

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.

Adirondack Park Agency

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Emergency Projects

I.D. No. APA-05-15-00006-P

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

Proposed Action: Amendment of section 572.22; and addition of section 572.15 to Title 9 NYCRR.

Statutory authority: Executive Law, sections 804(a), 806(4), 809(14), (15) and 814(4)

Subject: Emergency projects.

Purpose: The purpose of the proposed rule is to define when jurisdictional land use and development constitutes an emergency project.

Public hearing(s) will be held at: 6:00 p.m., March 4, 2015 at Adirondack Park Agency, 1133 Rte. 86, Ray Brook, NY; and 2:00 p.m., March 5, 2015 at Department of Environmental Conservation, 625 Broadway, Rm. 129, Albany, NY.

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

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

Text of proposed rule: A new section 572.15 is added to 9 NYCRR to read as follows:

Section 572.15 Emergency Projects.

(a) *General.* This section provides the procedural requirements for the issuance of an emergency certification or an emergency recovery authorization for a project undertaken to address an emergency. No other requirements of this Subtitle shall apply to an emergency project. It is within the Agency's discretion to determine whether a specific event or conditions constitutes an emergency and whether proposed land use or development is an emergency project.

(b) *Definitions used in this section.*

(1) *Emergency means:* (i) a specific event or condition that presents an immediate threat to life or property; or (ii) a specific storm event or natural calamity that has been declared to be an emergency by federal or state officials.

(2) *Emergency project means* land use or development that is immediately necessary for the protection of life or property and that would otherwise require a permit, order, or variance.

(3) *Emergency certification means* a written determination by the Agency that an emergency exists or has existed and that an emergency project may be undertaken or has been undertaken to prepare for or mitigate the emergency.

(4) *Emergency recovery authorization means* a written determination by the Agency authorizing an emergency project that is necessary for repair, remediation or recovery from an emergency as defined in subdivision (b)(1) of this section and that is not covered by an emergency certification.

(c) *Emergency Certification Procedures.* (1) To obtain an emergency certification, a project sponsor shall: (i) notify the Agency with sufficient information to allow for an Agency determination whether an emergency as defined in paragraphs (b)(1)(i) and (ii) of this section exists or existed and whether the project is an emergency project as defined in subdivision (b)(2) of this section; and (ii) obtain an emergency certification prior to undertaking an emergency project or as soon thereafter as practicable.

(2) The Agency shall issue an emergency certification upon a determination that: (i) an emergency exists or existed; and (ii) the emergency project is limited in scope to the land use and development necessary to prepare for or mitigate the emergency. The Agency shall have two business days from receipt of sufficient information to issue an emergency certification.

(3) The emergency certification shall include a description of the land use and development comprising the emergency project, and may include conditions to limit the timing and duration of the emergency project and its impact on any of the natural, scenic, aesthetic, ecological, wildlife, historic, recreational, or open space resources of the Park.

(4) An emergency certification may only be issued by the executive director, deputy director – regulatory programs and such other Agency staff as the executive director shall designate in writing.

(d) *Emergency Recovery Authorization Procedures.* (1) A project sponsor proposing an emergency project under this subdivision shall notify the Agency prior to undertaking the emergency project and provide the Agency with the following information:

(i) a brief statement identifying the emergency, as defined in paragraph(b)(1) of this section that created the need for the emergency project;

(ii) a description of the proposed land use and development and why it is necessary for repair, remediation or recovery from an emergency;

(iii) documentation of existing conditions;

(iv) a location map;

(v) actions proposed to be taken to minimize environmental impacts; and

(vi) any additional information requested by the Agency necessary for the issuance of an emergency recovery authorization.

(2) The Agency shall issue an emergency recovery authorization for an emergency project upon a determination that: (i) the emergency project is directly related to an emergency as defined in paragraph (b)(1)

of this section; (ii) the emergency project is limited in scope to the land use and development necessary to repair, remediate or recovery from the emergency; and (iii) the emergency project will cause the least change, modification, disturbance, or damage to the environment as practicable. The Agency shall have 5 business days to respond to a request for an emergency recovery authorization upon receipt of sufficient information.

