represents the statutory definition of Neglect in Social Services Law Section 488. Clarification will be provided in guidance for providers.

Comment: Paragraphs (1) through (7) in Section 524.14(a) Special Investigations all reference inpatient programs. Provider requested clarification whether this pertains only to inpatient (in the hospital) or whether this includes residents of OMH-licensed residential programs.

Response: Clarification will be provided in guidance for providers.

Comment: A trade organization stated that OMH should take into consideration any unintended adverse consequences that may arise as a result of incorporating the Justice Center's regulations and guidelines into OMH's own regulations. The commenter stated it is supportive of the Justice Center's mission but has concerns regarding the agency's operations and its impact on providers. Imposing additional burdens on providers that are cumbersome, and in many cases, still ill-defined, would not help achieve the Justice Center's goal.

Response: This comment does not require a change to the regulations.

Comment: The proposed changes to the incident category definitions in Section 524.5 state that "nothing contained herein shall be construed as restricting the discretion of the Justice Center in categorizing incident reports." The commenter's hospital members have advised that they have experienced problems with receiving conflicting information from the Justice Center and OMH regarding incident categories. The commenter is concerned with this proposed provision, as it appears to give the Justice Center the flexibility to categorize incidents as abuse and/or neglect, even if the incident does not fall into the definitions of abuse or neglect in Part 524.

Response: This comment does not require a change to the regulations. OMH will continue to work with the Justice Center to resolve identified issues and concerns.

Comment: The trade organization expressed concern that the regulations do not sufficiently ease the numerous duplicative mandated reporting requirements that have been imposed by the Justice Center. Proposed changes in Section 524.8(e) still require multiple mandated reporters to submit reports concerning the same incident. In addition, it imposes an added burden on providers, as it requires providers "to establish written protocols to ensure reports involving multiple mandated reporters are properly made and documented."

Response: This comment does not require a change to the regulations. OMH will continue to work with the Justice Center to resolve identified issues and concerns.

Comment: The commenter stated that OMH should work with the Justice Center to eliminate the need for multiple reports regarding the same incident. OMH should eliminate the requirement that providers establish protocols for reports involving multiple mandated reporters, and instead have OMH develop those protocols.

Response: This comment does not require a change to the regulations. OMH will continue to work with the Justice Center to resolve identified issues and concerns.

Comment: Section 524.8(f) states that OMH "shall develop protocols in consultation with the Justice Center to assist providers in appropriately and therapeutically responding in circumstances where patients have a demonstrated pattern of frequently reporting allegations of abuse or neglect that are not reasonably reliable (i.e., there is no possibility that an allegation is true)." The commenter supports efforts to streamline processes related to the Justice Center in a way that is mindful of current treatment, and believes that OMH should continue to look at this area, including ways to eliminate the multiple false reports made through the Justice Center's reporting system.

Response: This comment does not require a change to the regulations. OMH will continue to work with the Justice Center to resolve identified issues and concerns.

Comment: The commenter stated that OMH should more closely align its regulation with the proposed amendments to 14 NYCRR 836 set forth by the New York State Office of Alcoholism and Substance Abuse Services (OASAS). Section 836.6(g) permits providers to delay discovery and immediate reporting for up to 24 hours to conduct a preliminary review of an allegation of abuse or neglect when the person making the allegation has a documented history of making false reports or the person has a documented behavioral or psychological condition that would tend

to cause the person to make a false report and no other person has come forward as a witness to such allegation. The commenter believes that OMH should adopt a similar type of delay in reporting to address the possibility of a false allegation.

Response: The substance of this language was intended to be in the protocols developed by OMH in consultation with the Justice Center. However, clarifying language similar to 14 NYCRR Section 836 has been added in Section 524.8(g) to make OMH regulations consistent with those of OASAS.

Comment: Section 524.9(c)(1) states that for investigations conducted by OMH and mental health providers all such "investigations and inspections of clinical records shall be made by persons competent to conduct such investigations and inspections." This provision is not made applicable to investigations done by the Justice Center, nor to its investigators. The commenter stated that OMH should require the same such competency of Justice Center investigators as it does for OMH investigators.

Response: This comment does not require a change in regulations. It reflects a statutory requirement in Mental Hygiene Law Section 31.09.

Comment: Section 524.9(c)(4) requires providers immediately to begin conducting any assessment or review necessary once the provider is made aware of a report to the Justice Center (or when a patient death has occurred). This provision prohibits the provider from taking any statements from witnesses to the incident – only the designated investigating entity may do so. The commenter believes this is counterproductive as it hampers the provider's ability to conduct an assessment or review, and that OMH should eliminate this prohibition.

Response: OMH will continue to work with the Justice Center to resolve identified issues and concerns.

Comment: The proposed changes to the incident category definitions in § 524.5 state that "nothing contained herein shall be construed as restricting the discretion of the Justice Center in categorizing incident reports." The commenter's hospital members have advised that they have had problems with receiving conflicting information from the Justice Center and OMH regarding incident categories. The commenter is concerned with this proposed provision because it appears to give the Justice Center the flexibility to categorize incidents as abuse and/or neglect, even if the incident does not fall into the definitions of abuse or neglect in Part 524.

Response: This comment does not require a change to the regulations. OMH will continue to work with the Justice Center to resolve identified issues and concerns.

Public Service Commission

NOTICE OF ADOPTION

Submetering of Electricity

I.D. No. PSC-11-15-00024-A

Filing Date: 2015-11-20

Effective Date: 2015-11-20

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

Action taken: On 11/19/15, the PSC adopted an order approving Island House Tenants Corporation's (Island House) Notice of Intent to submeter electricity at 551, 555 and 575 Main 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: Submetering of electricity.

Purpose: To approve Island House's Notice of Intent to submeter electricity.

Substance of final rule: The Commission, on November 19, 2015, adopted an order approving the Notice of Intent filed by Island House Tenants Corporation and Island House Preservation Partners, LLC, to submeter electricity at 551, 555 and 575 Main Street, New York, New York, 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.

(15-E-0077SA1)

NOTICE OF ADOPTION**Area Code Overlay****I.D. No.** PSC-15-15-00006-A**Filing Date:** 2015-11-23**Effective Date:** 2015-11-23

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

Action taken: On 11/19/15, the PSC adopted an order approving North American Numbering Plan Administrator's (NANPA) petition to activate a new area code overlay for the existing 212/646/917 Numbering Plan Area (NPA).

Statutory authority: Public Service Law, section 97(2)

Subject: Area code overlay.

Purpose: To approve NANPA's petition to activate a new area code overlay.

Substance of final rule: The Commission, on November 19, 2015, adopted an order approving the petition of North American Numbering Plan Administrator to activate a new area code overlay for the existing 212/646/917 Numbering Plan Area, 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.

(15-C-0168SA1)

NOTICE OF ADOPTION**Approval of Amendments to Regulations on USOA and Reporting Requirements****I.D. No.** PSC-31-15-00021-A**Filing No.** 1020**Filing Date:** 2015-11-24**Effective Date:** 2015-11-24

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

Action taken: Amendment of Parts 10, 167 and 312 of Title 16 NYCRR.

Statutory authority: Public Service Law, sections 4, 5, 65 and 66

Subject: Approval of amendments to regulations on USOA and reporting requirements.

Purpose: To approve amendments to regulations on USOA and reporting requirements.

Substance of final rule: The Commission, on November 19, 2015, adopted a memorandum and resolution approving amendments to regulations on Uniform System of Accounts (USOA) and reporting requirements in 16 NYCRR Part 10, 167 and 312. The revisions pertain to 16 NYCRR Section 10.2(b), to reference the Federal Energy Regulatory Commission USOA as of April 1, 2015, and 16 NYCRR Parts 167 and 312 to add new sections 167.5, 167.6, 312.5, and 312.6 to establish separate revenue accounts and instructions to record delivery revenues for customers served by energy service providers.

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

The agency received no public comment.

(14-M-0450SA1)

NOTICE OF ADOPTION**Rehearing and Clarification****I.D. No.** PSC-32-15-00008-A**Filing Date:** 2015-11-20**Effective Date:** 2015-11-20

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

Action taken: On 11/19/15, the PSC adopted an order granting Central Hudson Gas and Electric Corporation (Central Hudson) a rehearing and clarification of three aspects of the June 17, 2015 Order Approving Rate Plan.

Statutory authority: Public Service Law, sections 4, 22 and 66

Subject: Rehearing and clarification.

Purpose: To grant Central Hudson a rehearing and clarification.

Substance of final rule: The Commission, on November 19, 2015, adopted an order granting Central Hudson Gas and Electric Corporation a rehearing and clarification of three aspects of the June 17, 2015 Order Approving Rate Plan, 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-E-0318SA2)

NOTICE OF ADOPTION**Alliance's Financing Limit****I.D. No.** PSC-32-15-00011-A**Filing Date:** 2015-11-19**Effective Date:** 2015-11-19

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

Action taken: On 11/19/15, the PSC adopted an order approving Alliance Energy New York, LLC, Alliance NYGT, LLC and Alliance Energy Transmission, LLC's (Alliance) petition to increase its financing limit from \$30 million to \$75 million.

Statutory authority: Public Service Law, section 69

Subject: Alliance's financing limit.

Purpose: To approve Alliance's petition to increase its financing limit.

Substance of final rule: The Commission, on November 19, 2015, adopted an order approving the petition of Alliance Energy New York, LLC, Alliance NYGT, LLC and Alliance Energy Transmissions, LLC, to increase its financing limit from \$30 million to \$75 million, 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.

(15-M-0406SA1)

NOTICE OF ADOPTION

Cricket Valley's Financing Arrangement

I.D. No. PSC-34-15-00016-A

Filing Date: 2015-11-19

Effective Date: 2015-11-19

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

Action taken: On 11/19/15, the PSC adopted an order approving Cricket Valley Energy Center, LLC's (Cricket Valley) petition for a financing arrangement to enter into debt instruments, up to the maximum amount of \$1.5 billion.

Statutory authority: Public Service Law, section 69

Subject: Cricket Valley's financing arrangement.

Purpose: To approve Cricket Valley's financing arrangement.

Substance of final rule: The Commission, on November 19, 2015, adopted an order approving Cricket Valley Energy Center, LLC's petition for authority to enter into debt instruments in an amount not to exceed \$1.5 billion, 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.

(15-E-0454SA1)

NOTICE OF ADOPTION

Waiver of Rules

I.D. No. PSC-34-15-00025-A

Filing Date: 2015-11-20

Effective Date: 2015-11-20

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

Action taken: On 11/19/15, the PSC adopted an order denying Walking Meadows Development (Walking Meadows) a waiver of Commission and utility tariff rules related to extensions of electric and gas service.

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

Subject: Waiver of rules.

Purpose: To deny Walking Meadows a waiver of rules.

Substance of final rule: The Commission, on November 19, 2015, adopted an order denying Walking Meadows Development a waiver of 16 NYCRR § 100.3(b) and Niagara Mohawk Power Company d/b/a National Grid tariff rules; P.S.C. No. 219 — Gas, Rule 10.4 and P.S.C. No. 220 — Electricity, Rule 16.6, relating to extensions of electric and gas service, 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.

(15-M-0435SA1)

NOTICE OF ADOPTION

Transfer of Street Lighting Facilities

I.D. No. PSC-36-15-00026-A

Filing Date: 2015-11-19

Effective Date: 2015-11-19

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

Action taken: On 11/19/15, the PSC adopted an order approving New York State Gas and Electric Corporation's (NYSEG) petition to transfer street lighting facilities to the Village of Horseheads.

Statutory authority: Public Service Law, section 70

Subject: Transfer of street lighting facilities.

Purpose: To approve NYSEG's petition to transfer street lighting facilities to the Village of Horseheads.

Substance of final rule: The Commission, on November 19, 2015, adopted an order approving New York State Gas and Electric Corporation's petition to transfer street lighting facilities to the Village of Horseheads, 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.

(15-E-0471SA1)

NOTICE OF ADOPTION

Annual Operating Revenues and Restoration of Service Charges

I.D. No. PSC-37-15-00011-A

Filing Date: 2015-11-23

Effective Date: 2015-11-23

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

Action taken: On 11/19/15, the PSC adopted an order authorizing William K. Green (Green) to increase its annual operating revenues by \$3,050 or 45%, and to modify its restoration of service charges.

Statutory authority: Public Service Law, sections 4(1), 5(1)(f), 89-c(1), (3), (10)(a), (b) and (f)

Subject: Annual operating revenues and restoration of service charges.

Purpose: To authorize Green to increase its annual operating revenues and modify its restoration of service charges.

Substance of final rule: The Commission, on November 19, 2015, adopted an order authorizing William K. Green to increase its annual operating revenues by \$3,050 or 45%, and to modify its restoration of service charges to be consistent with charges in the standard small water company tariff, effective December 1, 2015, 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.

(15-W-0508SA1)

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

Petition to Waive Monthly Billing for Certain Net-Metered Customers

I.D. No. PSC-49-15-00006-P

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

Proposed Action: The Public Service Commission is considering a petition filed by Central Hudson Gas & Electric Corporation to waive monthly billing for certain net-metered customers.

Statutory authority: Public Service Law, sections 5(1), 65(1), (2), (3), 66(1), (2), (3), (5), 66-j and 66-l

Subject: Petition to waive monthly billing for certain net-metered customers.

Purpose: To consider the request of Central Hudson to continue bimonthly meter reading and billing for certain net-metered customers.

Substance of proposed rule: On November 18, 2015, Central Hudson Gas & Electric Corporation filed a petition to waive the monthly billing requirement for certain net-metered customers adopted in Cases 14-E-0318 and 14-G-0319 in the Order Approving Rate Plan issued and effective June 17, 2015. The Public Service Commission is considering whether to approve, deny or modify, in whole or part, the request to waive the monthly billing requirement and to take other actions necessary to address the petition.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.ny.gov/f96dir.htm>. For questions, contact: 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-E-0318SP4)

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

Petition to Transfer Assets of AOMNE to NYAW

I.D. No. PSC-49-15-00007-P

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

Proposed Action: The Commission is considering the joint petition of New York American Water, Inc. (NYAW) and Association of Owners of Mill Neck Estates, Inc. (AOMNE) to transfer ownership of AOMNE to NYAW for \$133,000.

Statutory authority: Public Service Law, section 89-h

Subject: Petition to transfer assets of AOMNE to NYAW.

Purpose: To consider the petition to transfer assets of AOMNE to NYAW.

Substance of proposed rule: On November 2, 2015, New York American Water Company, Inc. (NYAW) and Association of Owners of Mill Neck Estates, Inc. (AOMNE) filed a joint petition under Public Service Law 89-h seeking approval of the transfer of AOMNE to NYAW for a price of \$133,000. 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.

(15-W-0639SP1)

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

Request of the New York Independent System Operator, Inc. to Incur Indebtedness

I.D. No. PSC-49-15-00008-P

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

Proposed Action: The Commission is considering a petition filed on November 10, 2015, by the New York Independent System Operator, Inc. (NYISO), to incur indebtedness for a term in excess of twelve months.

Statutory authority: Public Service Law, sections 4(1), 5(2), 65(1), 66(1), (2), (4) and (5) and 69

Subject: Request of the New York Independent System Operator, Inc. to incur indebtedness.

Purpose: To consider a petition filed by the New York Independent System Operator, Inc. to incur indebtedness.

Substance of proposed rule: The Public Service Commission is considering a Petition filed by the New York Independent System Operator, Inc. (NYISO) on November 10, 2015, seeking approval to incur indebtedness, for a term in excess of twelve months. The Petition seeks to: (i) extend the term of its currently-approved credit facilities consisting of a revolving line of credit and a term loan facility for an additional one-year period until December 31, 2018; (ii) increase the maximum principal amount available under the currently-approved term loan facility by \$25 million to \$125 million to reflect the term extension; and, (iii) enter into a new three-year unsecured term loan credit facility in the amount of \$30 million dedicated to funding the multi-year project for replacing the NYISO's Energy Management System and Business Management System. 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, Department of Public Service, 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-0655SP1)

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

Petition for Rehearing of the Order Establishing Interim Ceilings on the Interconnection of Net Metered Generation

I.D. No. PSC-49-15-00009-P

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

Proposed Action: The Commission is considering a Petition requesting rehearing of the October 16, 2015 Order Establishing Interim Ceilings on the Interconnection of Net Metered Generation submitted by the Joint Utilities on November 16, 2015.

Statutory authority: Public Service Law, sections 2(2-a) - 2(2-d), (4),

5(2), 22, 65(1), (2), (3), 66(1), (2), (3), (4), (5), (9), (12), (12-a), 66-c and 66-j

Subject: Petition for rehearing of the Order Establishing Interim Ceilings on the Interconnection of Net Metered Generation.

Purpose: To consider a Petition for rehearing of the Order Establishing Interim Ceilings on the Interconnection of Net Metered Generation.

Substance of proposed rule: The Public Service Commission is considering a petition submitted on November 16, 2015 by Orange and Rockland Utilities, Inc., Consolidated Edison Company of New York, Inc., Central Hudson Gas & Electric, Niagara Mohawk Power Corporation d/b/a National Grid, New York State Electric & Gas Corporation, and Rochester Gas and Electric Corporation (collectively, the Joint Utilities) requesting rehearing of the Order Establishing Interim Ceilings on the Interconnection of Net Metered Generation issued in Case 15-E-0407 on October 16, 2015. The Joint Utilities request rehearing regarding the Commission’s decision to modify the ceilings on the interconnection of net metered generation. The Commission may reaffirm its initial decision or adhere to it with additional rationale, modify the decision, reverse the decision, or take such other or further action as it deems necessary.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.ny.gov/f96dir.htm>. For questions, contact: Elaine Agresta, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2660, email: elaine.agresta@dps.ny.gov

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

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

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

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

(15-E-0407SP2)

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

Proposed Revisions to Rule 34—Economic Development Programs and SC No. 12—Special Contract Rates

I.D. No. PSC-49-15-00010-P

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

Proposed Action: The Commission is considering a proposal by Niagara Mohawk Power Corporation d/b/a National Grid to revise Rule 34—Economic Development Programs and Service Classification No. 12 - Special Contract Rates, P.S.C. No. 220—Electricity.

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

Subject: Proposed revisions to Rule 34—Economic Development Programs and SC No. 12—Special Contract Rates.

Purpose: To consider revisions to Rule 34—Economic Development Programs and SC No. 12—Special Contract Rates.

Substance of proposed rule: The Public Service Commission (Commission) is considering modifications proposed by Niagara Mohawk Power Corporation d/b/a National Grid (NMPC) to P.S.C. No. 220 – Electricity. NMPC proposes to revise Rule 34 – Economic Development Programs to (1) describe how notification from the New York Power Authority (NYPA) is received by NMPC when a customer account received Recharge New York (RNY) service, (2) eliminate language that states the Company will revert the customer back to the billing period of the appropriate service classification from calendar month billing when the customer loses its RNY allocation, and (3) eliminate references to contractual supply obligations between NYPA and its customers. NMPC also proposes revisions to Service Classification No. 12 – Special Contract Rates to update the filing procedures for Standardized and Individually Negotiated Contracts. The proposed amendments have an effective date of February 13, 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.