(3) The emergency recovery authorization shall include a description of the land use and development comprising the emergency project and may include conditions to limit the timing and duration of the emergency project and its impact upon the natural, scenic, aesthetic, ecological, wildlife, historic, recreational, or open space resources of the Park.

(4) An emergency recovery authorization may only be issued by the executive director, deputy director – regulatory programs and such other Agency staff as the executive director shall designate in writing.

(e) Limitations. (1) The Agency may modify or rescind an emergency certification or emergency recovery authorization if new information demonstrates that an emergency does not, or no longer, exists or that the emergency project is not, or no longer, necessary or appropriate.

(2) Any person who undertakes land use or development that otherwise would require a permit or variance from the Agency that is not described in an emergency certification or emergency recovery authorization issued to such person pursuant to this section may be subject to enforcement action.

Subdivision (a) of section 572.22 of 9 NYCRR is amended to read as follows:

(a) Appeals of actions taken by Agency staff [the deputy director – regulatory programs]. (1) Any project sponsor or variance applicant may appeal the following actions of the deputy director-regulatory programs to the [a]Agency:

(i) determinations whether a project or variance application is complete, and the contents of requests for additional information;

(ii) conditions precedent to the issuance of, and conditions imposed in, permits issued pursuant to the authority delegated in section 572.11 of this Part;

(iii) determinations pursuant to section 572.19(b) of this Part whether a request to amend a permit or variance involves a material change;

(iv) denial or conditional approval of requests to amend permits or variances, or requests to renew permits; or

(v) any other action with respect to a project or a variance pursuant to delegated authority.

(2) Any person may appeal any determination made pursuant to section 572.15 of this Part declining to issue an emergency certification or emergency recovery authorization.

Text of proposed rule and any required statements and analyses may be obtained from: Jennifer McAleese, Senior Attorney, Adirondack Park Agency, 1133 Rte. 86, Ray Brook, New York 12977, (518) 891-4050, email: APARuleMaking@apa.ny.gov

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

Public comment will be received until: March 21, 2015.

Regulatory Impact Statement

1. Statutory authority:

The Adirondack Park Agency Act (APA Act), Executive Law Article 27, Section 804(9), authorizes the Agency “to adopt, amend and repeal...such rules and regulations...as it deems necessary to administer this article and to do any and all things necessary or convenient to carry out the purposes and policies of this article...” Similar authority to regulate wild, scenic and recreational rivers and freshwater wetlands in the Adirondack Park is found in the NYS Wild, Scenic and Recreational Rivers System Act (Rivers Act) (Environmental Conservation Law (ECL) Section 15-2705) and in the NYS Freshwater Wetlands Act (Wetlands Act) (ECL Article 24, Title 8. The Agency’s statutory authority to adopt regulations to define whether land use or development is an “emergency project” is set forth in Executive Law Sections 806(4) with respect to shoreline restrictions, 809(14) and (15) with respect to land use and development on private lands, and 814(4) and (5) with respect to state agency projects. ECL Section 70-0107(3)(c) and (j) specify that the Rivers Act and the Wetlands Act, with respect to provisions administered by the Agency, are subject to the procedures of Executive Law Section 809.

2. Legislative objectives:

During an emergency, it is often difficult to obtain regulatory approval before one must act to protect life or property. In addition, following the emergency, there continues to be additional work that must take place to recover from the emergency before the Agency’s regular permitting or variance review processes can be completed. The primary objective of the proposed emergency project rule is to define when jurisdictional land use and development constitutes an emergency project. Land use and development that is determined to be an “emergency project” is exempt from the Agency’s normal regulatory review procedures.

The APA Act provides for an exemption from the Agency’s jurisdiction and normal review procedures in sections 806(4), 809(15), and 814(4); each section contains a clause stating that the section does not apply to land use or development that is “immediately necessary for the protection of life or property.” This proposed rule is intended to provide more definition for this statutory exemption by clarifying what constitutes an emergency project and by establishing an expedited process for ensuring that land use or development that falls within the statutory exemption is directly related to the work necessary to address the ongoing emergency, thereby limiting any unrelated adverse environmental impacts. In addition, this rulemaking proposes an amendment to existing rules to allow administrative review of determinations made pursuant to the emergency project rule.

The public policy objective underlying the statutory exemption of emergency projects from Agency permit and variance jurisdiction is to allow the undertaking of measures immediately necessary for protection of life or property without the delay of regulatory procedures and review. It is important to note that the proposed emergency project rule follows the statutory exemption from normal regulatory procedures; however, it is a limited exemption and is only intended to provide an expedited process to document the measures undertaken as emergency projects without an Agency variance or permit. This documentation will be useful for landowners seeking reimbursement for emergency measures and as proof of the lawfulness of the measures undertaken by the landowner. The rule will also ensure that the measures undertaken are confined to those immediately necessary to protect life or property.

3. Needs and benefits:

Since 2011, there have been numerous state declared emergency weather events, including the 2011 flooding, Hurricane Irene and Tropical Storm Lee. These weather events required prompt action both during the event itself and the remediation and recovery phase after the event. During and immediately after these events, the Agency primarily relied upon coordination with the NYS Department of Environmental Conservation (NYSDEC) for its regulatory response, because that agency had more staff in the field and was able to incorporate Agency review considerations into its immediate response actions. The proposed rule would provide a formal, responsive, and unified process, as well as better documentation of the Agency’s regulatory involvement that would be useful to landowners and the public.

4. Costs:

There are no costs associated with the proposed regulations. The proposed rule is intended to codify the Agency’s existing practices, and to provide a consistent, formal process for the Agency’s response to emergencies. Currently, during emergency situations, the Agency seeks substantially the same information from landowners as is requested in the proposed rule. Accordingly, the proposed rule simply formalizes the Agency’s existing practice.

Also, recognizing the exigency of emergency situations, the information that the Agency is requesting is very basic information and the minimum amount of information required in order for the Agency to determine that a proposal is an emergency project. Recent experience has shown the need for public and private landowners to have complete documentation from the Agency of measures undertaken during emergencies, as well as for the Agency and the NYS Department of Environmental Conservation (NYSDEC) to have better coordination when responding to emergencies in the Adirondack Park. The proposed rule will enhance coordination between the Agency and NYSDEC as the proposed rule better aligns the Agency’s process with NYSDEC’s and even relies upon information submitted to NYSDEC, which reduces the regulatory burden on applicants. The proposed rule will provide a more efficient process for the Agency and the applicant as well as a less costly overall process for responding to emergencies.

5. Local government mandates:

The proposed rules will not impose any responsibilities on local government entities, unless the local government is the project sponsor.

6. Paperwork:

The proposed rule provides a procedure for obtaining a determination from the Agency that land use or development is, in fact, an “emergency project.” The Agency will issue either an Emergency Certification or an Emergency Recovery Authorization. In the event of an emergency, the project sponsor may request the Agency to issue an Emergency Certification either before undertaking the emergency project or within 30 days of undertaking the emergency project. In order to issue an Emergency Certification, the Agency will require the project sponsor to provide the Agency with sufficient information to determine that an emergency is (or was) ongoing or occurred within the last 30 days and that the emergency project is (or was) limited in scope to that necessary to address the emergency. The Emergency Recovery Authorization is intended for the follow-up response to the emergency. The project sponsor will be required to obtain authorization from the Agency prior to undertaking the emergency project.

In addition, the project sponsor will be required to submit sufficient information to the Agency through a standard application form that will allow the Agency to make a determination that the proposal satisfies the criteria for an Emergency Recovery Authorization.