(15-E-0684SP1)

Department of State

**EMERGENCY
RULE MAKING**

Installation of Carbon Monoxide Detecting Devices in Commercial Buildings

I.D. No. DOS-28-15-00004-E

Filing No. 1009

Filing Date: 2015-11-20

Effective Date: 2015-11-20

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

Action taken: Addition of section 1228.4 to Title 19 NYCRR.

Statutory authority: Executive Law, sections 377(1) and 378(5-d)

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

Specific reasons underlying the finding of necessity: This rule is adopted as an emergency measure to preserve public safety and public health and because time is of the essence.

This rule amends the State Uniform Fire Prevention and Building Code (Uniform Code). The Uniform Code is a fire prevention and building code adopted by the State Fire Prevention and Building Code Council (Code Council) pursuant to Article 18 of the Executive Law. The Uniform Code is applicable in all parts of the State except New York City.

Executive Law § 378 sets forth standards which the Uniform Code shall address. Chapter 541 of the Laws of 2014 amended Executive Law § 378 by adding a new subdivision 5-d. Subdivision 5-d provides that the Uniform Code must include “[s]tandards for installation of carbon monoxide detecting devices requiring that the owner of every building that contains one or more restaurants and the owner of every commercial building in the state shall have installed in such building and shall maintain operable carbon monoxide detecting device or devices of such manufacture, design and installation standards as are established by the [Code Council]. Carbon monoxide detecting devices shall only be required if the restaurant or commercial building has appliances, devices or systems that may emit carbon monoxide or has an attached garage.”

This rule implements subdivision 5-d of Executive Law § 378 by adding a new section 1228.4 (entitled “Carbon Monoxide Detection in Commercial Buildings”) to 19 NYCRR Part 1228 (“Additional Uniform Code Provisions”). New section 1228.4 requires the installation of carbon monoxide detecting devices (carbon monoxide alarms or a carbon monoxide detection system) in every commercial building (including every building that contains one or more restaurants) if such building contains a carbon monoxide source, contains a garage or other motor-vehicle-related occupancy and/or is attached to a garage or other motor-vehicle-related occupancy. Section 1228.4 also establishes the manufacture, design, and installation standards for such carbon monoxide detecting devices.

Adoption of this rule on an emergency basis is necessary to protect public safety because the absence of carbon monoxide detection devices in nonresidential occupancies has contributed to instances of illness and death among patrons and employees. The Memorandum in Support of the bill enacting Executive Law § 378(5-d) states that while New York State one- and two-family homes and apartments are required to be equipped with carbon monoxide detectors, restaurants and other businesses are not. This failure to mandate carbon monoxide detectors in commercial buildings has contributed to cases of illness and death among patrons and employees. The Memorandum in support of the companion bill, which amended the New York City administrative code to require carbon mon-

oxide detection in restaurants and other commercial buildings in New York City, references the 2014 carbon monoxide leak that tragically killed a Long Island restaurant manager and sickened nearly 30 people. The carbon monoxide poisoning in this incident came from a malfunctioning water heater flue pipe in the basement of the establishment.

Carbon monoxide is an invisible, odorless gas that is generated by the incomplete combustion of carbonaceous fuels such as fuel oil, natural gas, kerosene and wood. In non fire situations, elevated carbon monoxide levels may be caused by improperly installed or maintained fuel fired appliances, motor vehicles operated in enclosed garages, or using appliances intended for outdoor use indoors during power failures. As carbon monoxide is not detectable by the senses, its presence and concentration can only be determined by instruments such as carbon monoxide detection systems.

By bringing restaurants and commercial buildings onto an equal footing with residences, the Legislature's objective is to provide a safe experience for customers and employees and to reduce the number of deaths and injuries caused by carbon monoxide poisoning.

A prior version of this rule was adopted as an emergency measure and proposed for permanent adoption by Notice of Emergency Adoption and Proposed Rule Making (NEAPRM) filed on June 26, 2015 and published in the State Register on July 15, 2015. The prior version of this rule took effect on June 27, 2015.

The prior version of this rule was previously re-adopted as an emergency measure by Notice of Emergency Adoption filed on September 21, 2015. The re-adoption of the prior version of this rule expired on November 19, 2015.

DOS and the Code Council assessed the comments received during the public comment period for the prior version of this rule, and DOS and the Code Council made a number of non-substantial changes to the prior version of this rule. This rule (i.e., the rule now being adopted) reflects those non-substantial changes.

At its meeting held on November 2, 2015, the State Fire Prevention and Building Code Council (Code Council) found and determined that a adoption of this rule on an emergency basis, as authorized by section 202 of the State Administrative Procedure Act, is required to preserve public safety and general welfare because:

(1) Executive Law § 378 (5-d), as added by Chapter 541 of the Laws of 2014, provides that the Uniform Code must contain provisions requiring the installation of carbon monoxide detecting devices in every commercial building and every building that contains one or more restaurants;

(2) Executive Law § 378 (5-d) became effective on June 27, 2015;

(3) the prior version of this rule became effective as an emergency rule on June 27, 2015;

(4) the emergency re-adoption of the prior version of this rule became effective on September 21, 2015;

(5) the emergency re-adoption of the prior version of this rule will expire on November 19, 2015;

(6) DOS and the Code Council have made non-substantial changes to the prior version of this rule in response to public comments received;

(7) adoption of this rule (which reflects those non-substantial changes) as a permanent measure will not be effective until the Notice of Adoption is published in the State Register;

(8) it is unlikely that the Notice of Adoption relating to the adoption of this rule as a permanent measure will be filed in time for such Notice of Adoption to appear in the State Register before November 19, 2015; and

(9) adopting this rule on an emergency basis, filing the Notice of Emergency Adoption on November 20, 2015, and making the emergency adoption of this rule effective immediately upon the filing of the Notice of Emergency Adoption, are necessary to assure that the Uniform Code will continue to include the provisions contemplated by subdivision 5-d of Executive Law § 378 between November 20, 2015 and the date on which the Notice of Adoption relating to the adoption of this rule as a permanent measure will appear in the State Register.

Subject: Installation of carbon monoxide detecting devices in commercial buildings.

Purpose: To amend the State Uniform Fire Prevention and Building Code (Uniform Code) by adding standards requiring the installation of carbon monoxide detecting devices in every commercial building (including but not limited to every building that contains one or more restaurants), if such building has appliances, devices or systems that may emit carbon monoxide or has an attached garage, and to establish manufacture, design and installation standards for such carbon monoxide detecting devices.

Substance of emergency rule: This rule adds new section 1228.4 to Part 1228 of 19 NYCRR. New section 1228.4 is part of the State Uniform Fire Prevention and Building Code (the Uniform Code). The provisions of new section 1228.4 (entitled "Carbon Monoxide Detection in Commercial Buildings") are summarized as follows:

Subdivision (a) ("Introduction") introduces the new section, which implements standards and requirements regarding carbon monoxide ("CO") detection in certain new and existing commercial.

Subdivision (b) ("Definitions") defines certain terms used in section 1228.4, including: carbon monoxide source; carbon monoxide-producing HVAC system, classroom, commercial building, detection zone, existing commercial building, and new commercial building.

Subdivision (c) ("Commercial buildings required to have carbon monoxide detection") provides that as a general rule, CO detection must be provided in every commercial building that (i) contains any CO source and/or (ii) is attached to a garage and/or (iii) is attached to any other motor-vehicle-related occupancy. These requirements shall apply without regard to whether such commercial building is an existing commercial building or a new commercial building and without regard to whether such commercial building shall or shall not have been offered for sale. However, CO detection shall not be required in:

(1) a commercial building that is classified, in its entirety, in Storage Group S or Utility and Miscellaneous Group U under Chapter 3 of the 2010 Building Code of New York State (the 2010 BCNYS) and occupied only occasionally and only for building or equipment maintenance;

(2) a commercial building that is a "canopy" (as that term is defined in the 2010 Fire Code of New York State); or

(3) a commercial building that is completely unoccupied, during the period when such building is completely unoccupied and other stated conditions are satisfied.

Subdivision (d) ("Detection zones required to be provided with carbon monoxide detection") specifies the detection zones where carbon monoxide detection must be provided. In general, CO detection is required in each detection zone in which at least one "triggering condition" exists.

"Triggering Condition 1" is the presence of any CO source in the detection zone.

"Triggering Condition 2" is the presence in a detection zone of a duct opening or other outlet from a CO-producing HVAC system (subject to certain exceptions stated in the full Text of the rule).

"Triggering Condition 3" is the presence of a garage or other motor-vehicle-related occupancy in location that is adjacent to a detection zone (subject to certain exceptions stated in the full Text of the rule).

If a detection zone other than a classroom (as defined in subdivision b) that would otherwise require CO detection has ambient conditions that would, under normal conditions and with all required ventilation and exhaust systems installed and operating properly, activate CO detection devices, CO detection shall not be required in that detection zone provided that an alternative safety plan for the commercial building in which such detection zone is located shall have been approved by the authority having jurisdiction and implemented.

If a detection zone (other than a classroom) that would otherwise require CO detection is "open" (without sidewalls or drops) on 50 percent or more of its perimeter, and there is no occupiable area within such detection zone that is not open on 50 percent or more of its perimeter, CO detection shall not be required in that detection zone.

Subdivision (e) ("Placement of carbon monoxide detection") specifies that places within a detection zone where the CO detection devices must be located. In the case of a detection zone having an area less than 10,000 square feet, the CO detection must be placed in a central location within such detection zone. In the case of a detection zone having an area 10,000 square feet or larger, CO detection must be placed in a central location within such detection zone and at such additional locations within such detection zone as may be necessary to assure that no point in the detection zone is more than 100 feet from CO detection. In certain cases (more fully described in the full Text of the rule), the additional CO detection will not be required in a detection zone that is 10,000 square feet or larger.

Subdivision (f) ("Detection equipment") provides that CO detection shall be provided by CO alarms complying with subdivision (g) or a CO detection system complying with subdivision (h).

Subdivision (g) ("Carbon monoxide alarms") specifies specifications for CO alarms. In general, CO alarms must be hard-wired, with a battery backup. However, battery-powered CO alarms (powered by a 10-year battery) will be allowed in existing commercial building and in commercial buildings without commercial electric power. In either case, CO alarms must be listed in accordance with Underwriters Laboratory (UL) 2034. Combination CO / smoke alarms shall not be deemed to satisfy the requirements of this section 1228.4. The rule includes an exception that would allow certain previously installed plug-in or cord-type CO alarms, certain previously installed CO alarms powered by a battery with a life of less than 10-years, and certain previously installed combination CO / smoke alarms to remain in place for the remainder of their useful lives.

In new commercial buildings, where a CO alarm is installed in a normally unoccupied detection zone, such CO alarm must be interconnected with a CO alarm that is placed in an adjacent and normally occupied detection zone. A sign that identifies and describes the location of each normally unoccupied detection zone that contains any such interconnected CO alarm must be placed in the proximity of each CO alarm installed in a normally occupied detection zone.

CO alarms must be installed in the locations specified in subdivisions (d) and (e) of section 1228.4.

In general, CO alarms must be installed, operated, and maintained in accordance with the manufacturer's instructions. However, in the event of a conflict between the manufacturer's instructions and the provisions of section 1228.4, the provisions of this section 1228.4 shall control.

Subdivision (h), "Carbon monoxide detection systems," specifies requirements for CO detection systems. CO detection systems must comply with National Fire Protection Association (NFPA) 720. CO detectors shall be listed in accordance with UL 2075.

The CO detectors must be installed in the locations specified in subdivisions (d) and (e) of section 1228.4. In the event of a conflict between the CO detector location requirements specified in subdivisions (d) and (e) and the CO detector location requirements specified in NFPA 720, the location requirements specified in subdivisions (d) and (e) of section 1228.4 shall control.

Combination CO / smoke detectors will be permitted in CO detection systems, provided such combination detectors are listed in accordance with UL 2075 and UL 268.

Notification appliances in CO detection systems must comply with NFPA 720. Notification appliances shall be provided in the locations specified in NFPA 720 or, in the alternative, in the locations specified in subdivisions (d) and (e) and paragraph (4) of subdivision (g) of section 1228.4 as the required locations for CO detection.

The power source for CO detection systems must comply with NFPA 720.

Subdivision (i) ("Additional requirement in Group E occupancies") provides that in a new commercial building that (i) has an occupant load of 31 or more and (ii) is classified, in whole or in part, as Educational Group E under Chapter 3 of the 2010 BCNYS, CO alarm signals shall be automatically transmitted to an approved on-site location that is normally staffed by school personnel during normal school hours.

Subdivision (j) ("Maintenance") provides that CO alarms and CO detection systems must be maintained in accordance with NFPA 720, and that CO alarms and CO detectors that become inoperable or begin producing end-of-life signals must be replaced as soon as practicable.

Subdivision (k) ("Connection of carbon monoxide detection systems to control units and off-premises signal transmission") provides that CO detection systems shall be connected to control units and off-premises signal transmission. All CO detection systems installed in accordance with subdivision (h) of section 1228.4 shall have off-premises signal transmission in accordance with NFPA 720. All CO detection systems in new commercial buildings that are required by section 903 or section 907 of the 2010 Fire Code of New York State to have a fire alarm control panel installed shall have off-premises signal transmission in accordance with NFPA 720. CO detection systems shall not activate a fire signal to a fire alarm control panel. CO detection systems shall not activate any notification appliance that announces a fire alarm or any other alarm that is not distinctive from a fire notification as required by NFPA 72. Where notification of CO detection system is permitted to be transmitted to approved locations, at least one approved notification appliance shall be provided within every building that transmits a signal to an approved location.

Subdivision (l) ("Other Uniform Code provisions relating to carbon monoxide detection") provides that section 1228.4 does not repeal, override, modify or otherwise affect any other provision of the Uniform Code (including but not necessarily limited to section R313.4 of the 2010 RCNYS and section 610 of the 2010 FCNYS) that requires CO detection in any class of buildings, and that any building that is or becomes subject to any such other provision must comply with such other provision. Subdivision (l) further provides that in the case of a building that (1) is subject to section R313.4 of the 2010 RCNYS or section 610 of the 2010 FCNYS and (2) is also a "commercial building" that is subject to section 1228.4 (a "mixed use building") must comply with the requirements of section R313.4 of the 2010 RCNYS or section 610 of the 2010 FCNYS, as applicable, and, in addition, shall comply with the requirements of section 1228.4. However, duplicative CO detection shall not be required, and if an area in a mixed use building is provided CO detection in accordance with the requirements of section R313.4 of the 2010 RCNYS or section 610 of the 2010 FCNYS, as applicable, such area need not be provided with additional CO protection under this section 1228.4.

Subdivision (m) ("Interconnection in mixed used buildings") provides that in the case of a new "mixed use building," the CO detection required by section 1228.4 must be interconnected with the CO detection required by section R313.4 of the 2010 RCNYS or section 610 of the 2010 FCNYS, as applicable.

Subdivision (n) ("Incorporation by reference") provides for the incorporation by reference of the 2010 BCNYS, the 2010 FCNYS, and NFPA 720 in section 1228.4.

Subdivision (o) ("Effective date") provides that section 1228.4 will take effect on June 27, 2015.

Subdivision (p) ("Transition period") establishes a transition period (June 27, 2015 to June 27, 2016); provides that owners of existing commercial buildings are encouraged to install carbon monoxide detection as quickly as practicable; provides that the owner of an existing commercial building shall not be deemed to be in violation of section 1228.4 if the owner provides the authority having jurisdiction with a written statement certifying that such owner is attempting in good faith to install carbon monoxide detection that complies with the requirements of this section 1228.4 in such owner's existing commercial building as quickly as practicable; and provides that carbon monoxide detection that satisfies the requirements of section 1228.4 must be installed and must be fully operational in all existing commercial buildings by the end of the transition period.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. DOS-28-15-00004-EP, Issue of July 15, 2015. The emergency rule will expire February 17, 2016.

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

Additional matter required by statute: 1. Executive Law § 378 (15)(a)

This rule amends the State Uniform Fire Prevention and Building Code (Uniform Code) by adding a new section 1228.4 to Part 1228 of Title 19 NYCRR. New section 1228.4 implements subdivision 5-d of Executive Law § 378, as added by Chapter 541 of the Laws of 2014, by requiring the installation of carbon monoxide detection in commercial buildings.

This rule is a new version of a prior rule that was adopted as an emergency measure and proposed for adoption as a permanent measure by Notice of Emergency Adoption and Proposed Rule Making filed on June 25, 2015 and published in the State Register on July 15, 2015.

The prior version of this rule was re-adopted as an emergency measure by a Notice of Emergency Adoption filed on September 21, 2015 and published in the State Register on October 7, 2015. The re-adoption of the prior version of this rule expired on November 19, 2015.

The Department of State (DOS) and the State Fire Prevention and Building Code Council (Code Council) made several non-substantial changes to the prior version of this rule in response to comments received during the public comment period for the prior version of this rule. This rule reflects those non-substantial changes.

At its meeting held on November 2, 2015, the Code Council found and determined that (1) adoption of this rule on an emergency basis, (2) filing the Notice of Emergency Adoption of this rule on November 20, 2015, and (3) making the emergency adoption of this rule effective immediately upon the filing of the Notice of Emergency Adoption, are required to preserve public safety and general welfare because:

(1) Executive Law § 378 (5-d), as added by Chapter 541 of the Laws of 2014, provides that the Uniform Code must contain provisions requiring the installation of carbon monoxide detecting devices in every commercial building and every building that contains one or more restaurants;

(2) Executive Law § 378 (5-d) became effective on June 27, 2015;

(3) the emergency adoption of the prior version of this rule became effective on June 27, 2015;

(4) the emergency re-adoption of the prior version of this rule became effective on September 21, 2015;

(5) the emergency re-adoption of the prior version of this rule will expire on November 19, 2015;

(6) adoption of this rule as a permanent measure will not be effective until the Notice of Adoption is published in the State Register;

(7) it is unlikely that the Notice of Adoption relating to the adoption of this rule as a permanent measure will be filed in time for such Notice of Adoption to appear in the State Register before November 19, 2015; and

(8) adopting this rule on an emergency basis, filing the Notice of Emergency Adoption of this rule on November 20, 2015, and making this rule effective immediately upon the filing of the Notice of Emergency Adoption are necessary to assure that the Uniform Code will continue to include the provisions contemplated by subdivision 5-d of Executive Law § 378 between November 20, 2015 and the date on which the Notice of Adoption relating to the adoption of this rule as a permanent measure will appear in the State Register.

At its meeting held on November 2, 2015, the Code Council also found and determined that making this rule effective immediately upon the filing of the Notice of Emergency Adoption, as authorized by Executive Law § 378(15)(a), is required to protect health, safety and security because, in the absence of such a finding and determination, the amendment of the Uniform Code to be implemented by this rule would not become effective until 90 days after publication of the Notice of Emergency Adoption and, for the reasons stated above, this rule must become effective on November 20, 2015.

2. Executive Law § 377(1)

Pursuant to Section 377(1) of the Executive Law, the Secretary of State has reviewed the amendment of the Uniform Code to be implemented by this rule, has found that said amendment effectuates the purposes of Article 18 of the Executive Law, and has approved said amendment.

Summary of Regulatory Impact Statement

This rule amends the State Uniform Fire Prevention and Building Code (Uniform Code) by adding a new section 1228.4 to 19 NYCRR Part 1228 (Additional Uniform Code Provisions). New section 1228.4 (entitled "Carbon Monoxide Detection in Commercial Buildings") requires the installation of carbon monoxide detecting devices in every commercial building (including but not limited to every building containing one or more restaurants) if such building has an attached garage or contains any appliance, equipment, device or system that may emit carbon monoxide.

1. STATUTORY AUTHORITY.

This rule is authorized by Executive Law § 377(1), which authorizes the State Fire Prevention and Building Code Council (Code Council) to amend the Uniform Code from time to time, and by new subdivision (5-d) of Executive Law § 378, as added by Chapter 541 of the Laws of 2014. New subdivision (5-d) provides that the Uniform Code must include "standards for installation of carbon monoxide detecting devices requiring that the owner of every building that contains one or more restaurants and the owner of every commercial building in the state shall have installed in such building and shall maintain operable carbon monoxide detecting device or devices of such manufacture, design and installation standards as are established by the [Code Council]. Carbon monoxide detecting devices shall only be required if the restaurant or commercial building has appliances, devices or systems that may emit carbon monoxide or has an attached garage."

2. LEGISLATIVE OBJECTIVES.

Under current New York law, one and two family dwellings and apartments must be equipped with carbon monoxide detectors, but no such requirement exists for restaurants and commercial buildings. The absence of detection devices in nonresidential occupancies has contributed to instances of illness and death among patrons and employees. Chapter 541 of the Laws of 2014 amended Executive Law § 378 to require that the Uniform Code include standards for carbon monoxide detection in commercial buildings and every building that contains one or more restaurants. By requiring that restaurants and commercial buildings follow the same standards as residences, the Legislature demonstrates that its objectives are to reduce the number of deaths and injuries caused by carbon monoxide poisoning, and to provide safer environments for customers and employees.

3. NEEDS AND BENEFITS.

Carbon monoxide is an invisible, odorless gas that is generated by the incomplete combustion of carbonaceous fuels such as fuel oil, natural gas, kerosene and wood. In non fire situations, elevated carbon monoxide levels may be caused by improperly installed or maintained fuel fired appliances, motor vehicles operated in enclosed garages, or appliances intended for outdoor use being used indoors during power failures. As carbon monoxide is not detectable by the senses, its presence and concentration can only be determined by instruments such as carbon monoxide detection systems.

According to the United States Consumer Product Safety Commission, "on average, about 170 people in the United States die every year from CO produced by non-automotive consumer products.

According to the Center for Disease Control and Prevention, there were 68,316 non-fire-related CO exposures reported to poison centers between the years 2000 and 2009. (The Center for Disease Control and Prevention, Carbon Monoxide Exposures United States, 2000-2009, August 5, 2011, <http://www.cdc.gov/mmwr/preview/mmwrhtml/mm6030a2.htm>.)

The Memorandum in Support of the bill enacting Executive Law § 378(5-d) states that the failure to mandate carbon monoxide detectors in commercial buildings has contributed to cases of illness and death among patrons and employees.

This rule implements Executive Law § 378(5-d) by requiring the installation of CO detecting devices in commercial buildings.

4. COSTS.

Cost to regulated parties.

Regulated parties (owners of new and existing commercial buildings that [1] contain one or more carbon monoxide sources and/or [2] contain a garage or other motor-vehicle related occupancy and/or [3] are attached to a garage or other motor-vehicle-related occupancy) are required to install carbon monoxide detection (carbon monoxide alarms or carbon monoxide detection systems) in the places specified in this rule, to maintain those carbon monoxide alarms or carbon monoxide detection systems, and to replace those carbon monoxide alarms or carbon monoxide detection systems when they cease to operate as intended.

In each commercial building where carbon monoxide detection is required, such detection must be located in each "detection zone" that

contains a carbon monoxide source, is served by an HVAC system that includes a carbon monoxide-producing component, or is adjacent to a garage or other motor-vehicle-related occupancy. In general, each story in a commercial building will be a "detection zone."

Costs to regulated parties for compliance with this rule will vary depending on the size of such building, the number of carbon monoxide sources within the buildings, the wiring within the building, and the type of carbon monoxide detection (carbon monoxide alarms or a carbon monoxide detection system) the owner chooses to provide. The Department estimates that battery-powered carbon monoxide alarms cost approximately \$50 (including installation costs). When carbon monoxide alarms are installed in new commercial buildings, the alarms must be hard-wired units with battery backup. The Department estimates that the total cost purchasing and installing hard-wired carbon monoxide alarms with battery backup will be approximately \$125 per unit. Lastly, this rule will permit installation of a carbon monoxide detection system in lieu of carbon monoxide alarms. The total cost of purchasing and installing one detector and one notification appliance (a necessary component of the carbon monoxide detection system) will be approximately \$348. In addition, a carbon monoxide detection system requires a control unit. The Department estimates that the cost of purchasing and installing a carbon monoxide detection system control unit will be approximately \$1,100.

This rule provides that carbon monoxide alarms and carbon monoxide detection systems must be maintained in an operative condition at all times, shall be replaced or repaired where defective, and shall be replaced when they cease to operate as intended. The on-going costs of complying with this rule will include the cost of maintaining carbon monoxide alarms and carbon monoxide detection systems in operative condition.

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

The Department anticipates that neither the Department nor the State nor the local governments in the State will incur any significant costs for the implementation or continued administration of this rule, except as follows:

First, the Department will provide instruction and technical assistance regarding new section 1228.4 and its requirements to code enforcement officials and to regulated parties. The Department anticipates that it will be able to use its existing staff to perform these functions.

Second, cities, towns, villages, counties, and State agencies responsible for administration and enforcement of the Uniform Code will be required (1) to see that their code enforcement personnel receive training on new section 1228.4 and its requirements, and (2) to enforce these new provisions.

Third, the State, which owns commercial buildings, as well as any local government that owns one or more commercial buildings, will be subject to the new requirements to be imposed by new section 1228.4 and will be required to comply with those requirements. In this context, the State and any local government that owns commercial buildings will be regulated parties, and will incur compliance costs similar to those discussed above for other regulated parties.

5. PAPERWORK.

This rule requires carbon monoxide detection systems to comply with the Standard for the Installation of Carbon Monoxide (CO) Detection and Warning Equipment, published by the National Fire Protection Association (NFPA 720). If a regulated party elects to install a CO detection system in lieu of CO alarms, such system must comply with NFPA 720. A small business or local government that elects to install a CO detection system will be required to comply with the reporting and recordkeeping requirements specified in NFPA 720 Sections 4.4.2.3, 4.14.2, 8.2.1.5, 8.2.3, 8.6.1, and 8.6.2.2. NFPA 720 provides standardized forms to be used for this recordkeeping.

6. LOCAL GOVERNMENT MANDATES.

This rule imposes no new programs, services, duties and responsibilities upon Local Governments, except as follows:

First, any Local Government that owns any existing commercial building or constructs any new commercial building will be required to install carbon monoxide alarm(s) or a carbon monoxide detection system in such building.

Second, cities, towns, villages, and counties charged by Executive Law Section 381 with the responsibility of administering and enforcing the Uniform Code will be required to enforce the provisions of new section 1228.4. Such cities, towns, villages, and counties will be required to see that their code enforcement personnel receive training on new section 1228.4.

7. DUPLICATION.

This rule does not duplicate, overlap or conflict with any other legal requirement of the Federal or State government known to the Department.

8. ALTERNATIVES.

The rule does not permit the use of plug in units or battery-powered carbon monoxide alarms in new commercial buildings. The Department considered the alternative of allowing the use of battery-powered carbon

monoxide alarms in new commercial buildings. This alternative was rejected because the Department determined that the additional cost associated with requiring hard-wired carbon monoxide alarms in new buildings was minimal (compared to the additional cost associated with requiring hard-wired alarms in existing buildings).

The rule permits a building owner to choose between installing carbon monoxide alarms or a carbon monoxide detection system. The Department considered the alternative of requiring the installation of a carbon monoxide detection system in all commercial buildings. This alternative was rejected because it would unnecessarily increase the cost of bringing commercial buildings, particularly existing commercial buildings, into compliance with the new statutory mandate.

The rule requires carbon monoxide detection in each detection zone where at least one of the “triggering conditions” exists. The rule also requires carbon monoxide detection in more than one location in larger (over 10,000 square feet) detection zones. The Department considered alternatives such as requiring carbon monoxide detection only in the vicinity of each carbon monoxide source, allowing plug-in units in new and existing buildings, and allowing alternative listing entities. These alternatives were rejected because the Department determined that such reduced coverage would not have provided the increased level of safety contemplated by the Legislature when it added a new subdivision (5-d) to section 378 of the Executive Law.

9. FEDERAL STANDARDS.

This rule parallels similar federal standards for carbon monoxide exposure. The federal standards apply to buildings consisting of employees who are employed in a business that affects commerce (CFR Title 29, Part 1910, Subpart Z, § 1910.1000: Air contaminants). However, although these standards are similar, they measure carbon monoxide exposures differently from section 1228.4, therefore making it difficult to conclude whether they exceed these standards. For example, CFR Title 29, Part 1910, Subpart Z, § 1910.1000 limits an employee’s exposure to 50 ppm over an 8-hour weighted average, comparable to a typical workday. By contrast, carbon monoxide alarms required by section 1228.4 sound an alarm after detecting higher concentrations - 100 ppm or 400 ppm - over a much shorter period of time.

10. COMPLIANCE SCHEDULE.

Regulated parties that own existing commercial buildings will be able to comply with this rule by purchasing and installing battery-operated carbon monoxide alarms of the type currently on the market. The Department anticipates that regulated parties that own existing commercial buildings should be able to comply with this rule by the end of the “transition period” (June 27, 2015 through June 27, 2016) established by this rule.

Regulated parties constructing new commercial buildings will be able to comply with this rule by installing hard-wired carbon monoxide alarms or carbon monoxide detection systems as part of the construction process.

Summary of Regulatory Flexibility Analysis

1. EFFECT OF RULE.

This rule implements subdivision (5-d) of Executive Law § 378, as added by Chapter 541 of the Laws of 2014. Specifically, this rule amends the State Uniform Fire Prevention and Building Code (Uniform Code) by adding a new section 1228.4 (entitled “Carbon Monoxide Detection in Commercial Buildings”) to 19 NYCRR Part 1228. New section 1228.4 requires the installation of carbon monoxide (CO) detecting devices in all new and existing commercial buildings.

Types and Estimated Number of Small Businesses and Local Governments Affected

This rule will affect any small business or local government that owns an existing commercial building or constructs a new commercial building. In addition, since landlords typically recover building-related costs by increasing rents, this rule will indirectly affect any small business or local government that rents space in a commercial building. The Department of State (DOS) is not able to estimate the number of small businesses and local governments that will be directly or indirectly affected by this rule; however, DOS anticipates that most small businesses and local governments will be directly or indirectly affected by this rule.

In addition, since this rule adds provisions to the Uniform Code, the activities of each local government that is responsible for administering and enforcing the Uniform Code will be affected by this rule. DOS estimates that approximately 1,604 local governments (mostly cities, towns and villages, as well as several counties) are responsible for administering and enforcing the Uniform Code.

2. REPORTING, RECORDKEEPING AND OTHER COMPLIANCE REQUIREMENTS.

Reporting and Recordkeeping Requirements

If a regulated party elects to install a CO detection system in lieu of CO alarms, such system must comply with the Standard for the Installation of Carbon Monoxide (CO) Detection and Warning Equipment, published by the National Fire Protection Association (NFPA 720). A small business or local government that elects to install a CO detection system will be

required to comply with the reporting and recordkeeping requirements specified in NFPA 720 Sections 4.4.2.3, 4.14.2, 8.2.1.5, 4.4.3, 8.2.3, 8.6.1, and 8.6.2.2. NFPA 720 provides standardized forms to be used for this recordkeeping.

Other Compliance Requirements

Small businesses and local governments that own a new or existing commercial building that contains a CO source, contains a garage or other motor-vehicle-related occupancy, or is attached to a garage or other motor-vehicle-related occupancy will be required to install CO detection (CO alarms or a CO detection system) in the places specified in this rule, to maintain those CO alarms or CO detection systems, and to replace those CO alarms or CO detection systems when they cease to operate as intended.

In each commercial building where CO detection is required, such detection must be located in each “detection zone” (as that term is defined in the rule) that contains a CO source, is served by an HVAC system that includes a CO-producing component, or is adjacent to a garage or other motor-vehicle-related occupancy.

As a general rule, when CO detection must be provided in a detection zone, the CO detection must be placed in a central location within the detection zone. If the detection zone is larger than 10,000 square feet, additional CO detection must be placed in such additional locations as may be necessary to assure that no point in the detection zone is more than 100 feet from CO detection.

In an existing commercial building (or in a new or existing commercial building without commercial electric power), CO alarms powered by 10-year batteries are permitted.¹ When CO alarms are installed in new commercial buildings, the alarms must be hard-wired units with battery backup.

This rule also permits installation of a CO detection system in lieu of CO alarms. A CO detection system (1) must comply with NFPA 720, (2) must have a detector at each location where a CO alarm otherwise would have been required, and (3) must have a notification appliance at each location specified in NFPA 720 or, in the alternative, at each location where a CO alarm otherwise would have been required.

When a CO alarm is installed in a normally unoccupied detection zone in a new commercial building, that alarm must be interconnected with a CO alarm that is placed in an adjacent and normally occupied detection zone; and

In the case of a new commercial building that (i) has an occupant load of 31 or more and (ii) is classified, in whole or in part, as Educational Group E under Chapter 3 of the 2010 Building Code of New York State (BCNYS), this rule provides that CO alarm signals must be automatically transmitted to an approved on-site location that is normally staffed by school personnel during normal school hours.

CO detection systems shall be connected to control units and off-premises signal transmission in accordance with the requirements of the BCNYS.

3. PROFESSIONAL SERVICES.

If a small business or local government elects to install a CO detection system (in lieu of CO alarms), the small business or local government must hire service personnel with the qualifications and experience listed in NFPA 720 Section 8.3 in order to install and maintain the CO detection system.

In addition, in certain situations a small business or local government that elects to install a CO detection system may be required to hire a person holding an appropriate license under General Business Law Article 6-D to install, service or maintain such CO detection system.

4. COMPLIANCE COSTS.

Initial Costs of Compliance

The initial capital costs of complying with the rule will include the cost of purchasing and installing the CO alarms or CO detection systems. Costs to regulated parties for compliance with this rule will vary depending on the size of such building, the number of CO sources within the buildings, the wiring within the building, and the type of CO detection (CO alarms or a CO detection system) the owner chooses to provide.²

In an existing commercial building (or in a new or existing commercial building without commercial electric power), CO alarms powered by 10-year batteries are permitted. DOS estimates that the cost of purchasing and installing such battery-powered CO alarms is approximately \$50.

When CO alarms are installed in new commercial buildings, the alarms must be hard-wired units with battery backup. DOS estimates that total cost purchasing and installing hard-wired CO alarms with battery backup will be approximately \$125 per unit.

This rule permits installation of a CO detection system in lieu of CO alarms. A CO detection system must comply with NFPA 720; must have a detector at each location where a CO alarm otherwise would have been required; and must have a notification appliance at each location specified in NFPA 720 or, in the alternative, at each location where a CO alarm otherwise would have been required. DOS estimates that the cost of each

detector in a CO detection system will be approximately \$55, the cost of each notification appliance used in a CO detection system will be approximately \$78, the cost of installing one detector and one notification appliance will be approximately \$215, and the total cost of purchasing and installing one detector and one notification appliance will be approximately \$348. In addition, a CO detection system requires a control unit. DOS estimates that the cost of purchasing and installing a CO detection system control unit will be approximately \$1,100.³ The estimated installation costs specified in this paragraph include the cost of installing the components and the cost of interconnecting the components.

In certain situations, a CO alarm installed in a new commercial building must be a "multiple station" alarm (i.e., must be interconnected with at least one other CO alarm in the building). DOS estimates that (1) the median price of multiple station CO alarms that are hard-wired and have battery backup to be approximately \$38 per unit, (2) the cost of installing such alarms will be approximately \$90 per unit, and (3) the cost of providing interconnection between an alarm in a normally unoccupied detection zone and an alarm in an adjacent, normally occupied detection zone will be approximately \$150.

In the case of a new commercial building classified, in whole or in part, as Educational Group E under the 2010 BCNYS, CO alarm signals must be automatically transmitted to an approved on-site location that is normally staffed by school personnel during normal school hours. DOS estimates that the median price of multiple station CO alarms that are hard-wired and have battery backup will be approximately \$38 per unit; (2) the cost of installing such alarms will be approximately \$90 per unit; and (3) the cost of providing interconnection between the detection zone (classroom) to an on-site location up to 100 feet away will be approximately \$250.

This rule provides that CO detection systems must be "monitored" (i.e., connected to control units and off-premises signal transmission). If a CO detection system is installed in a building that does not have a fire alarm system, DOS estimates that the cost of purchasing and installing the control unit required to provide "monitoring" of the CO detection system will be approximately \$1,100.

On-going Costs of Compliance

This rule provides that CO alarms and CO detection systems must be maintained in an operative condition at all times, shall be replaced or repaired where defective, and shall be replaced when they cease to operate as intended.

In the case of a battery-powered CO alarm, such maintenance would include vacuuming the alarm cover to remove accumulated dust (typically one a month) and replacing the alarm at the conclusion of its 10-year lifespan.

In the case of a hard-wired CO alarm with battery backup, the required maintenance would include vacuuming the alarm cover to remove accumulated dust (typically one a month) and replacing the backup battery as required (although it is anticipated that backup batteries in such alarms should not need to be replaced during the anticipated life of the alarm).

In addition, most manufacturers recommend that their CO alarms (whether battery-powered or hard-wired) be checked using the alarm's "test" button on a periodic basis (typically once a week) and replaced on a periodic basis (typically once every five years).

Regulated parties constructing new commercial buildings will be able to comply with this rule by installing hard-wired CO alarms or CO detection systems as part of the construction process. This rule will require CO detection systems to comply with NFPA 720.

Variations in Costs

Any variation in compliance costs for small businesses or local governments is likely to depend more on the number and size of commercial buildings owned by the small business or local government, not on the type or size of the small business or local government.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY.

It is economically and technologically feasible for small businesses and local governments to comply with new section 1228.4.

Regulated parties that own existing commercial buildings will be able to comply with this rule by purchasing and installing battery-operated CO alarms of the type currently on the market. DOS anticipates that regulated parties that own existing commercial building should be able to comply with this rule by the end of the "transition period" (June 27, 2015 through June 27, 2016) established by this rule.

Regulated parties constructing new commercial buildings will be able to comply with this rule by installing hard-wired CO alarms or CO detection systems as part of the construction process.

No new technology need be developed for compliance.

6. MINIMIZING ADVERSE IMPACT

The rule minimizes potential adverse economic impacts on regulated parties by providing several alternative means of compliance (including the option of installing battery powered carbon monoxide alarms in existing commercial buildings and in commercial buildings with no com-

mercial electric power); providing exemptions for commercial buildings that are (1) classified as Storage Group S or Utility and Miscellaneous Group U and occupied only occasionally for building or equipment maintenance, (2) "canopies" (as defined in the 2010 FCNYS), or (3) completely unoccupied and secured; providing a number of exceptions for certain detection zones that would otherwise require CO detection; and establishing a "transition period" to provide owners of existing commercial buildings with additional time to achieve full compliance.

Providing exemptions from coverage by the rule, or any part thereof, for commercial buildings owned by small businesses or local governments would not be consistent with legislative objectives and would endanger public health, safety, and general welfare.

7. SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION.

DOS notified interested parties throughout the State, including interested parties in rural areas, of the proposed adoption of a prior version of this rule by means of notices posted on DOS's website and notices published in Building New York, a monthly electronic news bulletin covering topics related to the Uniform Code and the construction industry.

The prior version of this rule was proposed for adoption by Notice of Emergency Adoption and Proposed Rule Making published in the State Register on July 15, 2015. DOS and the Code Council made several non-substantial changes to the prior version of this rule in response to public comments received during the public comment period. This rule (i.e., the rule now being adopted) reflects those non-substantial changes.

8. VIOLATIONS AND PENALTIES ASSOCIATED WITH VIOLATIONS.

The rule includes a subdivision that provides, in effect, a "cure period or other opportunity for ameliorative action, the successful completion of which will prevent the imposition of penalties on the party or parties subject to enforcement" in this rule. Subdivision (p) of new section 1228.4 provides that during the "transition period" (June 27, 2015 to June 27, 2016), the owner of an existing commercial building shall not be deemed to be in violation of section 1228.4 if the owner provides the authority having jurisdiction with a written statement certifying that such owner is attempting in good faith to install carbon monoxide detection that complies with the requirements of new section 1228.4 in such owner's existing commercial building as quickly as practicable.

All owners of existing commercial buildings will be required to have such carbon monoxide detection fully installed and operational by the end of the transition period.

¹ An "existing commercial building" is defined in this rule as a commercial building constructed before December 31, 2015 (meaning either that the original construction of the building was completed on or before December 31, 2015, or that the application for the building permit for the original construction of the building was filed on or before December 31, 2015). A "new commercial building" is defined in this rule as any commercial building that is not an existing commercial building.

² Cost estimates set forth in this section are based on prices quoted on the websites of several manufacturers of carbon monoxide alarms and carbon monoxide detection systems. See, for example, <http://www.homedepot.com/p/Kidde-120-Volt-Hardwire-Inter-Connectable-Carbon-Monoxide-Alarm-with-Battery-Backup-KN-COB-IC/202281774?N=5yc1vZbmgkZ1z0uzse>. Estimated installation costs are based on the time estimated to perform an installation multiplied by an assumed hourly rate of \$70.

³ In many situations, a single control panel can control both a carbon monoxide detection system and a fire alarm system. Therefore, in a building where a fire alarm system is required by other provisions of the Uniform Code, there should be little or no additional cost associated with providing a control panel for the carbon monoxide detection system.

Summary of Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBERS OF RURAL AREAS.

This rule amends the State Uniform Fire Prevention and Building Code (Uniform Code) by adding a new section 1228.4 to 19 NYCRR Part 1228. New section 1228.4 requires the installation of carbon monoxide (CO) detecting devices in all new and existing commercial buildings. Since the Uniform Code applies in all areas of the State (other than New York City), this rule applies in all rural areas of the State.

2. REPORTING, RECORDKEEPING AND OTHER COMPLIANCE REQUIREMENTS.

Reporting and Recordkeeping Requirements

If a regulated party elects to install a CO detection system in lieu of CO alarms, such system must comply with the Standard for the Installation of Carbon Monoxide Detection and Warning Equipment, published by the National Fire Protection Association (NFPA 720). A small business or lo-

cal government that elects to install a CO detection system will be required to comply with the reporting and recordkeeping requirements specified in NFPA 720 Sections 4.4.2.3, 4.14.2, 8.2.1.5, 4.4.3, 8.2.3, 8.6.1, and 8.6.2.2. NFPA 720 provides standardized forms to be used for this recordkeeping.

Other Compliance Requirements.

The owner of a new or existing commercial building that contains a CO source, contains a garage or other motor-vehicle-related occupancy, or is attached to a garage or other motor-vehicle-related occupancy will be required to install CO detection (CO alarms or a CO detection system) in the places specified in this rule, to maintain those CO alarms or CO detection systems, and to replace those CO alarms or CO detection systems when they cease to operate as intended.

In each commercial building where CO detection is required, such detection must be located in each "detection zone" that contains a CO source, is served by an HVAC system that includes a CO-producing component, or is adjacent to a garage or other motor-vehicle-related occupancy.

As a general rule, when CO detection must be provided in a detection zone, the CO detection must be placed in a central location within the detection zone. However, if the detection zone is larger than 10,000 square feet, additional CO detection must be placed in such additional locations as may be necessary to assure that no point in the detection zone is more than 100 feet from CO detection.

In an existing commercial building (or in a new or existing commercial building without commercial electric power), CO alarms powered by 10-year batteries are permitted.¹ When CO alarms are installed in new commercial buildings, the alarms must be hard-wired units with battery backup.

This rule permits installation of a CO detection system in lieu of CO alarms. A CO detection system (1) must comply with NFPA 720, (2) must have a detector at each location where a CO alarm otherwise would have been required, and (3) must have a notification appliance at each location specified in NFPA 720 or, in the alternative, at each location where a CO alarm otherwise would have been required.

When a CO alarm is installed in a normally unoccupied detection zone in a new commercial building, that alarm must be interconnected with a CO alarm that is placed in an adjacent and normally occupied detection zone; and

In the case of a new commercial building that (i) has an occupant load of 31 or more and (ii) is classified, in whole or in part, as Educational Group E under Chapter 3 of the 2010 Building Code of New York State (BCNYS), this rule provides that CO alarm signals must be automatically transmitted to an approved on-site location that is normally staffed by school personnel during normal school hours.

This rule requires CO detection systems to be connected to control units and off-premises signal transmission in accordance with the requirements of the BCNYS.

3. PROFESSIONAL SERVICES.

If the owner of a commercial building elects to install a CO detection system in lieu of CO alarms, the building owner must hire service personnel with the qualifications and experience listed in NFPA 720 Section 8.3 in order to install and maintain the CO detection system.

In addition, in certain situations an owner of a commercial building who elects to install a CO detection system may be required to hire a person holding an appropriate license under General Business Law Article 6-D to install, service or maintain such CO detection system.

4. COMPLIANCE COSTS.

Initial Costs of Compliance

The initial capital costs of complying with the rule will include the cost of purchasing and installing the CO alarms or CO detection systems. Costs to regulated parties for compliance with this rule will vary depending on the size of such building, the number of CO sources within the building, the wiring within the building, and the type of CO detection (CO alarms or a CO detection system) the owner chooses to provide.²

In an existing commercial building (or in a new or existing commercial building without commercial electric power), CO alarms powered by 10-year batteries are permitted. The Department of State (DOS) estimates that the cost of purchasing and installing such battery-powered CO alarms is approximately \$50.

When CO alarms are installed in new commercial buildings, the alarms must be hard-wired units with battery backup. DOS estimates that total cost purchasing and installing hard-wired CO alarms with battery backup will be approximately \$125 per unit.

This rule permits installation of a CO detection system in lieu of CO alarms. A CO detection system must comply with NFPA 720; must have a detector at each location where a CO alarm otherwise would have been required; and must have a notification appliance at each location specified in NFPA 720 or, in the alternative, at each location where a CO alarm otherwise would have been required. DOS estimates that (1) the cost of each detector in a CO detection system will be approximately \$55, (2) the

cost of each notification appliance used in a CO detection system will be approximately \$78, (3) the cost of installing one detector and one notification appliance will be approximately \$215, and (4) the total cost of purchasing and installing one detector and one notification appliance will be approximately \$348. In addition, a CO detection system requires a control unit. DOS estimates that the cost of purchasing and installing a CO detection system control unit will be approximately \$1,100.³ The estimated installation costs specified in this paragraph include the cost of installing the components and the cost of interconnecting the components.

In certain situations, a CO alarm installed in a new commercial building must be a "multiple station" alarm (i.e., must be interconnected with at least one other CO alarm in the building). DOS estimates that (1) the median price of multiple station CO alarms that are hard-wired and have battery backup will be approximately \$38 per unit, (2) the cost of installing such alarms will be approximately \$90 per unit, and (3) the cost of providing interconnection between an alarm in a normally unoccupied detection zone and an alarm in an adjacent, normally occupied detection zone will be approximately \$150.

In the case of a new commercial building classified, in whole or in part, as Educational Group E, CO alarm signals must be automatically transmitted to an approved on-site location that is normally staffed by school personnel during normal school hours. DOS estimates that the median price of multiple station CO alarms that are hard-wired and have battery backup will be approximately \$38 per unit; (2) the cost of installing such alarms will be approximately \$90 per unit; and (3) the cost of providing interconnection between the detection zone (classroom) to an on-site location up to 100 feet away will be approximately \$250.

This rule provides that CO detection systems must be "monitored" (i.e., connected to control units and off-premises signal transmission). If a CO detection system is installed in a building that does not have a fire alarm system, DOS estimates that the cost of purchasing and installing the control unit required to provide "monitoring" of the CO detection system will be approximately \$1,100.

On-going Costs of Compliance

This rule provides that CO alarms and CO detection systems must be maintained in an operative condition at all times, shall be replaced or repaired where defective, and shall be replaced when they cease to operate as intended.

In the case of a battery-powered CO alarm, such maintenance would include vacuuming the alarm cover to remove accumulated dust (typically one a month) and replacing the alarm at the conclusion of its 10-year lifespan.

In the case of a hard-wired CO alarm with battery backup, the required maintenance would include vacuuming the alarm cover to remove accumulated dust (typically one a month) and replacing the backup battery as required (although it is anticipated that backup batteries in such alarms should not need to be replaced during the anticipated life of the alarm).

In addition, most manufacturers recommend that their CO alarms (whether battery-powered or hard-wired) be checked using the alarm's "test" button on a periodic basis (typically once a week) and replaced on a periodic basis (typically once every five years).

Regulated parties constructing new commercial buildings will be able to comply with this rule by installing hard-wired CO alarms or CO detection systems as part of the construction process. This rule will require CO detection systems to comply with NFPA 720.

Variations in Costs

Any variation in compliance costs for public and private entities in rural areas is likely to depend on the number and size of commercial buildings owned by a public or private entity, and not on differences between types of public and private entities in rural areas.

5. MINIMIZING ADVERSE IMPACT.

The rule minimizes potential adverse economic impacts on regulated parties by:

(1) providing several alternative means of compliance (including the option of installing battery powered carbon monoxide alarms in existing commercial buildings and in commercial buildings with no commercial electric power);

(2) providing exemptions for commercial buildings that are (i) classified as Storage Group S or Utility and Miscellaneous Group U and occupied only occasionally for building or equipment maintenance, (ii) "canopies" (as defined in the 2010 FCNYS), or (iii) completely unoccupied and secured;

(3) providing a number of exceptions for certain detection zones that would otherwise require CO detection; and

(4) establishing a "transition period" to provide owners of existing commercial buildings with additional time to achieve full compliance.

This rule implements Executive Law § 378(5-d), which requires installation of CO detecting devices in all commercial buildings that contains any appliance, equipment, device or system that may emit CO or has an attached garage. Executive Law § 378(5-d) makes no distinction between

commercial buildings located in rural areas and commercial buildings located in other areas of the State. Executive Law § 378(5-d) does not authorize the establishment of differing compliance requirements or timetables for commercial buildings located in rural areas. Providing exemptions from coverage by the rule, or any part thereof, for commercial buildings located in rural areas would not be consistent with legislative objectives and would endanger public health, safety, and general welfare.

6. RURAL AREA PARTICIPATION.

DOS notified interested parties throughout the State, including interested parties in rural areas, of the proposed adoption of a prior version of this rule by means of notices posted on DOS's website and notices published in Building New York, a monthly electronic news bulletin covering topics related to the Uniform Code and the construction industry.

The prior version of this rule was proposed for adoption by Notice of Emergency Adoption and Proposed Rule Making published in the State Register on July 15, 2015. DOS and the Code Council made several non-substantial changes to the prior version of this rule in response to public comments received during the public comment period. This rule (i.e., the rule now being adopted) reflects those non-substantial changes.

¹ An "existing commercial building" is defined in this rule as a commercial building constructed before December 31, 2015 (meaning either that the original construction of the building was completed on or before December 31, 2015, or that the application for the building permit for the original construction of the building was filed on or before December 31, 2015). A "new commercial building" is defined in this rule as any commercial building that is not an existing commercial building.

² Cost estimates set forth in this section are based on prices quoted on the websites of several manufacturers of carbon monoxide alarms and carbon monoxide detection systems. See, for example, <http://www.homedepot.com/p/Kidde-120-Volt-Hardwire-Inter-Connectable-Carbon-Monoxide-Alarm-with-Battery-Backup-KN-COB-IC/202281774?N=5yc1vZbmgkZ1z0uzse>. Estimated installation costs are based on the time estimated to perform an installation multiplied by an assumed hourly rate of \$70.

³ In many situations, a single control panel can control both a carbon monoxide detection system and a fire alarm system. Therefore, in a building where a fire alarm system is required by other provisions of the Uniform Code, there should be little or no additional cost associated with providing a control panel for the carbon monoxide detection system.

Job Impact Statement

The Department of State has concluded after reviewing the nature and purpose of the rule that it will not have a "substantial adverse impact on jobs and employment opportunities" (as that term is defined in section 201-a of the State Administrative Procedures Act) in New York.

This rule amends the State Uniform Fire Prevention and Building Code (the Uniform Code) to require that the installation of carbon monoxide detecting devices (carbon monoxide alarms or carbon monoxide detection systems) in all commercial buildings that contain a carbon monoxide source, contain a garage or other motor-vehicle-related occupancy and/or are attached to a garage or other motor-vehicle-related occupancy. This amendment is required to satisfy the requirements of subdivision (5-d) of section 378 of the Executive Law, as added by Chapter 541 of the Laws of 2014.

This rule requires the installation of carbon monoxide detecting devices in "existing commercial buildings" (defined in this rule as a commercial building constructed prior to January 1, 2016). However, potential adverse economic impact on regulated parties is minimized by the provisions of the rule that allow the use of battery powered carbon monoxide alarms in existing commercial buildings. (The rule also permits the use of battery powered carbon monoxide alarms in new and existing commercial buildings without a commercial electric power.)

This rule also requires the installation of carbon monoxide detecting devices in new commercial buildings. However, potential adverse economic impact on regulated parties is minimized by the provisions of the rule that permit the installation of carbon monoxide alarms even in new commercial buildings (although carbon monoxide alarms installed in new commercial buildings must be hard-wired, with battery backup). Regulated parties are permitted to install carbon monoxide detection systems; in the case of a building that is required by other, already existing provisions of the Uniform Code to have a fire alarm system, the additional cost of adding a carbon monoxide detection system is expected to be modest. In any event, whether an owner chooses to install hard-wired carbon monoxide alarms with battery backup or a carbon monoxide detection system in a new commercial building, the costs of purchasing, installing and maintaining the carbon monoxide detecting devices required by this rule is expected to be insignificant in comparison to the total cost of construction. Therefore, this rule should have no substantial adverse impact on construction of new

commercial buildings and, consequently, this rule should have no substantial adverse impact on jobs and employment opportunities related to the construction of new commercial buildings.

The Uniform Code has contained provisions requiring installation of carbon monoxide alarms in residential buildings since 2002. The current requirements relating to installation of alarms in residential buildings are not changed by this rule. Therefore, this rule should have no substantial adverse impact on jobs and employment opportunities related to the construction of new residential buildings.

NOTICE OF ADOPTION

Installation of Carbon Monoxide Detecting Devices in Commercial Buildings

I.D. No. DOS-28-15-00004-A

Filing No. 1010

Filing Date: 2015-11-20

Effective Date: 2015-12-09

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

Action taken: Addition of section 1228.4 to Title 19 NYCRR.

Statutory authority: Executive Law, sections 377(1) and 378(5-d)

Subject: Installation of carbon monoxide detecting devices in commercial buildings.

Purpose: To amend the State Uniform Fire Prevention and Building Code (Uniform Code) by adding standards requiring the installation of carbon monoxide detecting devices in every commercial building (including but not limited to every building that contains one or more restaurants), if such building has appliances, devices or systems that may emit carbon monoxide or has an attached garage, and to establish manufacture, design and installation standards for such carbon monoxide detecting devices.

Substance of final rule: This rule adds new section 1228.4 to Part 1228.4 of 19 NYCRR. New section 1228.4 is part of the State Uniform Fire Prevention and Building Code (the Uniform Code). The provisions of new section 1228.4 (entitled "Carbon Monoxide Detection in Commercial Buildings") are summarized as follows:

Subdivision (a) ("Introduction") introduces the new section, which implements standards and requirements regarding carbon monoxide ("CO") detection in certain new and existing commercial.

Subdivision (b) ("Definitions") defines certain terms used in section 1228.4, including: carbon monoxide source; carbon monoxide-producing HVAC system, classroom, commercial building, detection zone, existing commercial building, and new commercial building.

Subdivision (c) ("Commercial buildings required to have carbon monoxide detection") provides that as a general rule, CO detection must be provided in every commercial building that (i) contains any CO source and/or (ii) is attached to a garage and/or (iii) is attached to any other motor-vehicle-related occupancy. These requirements shall apply without regard to whether such commercial building is an existing commercial building or a new commercial building and without regard to whether such commercial building shall or shall not have been offered for sale. However, CO detection shall not be required in:

(1) a commercial building that is classified, in its entirety, in Storage Group S or Utility and Miscellaneous Group U under Chapter 3 of the 2010 Building Code of New York State (the 2010 BCNYS) and occupied only occasionally and only for building or equipment maintenance;

(2) a commercial building that is a "canopy" (as that term is defined in the 2010 Fire Code of New York State); or

(3) a commercial building that is completely unoccupied, during the period when such building is completely unoccupied and other stated conditions are satisfied.

Subdivision (d) ("Detection zones required to be provided with carbon monoxide detection") specifies the detection zones where carbon monoxide detection must be provided. In general, CO detection is required in each detection zone in which at least one "triggering condition" exists.

"Triggering Condition 1" is the presence of any CO source in the detection zone.

"Triggering Condition 2" is the presence in a detection zone of a duct opening or other outlet from a CO-producing HVAC system (subject to certain exceptions stated in the full Text of the rule).

"Triggering Condition 3" is the presence of a garage or other motor-vehicle-related occupancy in location that is adjacent to a detection zone (subject to certain exceptions stated in the full Text of the rule).

If a detection zone other than a classroom (as defined in subdivision b) that would otherwise require CO detection has ambient conditions that would, under normal conditions and with all required ventilation and

exhaust systems installed and operating properly, activate CO detection devices, CO detection shall not be required in that detection zone provided that an alternative safety plan for the commercial building in which such detection zone is located shall have been approved by the authority having jurisdiction and implemented.

If a detection zone (other than a classroom) that would otherwise require CO detection is “open” (without sidewalls or drops) on 50 percent or more of its perimeter, and there is no occupiable area within such detection zone that is not open on 50 percent or more of its perimeter, CO detection shall not be required in that detection zone.

Subdivision (e) (“Placement of carbon monoxide detection”) specifies that places within a detection zone where the CO detection devices must be located. In the case of a detection zone having an area less than 10,000 square feet, the CO detection must be placed in a central location within such detection zone. In the case of a detection zone having an area 10,000 square feet or larger, CO detection must be placed in a central location within such detection zone and at such additional locations within such detection zone as may be necessary to assure that no point in the detection zone is more than 100 feet from CO detection. In certain cases (more fully described in the full Text of the rule), the additional CO detection will not be required in a detection zone that is 10,000 square feet or larger.

Subdivision (f) (“Detection equipment”) provides that CO detection shall be provided by CO alarms complying with subdivision (g) or a CO detection system complying with subdivision (h).

Subdivision (g) (“Carbon monoxide alarms”) specifies specifications for CO alarms. In general, CO alarms must be hard-wired, with a battery backup. However, battery-powered CO alarms (powered by a 10-year battery) will be allowed in existing commercial building and in commercial buildings without commercial electric power. In either case, CO alarms must be listed in accordance with Underwriters Laboratory (UL) 2034. Combination CO / smoke alarms shall not be deemed to satisfy the requirements of this section 1228.4. The rule includes an exception that would allow certain previously installed plug-in or cord-type CO alarms, certain previously installed CO alarms powered by a battery with a life of less than 10-years, and certain previously installed combination CO / smoke alarms to remain in place for the remainder of their useful lives.

In new commercial buildings, where a CO alarm is installed in a normally unoccupied detection zone, such CO alarm must be interconnected with a CO alarm that is placed in an adjacent and normally occupied detection zone. A sign that identifies and describes the location of each normally unoccupied detection zone that contains any such interconnected CO alarm must be placed in the proximity of each CO alarm installed in a normally occupied detection zone.

CO alarms must be installed in the locations specified in subdivisions (d) and (e) of section 1228.4.

In general, CO alarms must be installed, operated, and maintained in accordance with the manufacturer’s instructions. However, in the event of a conflict between the manufacturer’s instructions and the provisions of section 1228.4, the provisions of this section 1228.4 shall control.

Subdivision (h), “Carbon monoxide detection systems,” specifies requirements for CO detection systems. CO detection systems must comply with National Fire Protection Association (NFPA) 720. CO detectors shall be listed in accordance with UL 2075.

The CO detectors must be installed in the locations specified in subdivisions (d) and (e) of section 1228.4. In the event of a conflict between the CO detector location requirements specified in subdivisions (d) and (e) and the CO detector location requirements specified in NFPA 720, the location requirements specified in subdivisions (d) and (e) of section 1228.4 shall control.

Combination CO / smoke detectors will be permitted in CO detection systems, provided such combination detectors are listed in accordance with UL 2075 and UL 268.

Notification appliances in CO detection systems must comply with NFPA 720. Notification appliances shall be provided in the locations specified in NFPA 720 or, in the alternative, in the locations specified in subdivisions (d) and (e) and paragraph (4) of subdivision (g) of section 1228.4 as the required locations for CO detection.

The power source for CO detection systems must comply with NFPA 720.

Subdivision (i) (“Additional requirement in Group E occupancies”) provides that in a new commercial building that (i) has an occupant load of 31 or more and (ii) is classified, in whole or in part, as Educational Group E under Chapter 3 of the 2010 BCNYS, CO alarm signals shall be automatically transmitted to an approved on-site location that is normally staffed by school personnel during normal school hours.

Subdivision (j) (“Maintenance”) provides that CO alarms and CO detection systems must be maintained in accordance with NFPA 720, and that CO alarms and CO detectors that become inoperable or begin producing end-of-life signals must be replaced as soon as practicable.

Subdivision (k) (“Connection of carbon monoxide detection systems to

control units and off-premises signal transmission”) provides that CO detection systems shall be connected to control units and off-premises signal transmission. All CO detection systems installed in accordance with subdivision (h) of section 1228.4 shall have off-premises signal transmission in accordance with NFPA 720. All CO detection systems in new commercial buildings that are required by section 903 or section 907 of the 2010 Fire Code of New York State to have a fire alarm control panel installed shall have off-premises signal transmission in accordance with NFPA 720. CO detection systems shall not activate a fire signal to a fire alarm control panel. CO detection systems shall not activate any notification appliance that announces a fire alarm or any other alarm that is not distinctive from a fire notification as required by NFPA 72. Where notification of CO detection system is permitted to be transmitted to approved locations, at least one approved notification appliance shall be provided within every building that transmits a signal to an approved location.

Subdivision (l) (“Other Uniform Code provisions relating to carbon monoxide detection”) provides that section 1228.4 does not repeal, override, modify or otherwise affect any other provision of the Uniform Code (including but not necessarily limited to section R313.4 of the 2010 RCNYS and section 610 of the 2010 FCNYS) that requires CO detection in any class of buildings, and that any building that is or becomes subject to any such other provision must comply with such other provision. Subdivision (l) further provides that in the case of a building that (1) is subject to section R313.4 of the 2010 RCNYS or section 610 of the 2010 FCNYS and (2) is also a “commercial building” that is subject to section 1228.4 (a “mixed use building”) must comply with the requirements of section R313.4 of the 2010 RCNYS or section 610 of the 2010 FCNYS, as applicable, and, in addition, shall comply with the requirements of section 1228.4. However, duplicative CO detection shall not be required, and if an area in a mixed use building is provided CO detection in accordance with the requirements of section R313.4 of the 2010 RCNYS or section 610 of the 2010 FCNYS, as applicable, such area need not be provided with additional CO protection under this section 1228.4.

Subdivision (m) (“Interconnection in mixed used buildings”) provides that in the case of a new “mixed use building,” the CO detection required by section 1228.4 must be interconnected with the CO detection required by section R313.4 of the 2010 RCNYS or section 610 of the 2010 FCNYS, as applicable.

Subdivision (n) (“Incorporation by reference”) provides for the incorporation by reference of the 2010 BCNYS, the 2010 FCNYS, and NFPA 720 in section 1228.4.

Subdivision (o) (“Effective date”) provides that section 1228.4 will take effect on June 27, 2015.

Subdivision (p) (“Transition period”) establishes a transition period (June 27, 2015 to June 27, 2016); provides that owners of existing commercial buildings are encouraged to install carbon monoxide detection as quickly as practicable; provides that the owner of an existing commercial building shall not be deemed to be in violation of section 1228.4 if the owner provides the authority having jurisdiction with a written statement certifying that such owner is attempting in good faith to install carbon monoxide detection that complies with the requirements of this section 1228.4 in such owner’s existing commercial building as quickly as practicable; and provides that carbon monoxide detection that satisfies the requirements of section 1228.4 must be installed and must be fully operational in all existing commercial buildings by the end of the transition period.

Final rule as compared with last published rule: Nonsubstantive changes were made in sections 1228.4(b)(15), (c)(2), (e)(2)(i), (g)(1), (3) and (n)(3).

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

Additional matter required by statute: 1. Executive Law § 378(15)(a)

Executive Law § 378(15)(a) provides, in pertinent part, that no change to the State Uniform Fire Prevention and Building Code (Uniform Code) shall become effective until at least ninety days after the date on which notice of such change has been published in the State Register, unless the Code Council finds that an earlier effective date is necessary to protect health, safety and security.

This rule amends the Uniform Code by adding a new section 1228.4 to Part 1228 of Title 19 NYCRR. New section 1228.4 implements subdivision 5-d of Executive Law § 378, as added by Chapter 541 of the Laws of 2014, by requiring the installation of carbon monoxide detection in commercial buildings.

This rule is a new version of a prior rule that was adopted as an emergency measure and proposed for adoption as a permanent measure by Notice of Emergency Adoption and Proposed Rule Making filed on June 25, 2015 and published in the State Register on July 15, 2015.

The prior version of this rule was re-adopted as an emergency measure

by a Notice of Emergency Adoption filed on September 21, 2015 and published in the State Register on October 7, 2015. The re-adoption of the prior version of this rule expired on November 19, 2015.

The Department of State (DOS) and the State Fire Prevention and Building Code Council (Code Council) made several non-substantial changes to the prior version of this rule in response to comments received during the public comment period for the prior version of this rule. This rule reflects those non-substantial changes.

At its meeting held on November 2, 2015, the Code Council found and determined that making the permanent adoption of this rule effective immediately upon the filing of the Notice of Adoption is required to preserve public safety and general welfare because:

(1) Executive Law § 378(5-d), as added by Chapter 541 of the Laws of 2014, provides that the Uniform Code must contain provisions requiring the installation of carbon monoxide detecting devices in every commercial building and every building that contains one or more restaurants;

(2) Executive Law § 378(5-d) became effective on June 27, 2015;

(3) by reason of the previously filed emergency adoption and previously filed emergency re-adoption, the prior version of this rule became effective on June 27, 2015 and will remain in effect through November 19, 2015;

(4) the Code Council has adopted this rule (which reflects non-substantial changes to the prior version of this rule) as an emergency measure, and has directed that the Notice of Emergency Adoption be filed on November 20, 2015, the day following the expiration of the prior version of this rule;

(5) the emergency adoption of this rule will become effective on the date that the Notice of Emergency Adoption is filed (on or about November 20, 2015) and will expire 90 days thereafter (on or about February 18, 2015);

(6) the Code Council has also adopted this rule as a permanent measure;

(7) it is anticipated that the Notice of Adoption of this rule as a permanent measure will be filed on or about the same date as the filing of the Notice of Emergency Adoption of this rule as an emergency measure, that is, on or about November 20, 2015;

(8) A Notice of Adoption filed on November 20, 2015 will appear in the State Register on December 9, 2015;

(9) pursuant to Executive Law § 378(15)(a), the adoption of this rule as a permanent measure will not be effective until 90 days after the date on which the Notice of Adoption appears in the State Register unless the Code Council finds that an earlier effective date is necessary to protect health, safety and security;

(10) making the adoption of this rule effective on a date earlier than March 8, 2016 (90 days after the date on which the Notice of Adoption will appear in the State Register) is necessary to protect health, safety, and security because, in the absence of an earlier effective date, the emergency adoption of this rule will expire before the permanent adoption of this rule becomes effective.

2. Executive Law § 377(1)

Pursuant to Section 377(1) of the Executive Law, the Secretary of State has reviewed the amendment of the Uniform Code to be implemented by this rule, has found that said amendment effectuates the purposes of Article 18 of the Executive Law, and has approved said amendment.

Summary of Revised Regulatory Impact Statement

This rule amends the State Uniform Fire Prevention and Building Code (Uniform Code) by adding a new section 1228.4 to 19 NYCRR Part 1228 (Additional Uniform Code Provisions). New section 1228.4 (entitled "Carbon Monoxide Detection in Commercial Buildings") requires the installation of carbon monoxide detecting devices in every commercial building (including but not limited to every building containing one or more restaurants) if such building has an attached garage or contains any appliance, equipment, device or system that may emit carbon monoxide.

1. STATUTORY AUTHORITY.

This rule is authorized by Executive Law § 377(1), which authorizes the State Fire Prevention and Building Code Council (Code Council) to amend the Uniform Code from time to time, and by new subdivision (5-d) of Executive Law § 378, as added by Chapter 541 of the Laws of 2014. New subdivision (5-d) provides that the Uniform Code must include "standards for installation of carbon monoxide detecting devices requiring that the owner of every building that contains one or more restaurants and the owner of every commercial building in the state shall have installed in such building and shall maintain operable carbon monoxide detecting device or devices of such manufacture, design and installation standards as are established by the [Code Council]. Carbon monoxide detecting devices shall only be required if the restaurant or commercial building has appliances, devices or systems that may emit carbon monoxide or has an attached garage."

2. LEGISLATIVE OBJECTIVES.

Under current New York law, one and two family dwellings and apartments must be equipped with carbon monoxide detectors, but no such

requirement exists for restaurants and commercial buildings. The absence of detection devices in nonresidential occupancies has contributed to instances of illness and death among patrons and employees. Chapter 541 of the Laws of 2014 amended Executive Law § 378 to require that the Uniform Code include standards for carbon monoxide detection in commercial buildings and every building that contains one or more restaurants. By requiring that restaurants and commercial buildings follow the same standards as residences, the Legislature demonstrates that its objectives are to reduce the number of deaths and injuries caused by carbon monoxide poisoning, and to provide safer environments for customers and employees.

3. NEEDS AND BENEFITS.

Carbon monoxide is an invisible, odorless gas that is generated by the incomplete combustion of carbonaceous fuels such as fuel oil, natural gas, kerosene and wood. In non fire situations, elevated carbon monoxide levels may be caused by improperly installed or maintained fuel fired appliances, motor vehicles operated in enclosed garages, or appliances intended for outdoor use being used indoors during power failures. As carbon monoxide is not detectable by the senses, its presence and concentration can only be determined by instruments such as carbon monoxide detection systems.

According to the United States Consumer Product Safety Commission, "on average, about 170 people in the United States die every year from CO produced by non-automotive consumer products.

According to the Center for Disease Control and Prevention, there were 68,316 non-fire-related CO exposures reported to poison centers between the years 2000 and 2009. (The Center for Disease Control and Prevention, Carbon Monoxide Exposures United States, 2000-2009, August 5, 2011, <http://www.cdc.gov/mmwr/preview/mmwrhtml/mm6030a2.htm>.)

The Memorandum in Support of the bill enacting Executive Law § 378(5-d) states that the failure to mandate carbon monoxide detectors in commercial buildings has contributed to cases of illness and death among patrons and employees.

This rule implements Executive Law § 378(5-d) by requiring the installation of CO detecting devices in commercial buildings.

4. COSTS.

Cost to regulated parties.

Regulated parties (owners of new and existing commercial buildings that [1] contain one or more carbon monoxide sources and/or [2] contain a garage or other motor-vehicle related occupancy and/or [3] are attached to a garage or other motor-vehicle-related occupancy) are required to install carbon monoxide detection (carbon monoxide alarms or carbon monoxide detection systems) in the places specified in this rule, to maintain those carbon monoxide alarms or carbon monoxide detection systems, and to replace those carbon monoxide alarms or carbon monoxide detection systems when they cease to operate as intended.

In each commercial building where carbon monoxide detection is required, such detection must be located in each "detection zone" that contains a carbon monoxide source, is served by an HVAC system that includes a carbon monoxide-producing component, or is adjacent to a garage or other motor-vehicle-related occupancy. In general, each story in a commercial building will be a "detection zone."

Costs to regulated parties for compliance with this rule will vary depending on the size of such building, the number of carbon monoxide sources within the buildings, the wiring within the building, and the type of carbon monoxide detection (carbon monoxide alarms or a carbon monoxide detection system) the owner chooses to provide. The Department estimates that battery-powered carbon monoxide alarms cost approximately \$50 (including installation costs). When carbon monoxide alarms are installed in new commercial buildings, the alarms must be hard-wired units with battery backup. The Department estimates that the total cost purchasing and installing hard-wired carbon monoxide alarms with battery backup will be approximately \$125 per unit. Lastly, this rule will permit installation of a carbon monoxide detection system in lieu of carbon monoxide alarms. The total cost of purchasing and installing one detector and one notification appliance (a necessary component of the carbon monoxide detection system) will be approximately \$348. In addition, a carbon monoxide detection system requires a control unit. The Department estimates that the cost of purchasing and installing a carbon monoxide detection system control unit will be approximately \$1,100.

This rule provides that carbon monoxide alarms and carbon monoxide detection systems must be maintained in an operative condition at all times, shall be replaced or repaired where defective, and shall be replaced when they cease to operate as intended. The on-going costs of complying with this rule will include the cost of maintaining carbon monoxide alarms and carbon monoxide detection systems in operative condition.

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

The Department anticipates that neither the Department nor the State nor the local governments in the State will incur any significant costs for the implementation or continued administration of this rule, except as follows:

First, the Department will provide instruction and technical assistance regarding new section 1228.4 and its requirements to code enforcement officials and to regulated parties. The Department anticipates that it will be able to use its existing staff to perform these functions.

Second, cities, towns, villages, counties, and State agencies responsible for administration and enforcement of the Uniform Code will be required (1) to see that their code enforcement personnel receive training on new section 1228.4 and its requirements, and (2) to enforce these new provisions.

Third, the State, which owns commercial buildings, as well as any local government that owns one or more commercial buildings, will be subject to the new requirements to be imposed by new section 1228.4 and will be required to comply with those requirements. In this context, the State and any local government that owns commercial buildings will be regulated parties, and will incur compliance costs similar to those discussed above for other regulated parties.

5. PAPERWORK.

This rule requires carbon monoxide detection systems to comply with the Standard for the Installation of Carbon Monoxide (CO) Detection and Warning Equipment, published by the National Fire Protection Association (NFPA 720). If a regulated party elects to install a CO detection system in lieu of CO alarms, such system must comply with NFPA 720. A small business or local government that elects to install a CO detection system will be required to comply with the reporting and recordkeeping requirements specified in NFPA 720 Sections 4.4.2.3, 4.14.2, 8.2.1.5, 8.2.3, 8.6.1, and 8.6.2.2. NFPA 720 provides standardized forms to be used for this recordkeeping.

6. LOCAL GOVERNMENT MANDATES.

This rule imposes no new programs, services, duties and responsibilities upon Local Governments, except as follows:

First, any Local Government that owns any existing commercial building or constructs any new commercial building will be required to install carbon monoxide alarm(s) or a carbon monoxide detection system in such building.

Second, cities, towns, villages, and counties charged by Executive Law Section 381 with the responsibility of administering and enforcing the Uniform Code will be required to enforce the provisions of new section 1228.4. Such cities, towns, villages, and counties will be required to see that their code enforcement personnel receive training on new section 1228.4.

7. DUPLICATION.

This rule does not duplicate, overlap or conflict with any other legal requirement of the Federal or State government known to the Department.

8. ALTERNATIVES.

The rule does not permit the use of plug in units or battery-powered carbon monoxide alarms in new commercial buildings. The Department considered the alternative of allowing the use of battery-powered carbon monoxide alarms in new commercial buildings. This alternative was rejected because the Department determined that the additional cost associated with requiring hard-wired carbon monoxide alarms in new buildings was minimal (compared to the additional cost associated with requiring hard-wired alarms in existing buildings).

The rule permits a building owner to choose between installing carbon monoxide alarms or a carbon monoxide detection system. The Department considered the alternative of requiring the installation of a carbon monoxide detection system in all commercial buildings. This alternative was rejected because it would unnecessarily increase the cost of bringing commercial buildings, particularly existing commercial buildings, into compliance with the new statutory mandate.

The rule requires carbon monoxide detection in each detection zone where at least one of the "triggering conditions" exists. The rule also requires carbon monoxide detection in more than one location in larger (over 10,000 square feet) detection zones. The Department considered alternatives such as requiring carbon monoxide detection only in the vicinity of each carbon monoxide source, allowing plug-in units in new and existing buildings, and allowing alternative listing entities. These alternatives were rejected because the Department determined that such reduced coverage would not have provided the increased level of safety contemplated by the Legislature when it added a new subdivision (5-d) to section 378 of the Executive Law.

9. FEDERAL STANDARDS.

This rule parallels similar federal standards for carbon monoxide exposure. The federal standards apply to buildings consisting of employees who are employed in a business that affects commerce (CFR Title 29, Part 1910, Subpart Z, § 1910.1000: Air contaminants). However, although these standards are similar, they measure carbon monoxide exposures differently from section 1228.4, therefore making it difficult to conclude whether they exceed these standards. For example, CFR Title 29, Part 1910, Subpart Z, § 1910.1000 limits an employee's exposure to 50 ppm over an 8-hour weighted average, comparable to a typical workday. By

contrast, carbon monoxide alarms required by section 1228.4 sound an alarm after detecting higher concentrations - 100 ppm or 400 ppm -over a much shorter period of time.

10. COMPLIANCE SCHEDULE.

Regulated parties that own existing commercial buildings will be able to comply with this rule by purchasing and installing battery-operated carbon monoxide alarms of the type currently on the market. The Department anticipates that regulated parties that own existing commercial buildings should be able to comply with this rule by the end of the "transition period" (June 27, 2015 through June 27, 2016) established by this rule.

Regulated parties constructing new commercial buildings will be able to comply with this rule by installing hard-wired carbon monoxide alarms or carbon monoxide detection systems as part of the construction process.

Summary of Revised Regulatory Flexibility Analysis

1. EFFECT OF RULE.

This rule implements subdivision (5-d) of Executive Law § 378, as added by Chapter 541 of the Laws of 2014. Specifically, this rule amends the State Uniform Fire Prevention and Building Code (Uniform Code) by adding a new section 1228.4 (entitled "Carbon Monoxide Detection in Commercial Buildings") to 19 NYCRR Part 1228. New section 1228.4 requires the installation of carbon monoxide (CO) detecting devices in all new and existing commercial buildings.

Types and Estimated Number of Small Businesses and Local Governments Affected

This rule will affect any small business or local government that owns an existing commercial building or constructs a new commercial building. In addition, since landlords typically recover building-related costs by increasing rents, this rule will indirectly affect any small business or local government that rents space in a commercial building. The Department of State (DOS) is not able to estimate the number of small businesses and local governments that will be directly or indirectly affected by this rule; however, DOS anticipates that most small businesses and local governments will be directly or indirectly affected by this rule.

In addition, since this rule adds provisions to the Uniform Code, the activities of each local government that is responsible for administering and enforcing the Uniform Code will be affected by this rule. DOS estimates that approximately 1,604 local governments (mostly cities, towns and villages, as well as several counties) are responsible for administering and enforcing the Uniform Code.

2. REPORTING, RECORDKEEPING AND OTHER COMPLIANCE REQUIREMENTS.

Reporting and Recordkeeping Requirements

If a regulated party elects to install a CO detection system in lieu of CO alarms, such system must comply with the Standard for the Installation of Carbon Monoxide (CO) Detection and Warning Equipment, published by the National Fire Protection Association (NFPA 720). A small business or local government that elects to install a CO detection system will be required to comply with the reporting and recordkeeping requirements specified in NFPA 720 Sections 4.4.2.3, 4.14.2, 8.2.1.5, 4.4.3, 8.2.3, 8.6.1, and 8.6.2.2. NFPA 720 provides standardized forms to be used for this recordkeeping.

Other Compliance Requirements

Small businesses and local governments that own a new or existing commercial building that contains a CO source, contains a garage or other motor-vehicle-related occupancy, or is attached to a garage or other motor-vehicle-related occupancy will be required to install CO detection (CO alarms or a CO detection system) in the places specified in this rule, to maintain those CO alarms or CO detection systems, and to replace those CO alarms or CO detection systems when they cease to operate as intended.

In each commercial building where CO detection is required, such detection must be located in each "detection zone" (as that term is defined in the rule) that contains a CO source, is served by an HVAC system that includes a CO-producing component, or is adjacent to a garage or other motor-vehicle-related occupancy.

As a general rule, when CO detection must be provided in a detection zone, the CO detection must be placed in a central location within the detection zone. If the detection zone is larger than 10,000 square feet, additional CO detection must be placed in such additional locations as may be necessary to assure that no point in the detection zone is more than 100 feet from CO detection.

In an existing commercial building (or in a new or existing commercial building without commercial electric power), CO alarms powered by 10-year batteries are permitted.¹ When CO alarms are installed in new commercial buildings, the alarms must be hard-wired units with battery backup.

This rule also permits installation of a CO detection system in lieu of CO alarms. A CO detection system (1) must comply with NFPA 720, (2) must have a detector at each location where a CO alarm otherwise would have been required, and (3) must have a notification appliance at each lo-

cation specified in NFPA 720 or, in the alternative, at each location where a CO alarm otherwise would have been required.

When a CO alarm is installed in a normally unoccupied detection zone in a new commercial building, that alarm must be interconnected with a CO alarm that is placed in an adjacent and normally occupied detection zone; and

In the case of a new commercial building that (i) has an occupant load of 31 or more and (ii) is classified, in whole or in part, as Educational Group E under Chapter 3 of the 2010 Building Code of New York State (BCNYS), this rule provides that CO alarm signals must be automatically transmitted to an approved on-site location that is normally staffed by school personnel during normal school hours.

CO detection systems shall be connected to control units and off-premises signal transmission in accordance with the requirements of the BCNYS.

3. PROFESSIONAL SERVICES.

If a small business or local government elects to install a CO detection system (in lieu of CO alarms), the small business or local government must hire service personnel with the qualifications and experience listed in NFPA 720 Section 8.3 in order to install and maintain the CO detection system.

In addition, in certain situations a small business or local government that elects to install a CO detection system may be required to hire a person holding an appropriate license under General Business Law Article 6-D to install, service or maintain such CO detection system.

4. COMPLIANCE COSTS.

Initial Costs of Compliance

The initial capital costs of complying with the rule will include the cost of purchasing and installing the CO alarms or CO detection systems. Costs to regulated parties for compliance with this rule will vary depending on the size of such building, the number of CO sources within the buildings, the wiring within the building, and the type of CO detection (CO alarms or a CO detection system) the owner chooses to provide.²

In an existing commercial building (or in a new or existing commercial building without commercial electric power), CO alarms powered by 10-year batteries are permitted. DOS estimates that the cost of purchasing and installing such battery-powered CO alarms is approximately \$50.

When CO alarms are installed in new commercial buildings, the alarms must be hard-wired units with battery backup. DOS estimates that total cost purchasing and installing hard-wired CO alarms with battery backup will be approximately \$125 per unit.

This rule permits installation of a CO detection system in lieu of CO alarms. A CO detection system must comply with NFPA 720; must have a detector at each location where a CO alarm otherwise would have been required; and must have a notification appliance at each location specified in NFPA 720 or, in the alternative, at each location where a CO alarm otherwise would have been required. DOS estimates that the cost of each detector in a CO detection system will be approximately \$55, the cost of each notification appliance used in a CO detection system will be approximately \$78, the cost of installing one detector and one notification appliance will be approximately \$215, and the total cost of purchasing and installing one detector and one notification appliance will be approximately \$348. In addition, a CO detection system requires a control unit. DOS estimates that the cost of purchasing and installing a CO detection system control unit will be approximately \$1,100.³ The estimated installation costs specified in this paragraph include the cost of installing the components and the cost of interconnecting the components.

In certain situations, a CO alarm installed in a new commercial building must be a "multiple station" alarm (i.e., must be interconnected with at least one other CO alarm in the building). DOS estimates that (1) the median price of multiple station CO alarms that are hard-wired and have battery backup to be approximately \$38 per unit, (2) the cost of installing such alarms will be approximately \$90 per unit, and (3) the cost of providing interconnection between an alarm in a normally unoccupied detection zone and an alarm in an adjacent, normally occupied detection zone will be approximately \$150.

In the case of a new commercial building classified, in whole or in part, as Educational Group E under the 2010 BCNYS, CO alarm signals must be automatically transmitted to an approved on-site location that is normally staffed by school personnel during normal school hours. DOS estimates that the median price of multiple station CO alarms that are hard-wired and have battery backup will be approximately \$38 per unit; (2) the cost of installing such alarms will be approximately \$90 per unit; and (3) the cost of providing interconnection between the detection zone (classroom) to an on-site location up to 100 feet away will be approximately \$250.

This rule provides that CO detection systems must be "monitored" (i.e., connected to control units and off-premises signal transmission). If a CO detection system is installed in a building that does not have a fire alarm system, DOS estimates that the cost of purchasing and installing the

control unit required to provide "monitoring" of the CO detection system will be approximately \$1,100.

On-going Costs of Compliance

This rule provides that CO alarms and CO detection systems must be maintained in an operative condition at all times, shall be replaced or repaired where defective, and shall be replaced when they cease to operate as intended.

In the case of a battery-powered CO alarm, such maintenance would include vacuuming the alarm cover to remove accumulated dust (typically one a month) and replacing the alarm at the conclusion of its 10-year lifespan.

In the case of a hard-wired CO alarm with battery backup, the required maintenance would include vacuuming the alarm cover to remove accumulated dust (typically one a month) and replacing the backup battery as required (although it is anticipated that backup batteries in such alarms should not need to be replaced during the anticipated life of the alarm).

In addition, most manufacturers recommend that their CO alarms (whether battery-powered or hard-wired) be checked using the alarm's "test" button on a periodic basis (typically once a week) and replaced on a periodic basis (typically once every five years).

Regulated parties constructing new commercial buildings will be able to comply with this rule by installing hard-wired CO alarms or CO detection systems as part of the construction process. This rule will require CO detection systems to comply with NFPA 720.

Variations in Costs

Any variation in compliance costs for small businesses or local governments is likely to depend more on the number and size of commercial buildings owned by the small business or local government, not on the type or size of the small business or local government.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY.

It is economically and technologically feasible for small businesses and local governments to comply with new section 1228.4.

Regulated parties that own existing commercial buildings will be able to comply with this rule by purchasing and installing battery-operated CO alarms of the type currently on the market. DOS anticipates that regulated parties that own existing commercial building should be able to comply with this rule by the end of the "transition period" (June 27, 2015 through June 27, 2016) established by this rule.

Regulated parties constructing new commercial buildings will be able to comply with this rule by installing hard-wired CO alarms or CO detection systems as part of the construction process.

No new technology need be developed for compliance.

6. MINIMIZING ADVERSE IMPACT.

The rule minimizes potential adverse economic impacts on regulated parties by providing several alternative means of compliance (including the option of installing battery powered carbon monoxide alarms in existing commercial buildings and in commercial buildings with no commercial electric power); providing exemptions for commercial buildings that are (1) classified as Storage Group S or Utility and Miscellaneous Group U and occupied only occasionally for building or equipment maintenance, (2) "canopies" (as defined in the 2010 FCNYS), or (3) completely unoccupied and secured; providing a number of exceptions for certain detection zones that would otherwise require CO detection; and establishing a "transition period" to provide owners of existing commercial buildings with additional time to achieve full compliance.

Providing exemptions from coverage by the rule, or any part thereof, for commercial buildings owned by small businesses or local governments would not be consistent with legislative objectives and would endanger public health, safety, and general welfare.

7. SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION.

DOS notified interested parties throughout the State, including interested parties in rural areas, of the proposed adoption of a prior version of this rule by means of notices posted on DOS's website and notices published in Building New York, a monthly electronic news bulletin covering topics related to the Uniform Code and the construction industry.

The prior version of this rule was proposed for adoption by Notice of Emergency Adoption and Proposed Rule Making published in the State Register on July 15, 2015. DOS and the Code Council made several non-substantial changes to the prior version of this rule in response to public comments received during the public comment period. This rule (i.e., the rule now being adopted) reflects those non-substantial changes.

8. VIOLATIONS AND PENALTIES ASSOCIATED WITH VIOLATIONS.

The rule includes a subdivision that provides, in effect, a "cure period or other opportunity for ameliorative action, the successful completion of which will prevent the imposition of penalties on the party or parties subject to enforcement" in this rule. Subdivision (p) of new section 1228.4 provides that during the "transition period" (June 27, 2015 to June 27, 2016), the owner of an existing commercial building shall not be deemed

to be in violation of section 1228.4 if the owner provides the authority having jurisdiction with a written statement certifying that such owner is attempting in good faith to install carbon monoxide detection that complies with the requirements of new section 1228.4 in such owner's existing commercial building as quickly as practicable.

All owners of existing commercial buildings will be required to have such carbon monoxide detection fully installed and operational by the end of the transition period.

¹ An "existing commercial building" is defined in this rule as a commercial building constructed before December 31, 2015 (meaning either that the original construction of the building was completed on or before December 31, 2015, or that the application for the building permit for the original construction of the building was filed on or before December 31, 2015). A "new commercial building" is defined in this rule as any commercial building that is not an existing commercial building.

² Cost estimates set forth in this section are based on prices quoted on the websites of several manufacturers of carbon monoxide alarms and carbon monoxide detection systems. See, for example, <http://www.homedepot.com/p/Kidde-120-Volt-Hardwire-Inter-Connectable-Carbon-Monoxide-Alarm-with-Battery-Backup-KN-COB-1C/202281774?N=5yclvZbmgkZlZouzse>. Estimated installation costs are based on the time estimated to perform an installation multiplied by an assumed hourly rate of \$70.

³ In many situations, a single control panel can control both a carbon monoxide detection system and a fire alarm system. Therefore, in a building where a fire alarm system is required by other provisions of the Uniform Code, there should be little or no additional cost associated with providing a control panel for the carbon monoxide detection system.

Summary of Revised Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBERS OF RURAL AREAS.

This rule amends the State Uniform Fire Prevention and Building Code (Uniform Code) by adding a new section 1228.4 to 19 NYCRR Part 1228. New section 1228.4 requires the installation of carbon monoxide (CO) detecting devices in all new and existing commercial buildings. Since the Uniform Code applies in all areas of the State (other than New York City), this rule applies in all rural areas of the State.

2. REPORTING, RECORDKEEPING AND OTHER COMPLIANCE REQUIREMENTS.

Reporting and Recordkeeping Requirements

If a regulated party elects to install a CO detection system in lieu of CO alarms, such system must comply with the Standard for the Installation of Carbon Monoxide Detection and Warning Equipment, published by the National Fire Protection Association (NFPA 720). A small business or local government that elects to install a CO detection system will be required to comply with the reporting and recordkeeping requirements specified in NFPA 720 Sections 4.4.2.3, 4.14.2, 8.2.1.5, 4.4.3, 8.2.3, 8.6.1, and 8.6.2.2. NFPA 720 provides standardized forms to be used for this recordkeeping.

Other Compliance Requirements

The owner of a new or existing commercial building that contains a CO source, contains a garage or other motor-vehicle-related occupancy, or is attached to a garage or other motor-vehicle-related occupancy will be required to install CO detection (CO alarms or a CO detection system) in the places specified in this rule, to maintain those CO alarms or CO detection systems, and to replace those CO alarms or CO detection systems when they cease to operate as intended.

In each commercial building where CO detection is required, such detection must be located in each "detection zone" that contains a CO source, is served by an HVAC system that includes a CO-producing component, or is adjacent to a garage or other motor-vehicle-related occupancy.

As a general rule, when CO detection must be provided in a detection zone, the CO detection must be placed in a central location within the detection zone. However, if the detection zone is larger than 10,000 square feet, additional CO detection must be placed in such additional locations as may be necessary to assure that no point in the detection zone is more than 100 feet from CO detection.

In an existing commercial building (or in a new or existing commercial building without commercial electric power), CO alarms powered by 10-year batteries are permitted.¹ When CO alarms are installed in new commercial buildings, the alarms must be hard-wired units with battery backup.

This rule permits installation of a CO detection system in lieu of CO alarms. A CO detection system (1) must comply with NFPA 720, (2) must have a detector at each location where a CO alarm otherwise would have been required, and (3) must have a notification appliance at each location specified in NFPA 720 or, in the alternative, at each location where a CO alarm otherwise would have been required.

When a CO alarm is installed in a normally unoccupied detection zone in a new commercial building, that alarm must be interconnected with a CO alarm that is placed in an adjacent and normally occupied detection zone; and

In the case of a new commercial building that (i) has an occupant load of 31 or more and (ii) is classified, in whole or in part, as Educational Group E under Chapter 3 of the 2010 Building Code of New York State (BCNYS), this rule provides that CO alarm signals must be automatically transmitted to an approved on-site location that is normally staffed by school personnel during normal school hours.

This rule requires CO detection systems to be connected to control units and off-premises signal transmission in accordance with the requirements of the BCNYS.

3. PROFESSIONAL SERVICES.

If the owner of a commercial building elects to install a CO detection system in lieu of CO alarms, the building owner must hire service personnel with the qualifications and experience listed in NFPA 720 Section 8.3 in order to install and maintain the CO detection system.

In addition, in certain situations an owner of a commercial building who elects to install a CO detection system may be required to hire a person holding an appropriate license under General Business Law Article 6-D to install, service or maintain such CO detection system.

4. COMPLIANCE COSTS.

Initial Costs of Compliance

The initial capital costs of complying with the rule will include the cost of purchasing and installing the CO alarms or CO detection systems. Costs to regulated parties for compliance with this rule will vary depending on the size of such building, the number of CO sources within the building, the wiring within the building, and the type of CO detection (CO alarms or a CO detection system) the owner chooses to provide.²

In an existing commercial building (or in a new or existing commercial building without commercial electric power), CO alarms powered by 10-year batteries are permitted. The Department of State (DOS) estimates that the cost of purchasing and installing such battery-powered CO alarms is approximately \$50.

When CO alarms are installed in new commercial buildings, the alarms must be hard-wired units with battery backup. DOS estimates that total cost purchasing and installing hard-wired CO alarms with battery backup will be approximately \$125 per unit.

This rule permits installation of a CO detection system in lieu of CO alarms. A CO detection system must comply with NFPA 720; must have a detector at each location where a CO alarm otherwise would have been required; and must have a notification appliance at each location specified in NFPA 720 or, in the alternative, at each location where a CO alarm otherwise would have been required. DOS estimates that (1) the cost of each detector in a CO detection system will be approximately \$55, (2) the cost of each notification appliance used in a CO detection system will be approximately \$78, (3) the cost of installing one detector and one notification appliance will be approximately \$215, and (4) the total cost of purchasing and installing one detector and one notification appliance will be approximately \$348. In addition, a CO detection system requires a control unit. DOS estimates that the cost of purchasing and installing a CO detection system control unit will be approximately \$1,100.³ The estimated installation costs specified in this paragraph include the cost of installing the components and the cost of interconnecting the components.

In certain situations, a CO alarm installed in a new commercial building must be a "multiple station" alarm (i.e., must be interconnected with at least one other CO alarm in the building). DOS estimates that (1) the median price of multiple station CO alarms that are hard-wired and have battery backup to be approximately \$38 per unit, (2) the cost of installing such alarms will be approximately \$90 per unit, and (3) the cost of providing interconnection between an alarm in a normally unoccupied detection zone and an alarm in an adjacent, normally occupied detection zone will be approximately \$150.

In the case of a new commercial building classified, in whole or in part, as Educational Group E, CO alarm signals must be automatically transmitted to an approved on-site location that is normally staffed by school personnel during normal school hours. DOS estimates that the median price of multiple station CO alarms that are hard-wired and have battery backup will be approximately \$38 per unit; (2) the cost of installing such alarms will be approximately \$90 per unit; and (3) the cost of providing interconnection between the detection zone (classroom) to an on-site location up to 100 feet away will be approximately \$250.

This rule provides that CO detection systems must be "monitored" (i.e., connected to control units and off-premises signal transmission). If a CO detection system is installed in a building that does not have a fire alarm system, DOS estimates that the cost of purchasing and installing the control unit required to provide "monitoring" of the CO detection system will be approximately \$1,100.

On-going Costs of Compliance

This rule provides that CO alarms and CO detection systems must be maintained in an operative condition at all times, shall be replaced or repaired where defective, and shall be replaced when they cease to operate as intended.

In the case of a battery-powered CO alarm, such maintenance would include vacuuming the alarm cover to remove accumulated dust (typically one a month) and replacing the alarm at the conclusion of its 10-year lifespan.

In the case of a hard-wired CO alarm with battery backup, the required maintenance would include vacuuming the alarm cover to remove accumulated dust (typically one a month) and replacing the backup battery as required (although it is anticipated that backup batteries in such alarms should not need to be replaced during the anticipated life of the alarm).

In addition, most manufacturers recommend that their CO alarms (whether battery-powered or hard-wired) be checked using the alarm's "test" button on a periodic basis (typically once a week) and replaced on a periodic basis (typically once every five years).

Regulated parties constructing new commercial buildings will be able to comply with this rule by installing hard-wired CO alarms or CO detection systems as part of the construction process. This rule will require CO detection systems to comply with NFPA 720.

Variations in Costs

Any variation in compliance costs for public and private entities in rural areas is likely to depend on the number and size of commercial buildings owned by a public or private entity, and not on differences between types of public and private entities in rural areas.

5. MINIMIZING ADVERSE IMPACT

The rule minimizes potential adverse economic impacts on regulated parties by:

(1) providing several alternative means of compliance (including the option of installing battery powered carbon monoxide alarms in existing commercial buildings and in commercial buildings with no commercial electric power);

(2) providing exemptions for commercial buildings that are (i) classified as Storage Group S or Utility and Miscellaneous Group U and occupied only occasionally for building or equipment maintenance, (ii) "canopies" (as defined in the 2010 FCNYS), or (iii) completely unoccupied and secured;

(3) providing a number of exceptions for certain detection zones that would otherwise require CO detection; and

(4) establishing a "transition period" to provide owners of existing commercial buildings with additional time to achieve full compliance.

This rule implements Executive Law § 378(5-d), which requires installation of CO detecting devices in all commercial buildings that contains any appliance, equipment, device or system that may emit CO or has an attached garage. Executive Law § 378(5-d) makes no distinction between commercial buildings located in rural areas and commercial buildings located in other areas of the State. Executive Law § 378(5-d) does not authorize the establishment of differing compliance requirements or timetables for commercial buildings located in rural areas. Providing exemptions from coverage by the rule, or any part thereof, for commercial buildings located in rural areas would not be consistent with legislative objectives and would endanger public health, safety, and general welfare.

6. RURAL AREA PARTICIPATION.

DOS notified interested parties throughout the State, including interested parties in rural areas, of the proposed adoption of a prior version of this rule by means of notices posted on DOS's website and notices published in Building New York, a monthly electronic news bulletin covering topics related to the Uniform Code and the construction industry.

The prior version of this rule was proposed for adoption by Notice of Emergency Adoption and Proposed Rule Making published in the State Register on July 15, 2015. DOS and the Code Council made several non-substantial changes to the prior version of this rule in response to public comments received during the public comment period. This rule (i.e., the rule now being adopted) reflects those non-substantial changes.

¹ An "existing commercial building" is defined in this rule as a commercial building constructed before December 31, 2015 (meaning either that the original construction of the building was completed on or before December 31, 2015, or that the application for the building permit for the original construction of the building was filed on or before December 31, 2015). A "new commercial building" is defined in this rule as any commercial building that is not an existing commercial building.

² Cost estimates set forth in this section are based on prices quoted on the websites of several manufacturers of carbon monoxide alarms and carbon monoxide detection systems. See, for example, <http://www.homedepot.com/p/Kidde-120-Volt-Hardwire-Inter-Connectable-Carbon-Monoxide-Alarm-with-Battery-Backup-KN-COB-1C/202281774?N=5yclvZbmgkZ1zOuzse>. Estimated installation costs are

based on the time estimated to perform an installation multiplied by an assumed hourly rate of \$70.

³ In many situations, a single control panel can control both a carbon monoxide detection system and a fire alarm system. Therefore, in a building where a fire alarm system is required by other provisions of the Uniform Code, there should be little or no additional cost associated with providing a control panel for the carbon monoxide detection system.

Revised Job Impact Statement

The Department of State has concluded after reviewing the nature and purpose of the rule that it will not have a "substantial adverse impact on jobs and employment opportunities" (as that term is defined in section 201-a of the State Administrative Procedures Act) in New York.

This rule amends the State Uniform Fire Prevention and Building Code (the Uniform Code) to require that the installation of carbon monoxide detecting devices (carbon monoxide alarms or carbon monoxide detection systems) in all commercial buildings that contain a carbon monoxide source, contain a garage or other motor-vehicle-related occupancy and/or are attached to a garage or other motor-vehicle-related occupancy. This amendment is required to satisfy the requirements of subdivision (5-d) of section 378 of the Executive Law, as added by Chapter 541 of the Laws of 2014.

This rule requires the installation of carbon monoxide detecting devices in "existing commercial buildings" (defined in this rule as a commercial building constructed prior to January 1, 2016). However, potential adverse economic impact on regulated parties is minimized by the provisions of the rule that allow the use of battery powered carbon monoxide alarms in existing commercial buildings. (The rule also permits the use of battery powered carbon monoxide alarms in new and existing commercial buildings without a commercial electric power.)

This rule also requires the installation of carbon monoxide detecting devices in new commercial buildings. However, potential adverse economic impact on regulated parties is minimized by the provisions of the rule that permit the installation of carbon monoxide alarms even in new commercial buildings (although carbon monoxide alarms installed in new commercial buildings must be hard-wired, with battery backup). Regulated parties are permitted to install carbon monoxide detection systems; in the case of a building that is required by other, already existing provisions of the Uniform Code to have a fire alarm system, the additional cost of adding a carbon monoxide detection system is expected to be modest. In any event, whether an owner chooses to install hard-wired carbon monoxide alarms with battery backup or a carbon monoxide detection system in a new commercial building, the costs of purchasing, installing and maintaining the carbon monoxide detecting devices required by this rule is expected to be insignificant in comparison to the total cost of construction. Therefore, this rule should have no substantial adverse impact on construction of new commercial buildings and, consequently, this rule should have no substantial adverse impact on jobs and employment opportunities related to the construction of new commercial buildings.

The Uniform Code has contained provisions requiring installation of carbon monoxide alarms in residential buildings since 2002. The current requirements relating to installation of alarms in residential buildings are not changed by this rule. Therefore, this rule should have no substantial adverse impact on jobs and employment opportunities related to the construction of new residential buildings.

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 Notice of Emergency Adoption and Proposed Rule Making was published in the State Register on July 15, 2015. A public hearing was held on August 31, 2015. The Department of State (DOS) received the comments described below. Where identical or substantially similar comments were received from more than one commenter, those comments are discussed in one consolidated statement below.

Summary and Analysis of Issues Raised and Significant Alternatives Suggested by Comments, and Reasons why any Significant Alternatives were not incorporated into the Rule

COMMENT 1: Having fuel-fired burners used in K-12 science classrooms be considered a carbon monoxide source is over restrictive. Testing has shown little to no production of carbon monoxide during extensive use within existing classrooms.

DOS RESPONSE TO COMMENT 1: This rule implements Executive Law 378 (5-d), which provides that the State Uniform Fire Prevention and Building Code (the Uniform Code) must include standards requiring the installation and maintenance of one or more carbon monoxide (CO) detecting devices in every building that contains one or more restaurants and every commercial building in the State that has "appliances, devices or

systems that may emit carbon monoxide or has an attached garage.” Since fuel-fired burners in K-12 classrooms are “appliances, devices or systems that may emit carbon monoxide,” this rule must consider such burners to be CO sources.

COMMENT 2: Please consider revising section 1228.4(e)(2)(ii) to allow non-classroom detection zones that contain multiple CO sources that are not CO-producing HVAC systems as separate sources under the exception.

DOS RESPONSE TO COMMENT 2: Section 1228.4(e)(2)(ii) provides an alternative for compliance in the case of certain large (more than 10,000 square feet) detection zones. As originally proposed, the alternative was available only if the large detection zone contained only one CO source. In response to this comment, DOS has revised 1228.4(e)(2)(ii) to make the alternative available if the large detection zone contains one or more CO sources. The revision will require one CO detecting device in a “central location” in the zone and one additional CO detecting device for each CO source located in the zone.

COMMENT 3: Please consider deleting clause “(C)” from the exception set forth in section 1228.4(e)(2)(ii). (The referenced clause reads as follows: “(C) is not adjacent to a garage or other motor-vehicle-related occupancy.”) If a garage is considered a triggering source then it should be treated as one of the CO sources under the detector placement requirements, including any exception.

DOS RESPONSE TO COMMENT 3: Section 1228.4(e)(2)(i) requires placement of CO detectors in a large (over 10,000 square feet) detection zone in locations that will assure that no point in the detection zone is more than 100 feet from a detector.

Section 1228.4(e)(2)(ii) provides an exception to that general rule. The exception provides that if the large detection zone (A) contains one or more CO sources, (B) is not served by a CO-producing HVAC system, (C) is not adjacent to a garage or other motor vehicle-related occupancy, and (D) is not a classroom, a CO detector will be required at a “central location” and, for each CO source in the zone, one CO detector will be required at either an approved location between such CO source and the remainder of the detection zone or on the ceiling of, or at another approved location in, the room containing such CO source.¹

The clause cited by the person submitting this comment (clause “(C)”) actually narrows the scope of this exception. If clause “(C)” were deleted, as requested, the exception would become broader and would apply in more situations. Therefore, DOS made no change in response to Comment 3.

COMMENT 4: CO detectors should be considered life safety devices, which they are defined as in NFPA 720 2012 edition, but not in the NYS reference of the 2009 edition.

DOS RESPONSE TO COMMENT 4: DOS has amended this rule to refer to the 2015 edition of NFPA 720.

COMMENT 5: Installation of CO detectors in HVAC zones is very problematic for many reasons; including dealing with existing buildings, reluctance of design professionals to sign off and subdivided buildings.

DOS RESPONSE TO COMMENT 5: This rule uses the term “detection zone” which is not the same as the NFPA 720 term of “HVAC zone.” This rule determines the locations where CO detector are required on the basis of “detection zones” (as defined in this rule), and not “HVAC zones” (as defined in NFPA 720). Therefore, DOS made no change in response to Comment 5.

COMMENT 6: Most fire alarm panels cannot produce the Temporal 4 notification tone for carbon monoxide notification.

DOS RESPONSE TO COMMENT 6: This rule does not require the use of a fire alarm control unit to produce the notification of occupants of an existing building (i.e., is any building that is constructed prior to January 1, 2016). Furthermore, any building that is constructed after January 1, 2016 is required to have off-premises signal transmission only when a fire alarm control unit is required by other sections of the Uniform Code for fire alarm or automatic sprinkler systems. Notification can be completed by either carbon monoxide alarms or by detectors activating notification appliances that meet the requirements of subdivision (k) of section 1228.4. Therefore, DOS made no change in response to Comment 6.

COMMENT 7: How does the general public know the difference between Temporal 3 and Temporal 4 notification tones?

DOS RESPONSE TO COMMENT 7: This rule does not address the issue of informing the general public, or the occupants of any given building, of the specific emergency indicated by a specific notification tone sounded by notification appliances in a building. DOS does not believe that amending this rule to require a voice-type notification system for carbon monoxide detectors is warranted at this time. Therefore, DOS made no change in response to Comment 7.

COMMENT 8: Supervisory signals do not get people out of building, unknown who receives signal from central station. If rapid CO source what is the time frame of central station notification to FD.

DOS RESPONSE TO COMMENT 8: Section 1228.4(k)(2) requires

connection to a central station in accordance with NFPA 720 for new buildings (constructed on or after January 1, 2016) that are required to have a fire alarm control unit due to other Uniform Code requirements. These are consistent with existing Uniform Code requirements for central station activation of fire alarm systems. Therefore, DOS made no change in response to Comment 8.

COMMENT 9: By having full alarm we will get people out.

DOS RESPONSE TO COMMENT 9: Activation of a fire alarm notification system would be in conflict with the definition of a “fire alarm signal” in the Uniform Code. Furthermore, the connection of carbon monoxide detection systems to either existing fire alarm control units or, in existing and new buildings that do not have fire alarm systems, requiring the installation of new fire alarm control units to activate the full fire alarm systems would not be logistically possible (as expressed in DOS Response to Comment 6) and/or would be excessive in cost in many circumstances. Therefore, DOS made no change in response to Comment 9.

COMMENT 10: Subdivision (g) of section 1228.4 (which permits the use of carbon monoxide alarms listed in accordance with UL 2034 in commercial buildings) should be removed from Section 1228.4 until there is a standard for commercial CO alarms. UL 2034 is not appropriate for commercial buildings.

DOS RESPONSE TO COMMENT 10: The use of UL 2034 carbon monoxide alarms in commercial buildings is allowed due to lack of product on the market to address the need for stand-alone devices and the retrofitting of existing commercial buildings. UL 2034 has been used in the commercial market in other locations within the state, such as the County of Albany, and is currently permitted in non-residential occupancies in the International Fire Code (specifically schools). DOS staff has worked with Underwriters Laboratories and manufacturers to discuss this specific requirement and the finding of staff has been the sensor testing is the same for the residential units (listed to UL 2034) and commercial-type units (listed to UL 2075). Since UL 2075 is for only the detectors (without notification), no other options are available. Therefore, DOS made no change in response to Comment 10.

COMMENT 11: Clarification is needed on whether carbon monoxide detection devices are required in vacant premises.

DOS RESPONSE TO COMMENT 11: DOS has amended the rule to provide that CO detection is not required during any period of time when (1) no part of the building is occupied and (2) certain other specified conditions are satisfied. See section 1228.4(c)(2)(iii) of the new version of the rule now being adopted.

COMMENT 12: Prohibiting combination smoke and carbon monoxide alarms is confusing and unsubstantiated.

DOS RESPONSE TO COMMENT 12: This rule prohibits the installation of combination smoke and carbon monoxide alarms but does allow for the installation of combination smoke and carbon monoxide detectors. The difference is that a smoke alarm (UL 217) is not appropriate to place in a commercial setting based on the listing and the availability of smoke detectors for that application (UL 268). However, DOS has amended the rule to allow certain previously installed combination alarms to remain in place for the remainder of their useful life.

COMMENT 13: There should be an exception for automotive repair shops.

DOS RESPONSE TO COMMENT 13: An automotive repair shop is a motor-vehicle-related occupancy and, therefore, an automotive repair shop is a “CO source” in and of itself. Automotive repair shops may also contain other CO sources. The exception already present in section 1228.4(d)(2)(i) should provide relief and the alternative safety plan contemplated by that provisions should provide adequate safeguards. DOS does not believe that creating a blanket exception for automotive repair shops satisfies the mandate of Executive Law 378 (5-d). Therefore, DOS made no change in response to Comment 13.

COMMENT 14: The 100 foot requirement from a detector will be impossible for restaurant owners to meet and request an easier requirement to meet.

DOS RESPONSE TO COMMENT 14: This rule provides that in detection zones larger than 10,000 square feet, detectors must be placed in such locations as may be required to assure that no point in the detection zone is more than 100 feet from a detector. The 100 foot requirement is to address the notification aspects of the carbon monoxide detection devices. This rule would allow detection devices to be placed up to 200 feet from each other, provided the space within the detection zone was open. No additional information has been provided to describe the specific request as far as distance or the hardship at 100 feet distance. Therefore, DOS made no change in response to Comment 14.

Description of Changes made in the Rule as a result of Comments

The following changes have been made to rule, as originally proposed: Section 1228.4(b)(15): the definition of “NFPA 720” was changed to refer to the 2015 edition, not the 2009 edition.

Section 1228.4(c)(2): a new exception was added; the new exception

provides that CO detection will not be required in a building during a period when no part of the building is occupied and certain other stated conditions are satisfied.

Section 1228.4(e)(2)(ii) was amended to read in the manner described in the DOS Responses to Comments 2 and 3.

Section 1228.4(g)(1): a new exception was added; the new exception allows certain previously installed plug-in or cord-type carbon monoxide alarms, or battery operated carbon monoxide alarms powered by a battery with a life of less than 10 years, to remain in place for the remainder of their useful lives.

Section 1228.4(g)(3): a new exception was added; the new exception allows certain previously installed combination CO / smoke alarms to remain in place for the remainder of their useful lives.

Section 1228.4(n)(3): changed to incorporate by reference the 2015 edition, not the 2009 edition, of NFPA 720.

No changes were made to Section 1228.4 subdivisions (a), (d), (f), (h), (i), (j), (k), (l), (m), (o) or (p).

¹ This description of 1228.4(e)(20)(ii) reflects the amendment made in response to Comment 2.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Cemetery Annual Financial Reports; Commercial Crime Coverage; and Permanent Maintenance Fund Contributions

I.D. No. DOS-49-15-00003-P

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

Proposed Action: Repeal of section 200.5; renumbering of section 200.6 to 200.7; addition of sections 200.1(e), 200.5, 200.6, 201.20; and amendment of sections 200.1(d), 200.3, 200.4 and 200.7 of Title 19 NYCRR.

Statutory authority: Executive Law, section 91; Not-for-Profit Corporation Law, section 1504(c)

Subject: Cemetery annual financial reports; commercial crime coverage; and permanent maintenance fund contributions.

Purpose: To reduce the financial reporting burden and expense on cemeteries and ensure timely, accurate and complete reports are filed.

Text of proposed rule: 1. Subdivision (d) of Section 200.1 of Title 19 NYCRR is amended to read as follows:

(d) For purposes of administration and reporting requirements, cemeteries shall be classified as follows:

(1) The term small cemetery corporation means any cemetery corporation which had, at the end of the preceding calendar year, less than \$[400,000]1,000,000 in total [funds]financial assets.

(2) The term medium cemetery corporation means any cemetery corporation which had, at the end of the preceding calendar year, at least \$[400,000]1,000,000 but less than \$[1,000,000]10,000,000 in total [funds]financial assets and which had under \$1,000,000 in total receipts in the preceding calendar year.

(3) The term large cemetery corporation means: i) any cemetery corporation which had, at the end of the preceding calendar year, \$[1,000,000]10,000,000 or more in total [funds]financial assets; or ii) any cemetery corporation which had \$1,000,000 or more in total receipts in the preceding calendar year.

(4) The term [total funds] includes all general funds, permanent maintenance funds, perpetual care funds, special trust funds and other funds under the control of the cemetery, including both restricted and unrestricted funds.]non-traditional cemetery corporation means any cemetery corporation which does not offer and has not in the past offered full body ground burials. A non-traditional cemetery corporation is excluded from the terms small, medium and large cemetery corporation.

2. A new subdivision (e) is added to Section 200.1 of Title 19 NYCRR as follows:

(e) The term total financial assets includes all general funds, permanent maintenance funds, perpetual care funds, special trust funds and other funds under the control of the cemetery, including both restricted and unrestricted funds, regardless of the form in which they are held.

3. Section 200.3 of Title 19 NYCRR is amended to read as follows:

§ 200.3 Filing of financial reports by cemeteries.

(a) Every [small]cemetery corporation shall file an annual financial report with the division within [75]90 days following the close of the cemetery's fiscal year. [Such report shall be signed by at least two officers or directors of the cemetery corporation]The annual report shall be filed or submitted in the form and manner prescribed by the division, whether by mail, electronically, or otherwise.

(b) [Every medium and large cemetery corporation shall file a CPA financial report with the division within 75 days following the close of the cemetery's fiscal year.]The annual report shall be signed by at least two officers or directors of the cemetery corporation, shall include a completed division financial report, DOS-415, and shall include any Federal Form 990 filed by the cemetery for the preceding calendar or fiscal year. The Form 990 shall be filed or submitted in the manner prescribed by the division, whether by mail, electronically or otherwise.

(c) In addition, every medium, large and non-traditional cemetery corporation and any cemetery directed to do so pursuant to § 200.4(d) of this section shall also file a CPA financial report.

4. Section 200.4 of Title 19 NYCRR is amended to read as follows:

§ 200.4 [Cemetery]CPA financial reports.

(a) Every [large]medium cemetery corporation shall file a CPA financial review with the division within 90 days following the close of the cemetery's fiscal year. The review shall be [audited]conducted by an independent certified public accountant or an independent enrolled public accountant[expressing an opinion in connection with the financial statement filed with the division, which opinion]. It shall be supplemented by the following data:

(1) a description of the extent of the physical examination of the cash and investments;

(2) a statement concerning the internal controls for safeguarding the cash and investments;

(3) a statement concerning compliance with N-PCL section 1507(c) and (d) indicating whether separate accounts are maintained for each perpetual care endowment, reflecting the principal amount, the income apportioned for the year, the cost of care charged for the year, and the excess of income credited to such account to be used in future years;

(4) a statement concerning the accountability for the permanent maintenance fund, indicating whether the cemetery's records separately identify cumulative principal reflecting allocations from the proceeds of the sales of lots and from supplemental sources, cumulative capital gains or losses from investments, and the retained income available for the maintenance and preservation of the cemetery; and

(5) a statement concerning the accountability for the perpetual care fund, indicating whether the cemetery's records separately identify cumulative principal for endowment, cumulative capital gains or losses, and the cumulative income retained for use in future years.

(b) Every [medium]large and non-traditional cemetery corporation shall file a CPA financial audit with the division within 90 days following the close of the cemetery's fiscal year. The audit shall be [reviewed]conducted by an independent certified public accountant or an independent enrolled public accountant[. This review will be] expressing an opinion in connection with the financial statement filed with the division[and]. The opinion shall be supplemented by the following data if applicable to the filing cemetery:

(1) a description of the extent of the physical examination of the cash and investments;

(2) a statement concerning the internal controls for safeguarding the cash and investments;

(3) a statement concerning compliance with N-PCL section 1507(c) and (d) indicating whether separate accounts are maintained for each perpetual care endowment reflecting the principal amount, the income apportioned for the year, the cost of care charged for the year, and the excess of income credited to such account to be used in future years;

(4) a statement concerning the accountability for the permanent maintenance fund, indicating whether the cemetery's records separately identify cumulative principal reflecting allocations from the proceeds of the sales of lots and from supplemental sources, cumulative capital gains or losses from investments, and the retained income available for the maintenance and preservation of the cemetery; and

(5) a statement concerning the accountability for the perpetual care fund, indicating whether the cemetery's records separately identify cumulative principal for endowment, cumulative capital gains or losses, and the cumulative income retained for use in future years.

(c) [Every small cemetery corporation shall file either the annual financial report form provided by the division or the cemetery corporation's own financial report if it contains all the information required on the division's form.]For any non-traditional cemetery, the opinion shall also be supplemented by the following data if applicable to the filing cemetery:

(1) a statement indicating whether funds, accounts, assets, and liabilities of the cemetery corporation are kept separate and distinct from the funds, accounts, assets, and liabilities of any related for-profit entity;

(2) a statement indicating whether the income and expenses of the cemetery corporation are kept separate and distinct from the income and expenses of any related for-profit entity; and

(3) a statement indicating whether any transaction between the cemetery corporation and any related for-profit entity are arm's length, fair and reasonable.

(d) The division may, upon application by a medium or large cemetery, modify the reporting requirements for such cemetery if the cemetery demonstrates to the satisfaction of the division that the requirements of this section and the cost of compliance are onerous and unreasonable and may, upon evidence of possible financial irregularity or non-compliance, order a small or medium cemetery to comply with the requirements of paragraph (b) of this section.

5. Sections 200.5 of Title 19 NYCRR is repealed and a new section 200.5 is added as follows:

§ 200.5 Additional information and reports.

Nothing herein limits or impairs the power and authority of the cemetery board pursuant to N-PCL section 1508(b) and other provisions of Article 15 of the N-PCL.

6. Section 200.6 of Title 19 NYCRR is renumbered as section 200.7 and a new Section 200.6 is added as follows:

§ 200.6 Commercial crime insurance coverage.

(a) Every cemetery corporation shall carry commercial crime insurance or similar insurance coverage for the acts or omissions of cemetery directors, officers, and employees as well as volunteers who handle money, accounts or securities for the cemetery.

(b) The annual financial report filed with the division shall set forth the amount of commercial crime coverage, the classes of persons included, the name of the carrier/issuer, the policy number, and the expiration date of coverage.

(c) The amount of coverage required is \$15,000 or 10% of total financial assets, whichever is greater, up to a maximum of \$500,000. Notwithstanding the foregoing:

(1) the division may, at its discretion, order a cemetery to obtain commercial crime coverage in excess of \$500,000 if it determines that an increase in coverage is appropriate and that such coverage is readily available in the marketplace. A cemetery subject to such order may file a protest with the Cemetery Board pursuant to section 200.2(b); and

(2) Upon application as prescribed by the division showing good cause for such relief, a cemetery may request that the division reduce, waive or modify the requirements under this section. Good cause may include proof that the cemetery is unable to obtain commercial crime insurance or similar coverage despite diligent effort, or that the cost of such coverage at the level required by this section is onerous and unreasonable.

7. Former section 200.6 of Title 19 NYCRR, which has been renumbered as Section 200.7 pursuant to these amendments, is amended to read as follows:

§ 200.7. Location of offices.

(a) The principal office of the State Cemetery Board is located at 123 William Street, New York, NY 10038-3804.

(b) All communications, papers, maps or copies thereof, reports or documents shall be addressed to or filed in the principal office of the State Cemetery Board unless otherwise directed by the division.

(c) [All orders]Orders by the State Cemetery Board [shall]may be filed in its principal office or its Albany, New York branch.

(d) There are branch offices at One Commerce Plaza, 99 Washington Avenue, Albany, NY 12231-0001; State Office Building, 207 Genesee Street, Utica, NY 13501-3744; Hughes State Office Building, 333 E. Washington Street, Syracuse, NY 13202-1418; 44 Hawley Street, Binghamton NY 13901 and 65 Court Street, Buffalo, NY 14202-3471.

8. A new section 201.20 is added to Title 19 NYCRR as follows:

§ 201.20 Permanent maintenance fund collections and contributions.

(a) All permanent maintenance fund deposits required by N-PCL section 1507 shall be made at least quarterly.

(b) A cemetery that receives payment in installments or over time for a lot, plot or part thereof, shall deposit to the permanent maintenance fund the full amount required by N-PCL section 1507 on the entire sale either:

(1) in lump sum at the time the contract is signed and any initial payment is received; or

(2) by depositing at least ten percent (10%) of any initial payment and each installment payment to the permanent maintenance fund as such payments are received until the full amount required by N-PCL section 1507 on the entire sale has been deposited to the fund.

Text of proposed rule and any required statements and analyses may be obtained from: Antonio Milillo, Department of State, Office of General Counsel, One Commerce Plaza, 99 Washington Avenue, Albany, NY 12231, (518) 474-6740, email: antonio.milillo@dos.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 section 91 authorizes the secretary of state to adopt rules which shall regulate and control the exercise of the powers of the department of state, and Not-For-Profit Corporation Law (N-PCL) section 1504 (c) authorizes the cemetery board to adopt

rules and regulations it deems necessary for the proper administration of N-PCL Article 15 (Public Cemetery Corporations).

2. Legislative Objectives: The legislative intent of N-PCL Article 15 is, among other things, to promote the state's interest in the establishment, maintenance and preservation of cemeteries and the proper operation of the corporations which own and manage them; to protect the well-being of citizens, to promote the public welfare and to prevent cemeteries from falling into disrepair and dilapidation and becoming a burden upon the community; and to ensure that cemeteries are conducted on a non-profit basis for the mutual benefit of the public. Section 1504 of the Not-for-Profit Corporation Law authorizes the division of cemeteries to inspect cemeteries and their business records and to ensure compliance with Article 15.

3. Needs and Benefits: The proposed revision of 19 NYCRR Part 200 is needed to reduce the financial reporting burden and expense on cemeteries while simultaneously ensuring that the Division of Cemeteries (the division) and the Cemetery Board (the board) are provided with complete, accurate, and timely financial reports to allow proper oversight of cemeteries. The current regulation defines a small cemetery as having less than \$400,000 in total funds; defines a medium cemetery as having at least \$400,000 and less than \$1 million in total funds and defines a large cemetery as having at least \$1 million in funds. Small cemeteries may file annual financial reports with no Certified Public Accountant (CPA) review; medium cemeteries are required to file a CPA review; and large cemeteries must file CPA audits. The proposed revision would change the definition of small cemetery to those with less than \$1 million in funds; medium cemeteries to those with at least \$1 million but less than \$10 million in funds; and large cemeteries to those with \$10 million or more. This will significantly reduce the administrative burden and expense of those cemeteries that move from the large to medium category and from the medium to small category. The proposed revision also creates a new class of cemeteries - non-traditional cemetery - for cemeteries that do not offer full body burial. This change will allow the division to more closely review the financial operation of these cemeteries which are often closely related to for-profit businesses. The proposed revision also gives cemeteries more time to file their annual reports with the division, allows cemeteries to seek a further reduction in their financial reporting requirements and allows the division to increase reporting requirements if it finds evidence of possible financial irregularity or non-compliance with cemetery law. The proposed revision would also require all cemeteries to file a standard department of state form as part of their annual financial reports which will provide significant uniformity in the way cemeteries report their finances and financial operations. This in turn will assist review of cemetery operations by the division and the board. The proposed revision also makes it clear that the promulgation of these regulations in no way limits the power and authority of the cemetery board under section 1508(b) and other provisions of the N-PCL to require cemeteries to provide additional reports and information beyond what is required by the regulation. The revision also replaces a requirement that cemeteries carry fidelity bond coverage - a type of insurance that is no longer generally available - with a requirement that they obtain commercial crime coverage - a type of insurance that is generally available. The proposed regulation sets a cap on the amount of coverage that would be required but allows cemeteries to seek waivers or modifications upon a showing of good cause and gives the division the flexibility to require greater coverage when it is available and would be appropriate. The addition of new section 201.20 will require cemeteries to make their required permanent maintenance fund payments at least quarterly. Some cemeteries have been waiting until the end of the year to make their fund payments which causes those cemeteries to lose potential interest and gains. The new section would also give cemeteries that engage in installment sales two methods of making their permanent maintenance fund deposits for those sales. Currently there is no regulation of how and when those deposits are made.

4. Costs:

a. Regulated Parties. Cemeteries that are moved from the large to medium or from the medium to small categories will experience decreased costs related to their annual financial reports; decreased costs will be most significant for newly categorized small cemeteries since they will no longer be required to file CPA reviewed reports. Non-traditional cemeteries that have not been submitting CPA financial audits will see their costs rise. With regard to commercial crime insurance coverage, insurance representatives and regulated entities have indicated that such coverage is widely available and relatively inexpensive when the amount of coverage does not exceed \$500,000 - the amount of the cap in the proposed regulation. The annual premium for that maximum coverage is expected to be between \$500 and \$750.

b. The agency, the State and local governments. No increase or decrease in costs is anticipated.

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: For those cemeteries that have not been filing the Department of State annual report form, making this form mandatory will increase their paperwork. Cemeteries that have been filing the report will not see an increase in paperwork from this requirement. Cemeteries that move from the medium category to the small category and from the large to the medium category will see their paperwork decrease. Non-traditional cemeteries that have not been filing CPA financial audits will see an increase in paperwork.

7. Duplication: These regulations would not duplicate existing State or Federal regulations.

8. Alternatives: These proposed regulations are the result of lengthy meetings with interested parties that spanned over more than a year. Most of the discussions and changes related to small details, such as the appropriate cap for commercial crime coverage and the appropriate way for cemeteries that engage in installment sales to make their permanent maintenance fund deposits related to those sales. The interested parties did not suggest broad alternatives to these proposed regulations.

9. Federal Standards: At this time there are no federal standards with regard to the filing of cemetery financial reports.

10. Compliance Schedule: The regulatory amendments will be effective immediately upon the publication of a Notice of Adoption in the State Register.

Regulatory Flexibility Analysis

1. Effect of Rule: There are 1771 cemeteries throughout the State that are under the jurisdiction of the Division of Cemeteries and which will be affected by this rule. This rule would not affect any local governments.

2. Compliance Requirements: This proposed rule modifies existing financial filing and reporting requirements for cemeteries. In many cases requirements and costs are lessened, but in some cases they are increased. An insurance requirement is modified to reflect the type of coverage now available, and uniform requirements for the deposit of permanent maintenance funds are added.

3. Professional Services: Many cemeteries will no longer be required to engage a Certified Public Accountant (CPA) in order to comply with the regulations modified by this proposed rule, but some will now have to engage a CPA.

4. Compliance Costs: Many cemeteries will experience decreased costs related to their annual financial reports; cemeteries that will no longer be required to file reports prepared by a CPA will realize the most significant decreased costs. Non-traditional cemeteries that have not been submitting CPA financial audits will see their costs rise. With regard to commercial crime insurance coverage, insurance representatives and regulated entities have indicated that such coverage is widely available and relatively inexpensive when the amount of coverage does not exceed \$500,000 – the amount of the cap in the proposed regulation. The annual premium for such maximum coverage is expected to be between \$500 and \$750.

5. Economic and Technological Feasibility: It is economically and technologically feasible for cemeteries to comply with the regulation.

6. Minimizing Adverse Impact: This regulation generally decreases the cost of compliance with the financial reporting requirements of the existing regulation, and also adds flexibility so that cemeteries may request further reduced requirements.

7. Small Business and Local Government Participation: The regulation was presented to the New York State Association of Cemeteries (NYSAC), the New York State Funeral Directors Association (NYSFDA) and individual cemeteries. Copies of the proposed regulation were also made available to persons in attendance at meetings of the New York State Cemetery Board. NYSFDA had no comments or objections to the proposed regulation. NYSAC and individual cemeteries did comment on and offer modifications to the proposed regulation, many of which have been incorporated into the proposed text.

Rural Area Flexibility Analysis

1. Types and Estimated Number of Rural Areas: A majority of the 1771 cemeteries regulated by the Division of Cemeteries are located in rural areas.

2. Reporting, Recordkeeping, and other Compliance Requirements and Professional Services: All 1771 cemeteries would be required to comply with these modified regulations and conform their reporting and record-keeping methods to them. The Department of State financial reporting form which had been voluntary for cemeteries to file will now be mandatory.

3. Costs: Many cemeteries will experience decreased costs related to their annual financial reports; the most significant decreased costs will be realized by the cemeteries that will no longer be required to file reports prepared by a certified public accountant (CPA). This is especially true for rural cemeteries that previously were categorized as medium cemeteries but now will be categorized as small. Non-traditional cemeteries that have

not been submitting CPA financial audits will see their costs rise. With regard to commercial crime insurance coverage, insurance representatives and regulated entities have indicated that such coverage is widely available and relatively inexpensive when the amount of coverage does not exceed \$500,000 – the amount of the cap in the proposed regulation. The annual premium for that maximum coverage is expected to be between \$500 and \$750.

4. Minimizing Adverse Impact: The proposed regulation adds flexibility, it permits cemeteries to seek modification of the financial reporting requirement, and modification or waiver of the commercial crime insurance coverage requirement. Also, the proposed regulation generally reduces existing burdens.

5. Rural Area Participation: The process of drafting this regulation has been an open process. The regulation was presented to the New York State Association of Cemeteries (NYSAC), the New York State Funeral Directors Association (NYSFDA) and individual cemeteries. Copies of the proposed regulation also have been made available to persons in attendance at meetings of the New York State Cemetery Board.

Job Impact Statement

A Job Impact Statement is not required because it is evident from the nature and purpose of this regulation that it would neither create nor eliminate employment positions and/or opportunities and therefore would have no adverse impact on jobs or employment opportunities in New York State.

Department of Taxation and Finance

NOTICE OF ADOPTION

Fuel Use Tax on Motor Fuel and Diesel Motor Fuel and the Art. 13-A Carrier Tax Jointly Administered Therewith

I.D. No. TAF-34-15-00004-A

Filing No. 1017

Filing Date: 2015-11-23

Effective Date: 2015-11-23

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

Action taken: Amendment of section 492.1(b)(1) of Title 20 NYCRR

Statutory authority: Tax Law, sections 171, subd. First; 301-h(c), 509(7), 523(b) and 528(a)

Subject: Fuel use tax on motor fuel and diesel motor fuel and the art. 13-A carrier tax jointly administered therewith.

Purpose: To set the sales tax component and the composite rate per gallon for the period October 1, 2015 through December 31, 2015.

Text or summary was published in the August 26, 2015 issue of the Register, I.D. No. TAF-34-15-00004-P.

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

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

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.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Fuel Use Tax on Motor Fuel and Diesel Motor Fuel and the Art. 13-A Carrier Tax Jointly Administered Therewith

I.D. No. TAF-49-15-00004-P

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

Proposed Action: Amendment of section 492.1(b)(1) of Title 20 NYCRR.

Statutory authority: Tax Law, sections 171, subd. First; 301-h(c), 509(7), 523(b) and 528(a)

Subject: Fuel use tax on motor fuel and diesel motor fuel and the art. 13-A carrier tax jointly administered therewith.

Purpose: To set the sales tax component and the composite rate per gallon for the period January 1, 2016 through March 31, 2016.

Text of proposed rule: Pursuant to the authority contained in subdivision First of section 171, subdivision (c) of section 301-h, subdivision 7 of section 509, subdivision (b) of section 523, and subdivision (a) of section 528 of the Tax Law, the Commissioner of Taxation and Finance hereby proposes to make and adopt the following amendment to the Fuel Use Tax Regulations, as published in Article 3 of Subchapter C of Chapter III of Title 20 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

Section 1. Paragraph (1) of subdivision (b) of section 492.1 of such regulations is amended by adding a new subparagraph (lxxx) to read as follows:

Motor Fuel			Diesel Motor Fuel		
Sales Tax Component	Composite Rate	Aggregate Rate	Sales Tax Component	Composite Rate	Aggregate Rate
(lxxx) October - December 2015					
15.7	23.7	41.5	16.0	24.0	40.05
(lxxxi) January - March 2016					
14.2	22.2	39.2	16.0	24.0	39.25

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

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

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

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

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