Both the Certification and the Authorization provide the project sponsor with Agency documentation that land use or development does not (or did not) require a permit, order or variance. This is important as it provides landowners with documentation that work done during an emergency is lawful for Agency purposes. In addition, this documentation may facilitate emergency aid reimbursement.

7. Duplication:

The proposed regulations do not duplicate, overlap, or conflict with any other local, state, or federal requirements.

8. Alternatives:

The Agency does not currently have a regulatory definition to establish when land use and development is an "emergency project." The proposed regulation would provide clear parameters for obtaining a determination from the Agency that land use or development is an "emergency project." The alternative is to continue with existing practice and review each proposal on a case by case basis without a clear regulatory definition of what constitutes an "emergency project." The Agency has deemed this as unacceptable and counterproductive to Agency efficiency and not in keeping with the Agency's goal of providing clear and consistent responses to the public.

9. Federal standards:

The proposed regulations do not involve any federal statutory authority or standards.

10. Compliance schedule:

The proposed regulations would apply prospectively, effective immediately upon their adoption. It is anticipated that regulated persons would be able to comply with these regulations immediately.

Regulatory Flexibility Analysis

The proposed rules would not impose additional reporting, record keeping or other compliance requirements on small businesses and local governments. Instead, they would provide an efficient process for relieving a regulatory burden on entities undertaking an "emergency project" as defined by the Adirondack Park Agency in the proposed rules. These entities may include small businesses or local governments.

The proposed rules would define "emergency project" and provide a procedure for obtaining a determination from the Agency that land use or development is an "emergency project," and for administratively challenging that determination.

The proposed rules would not preclude people from undertaking jurisdictional land use or development. Rather, under the proposed rule, if land use or development is determined to be an "emergency project," it would be exempt from the Agency's normal regulatory review procedures, and subject to streamlined procedures.

Accordingly, a Regulatory Flexibility Analysis is not required for the proposed rules.

Rural Area Flexibility Analysis

The proposed rules, applicable throughout the Adirondack Park, would have the same effect whether the area is considered rural or not. The proposed rules impose no additional reporting, record keeping or other compliance requirements on small businesses, or on public or private entities in rural areas. Instead, they would provide an efficient process for relieving a regulatory burden on those entities undertaking an "emergency project" as defined by the Adirondack Park Agency in the proposed rules.

The proposed rules would define "emergency project" and provide a procedure for obtaining a determination from the Agency that land use or development is an "emergency project," and for administratively challenging that determination.

The proposed rules would not preclude people from undertaking jurisdictional land use or development. Rather, under the proposed rule, if land use or development is determined to be an "emergency project," it would be exempt from the Agency's normal regulatory review procedures, and subject to streamlined procedures.

Accordingly, a Rural Area Flexibility Analysis is not required for the proposed rules.

Job Impact Statement

A job impact statement (JIS) is not submitted for these proposed rules because they are not expected to create any substantial adverse impact upon jobs and employment opportunities in the Adirondack Park.

The proposed rules would define "emergency project" and provide a procedure for obtaining a determination from the Agency that land use or development is an "emergency project," and for administratively challenging that determination.

The proposed rules would not preclude people from undertaking jurisdictional land use or development. Rather, under the proposed rule, if land use or development is determined to be an "emergency project," it

would be exempt from the Agency's normal regulatory review procedures, and subject to streamlined procedures.

Section 201-a of SAPA defines job impact as a "change in the number of jobs and employment opportunities" attributable to the adoption of the rule. A "substantial adverse impact on jobs" is defined as "a decrease of more than 100 full-time annual jobs and employment opportunities."

There will be no change in employment opportunities due to the proposed rules. Under the proposed rules, projects that do not qualify as "emergency projects" will be reviewed pursuant to the Agency's normal review processes. The proposed rules simply provide an expedited regulatory response for "emergency projects."

Accordingly, a JIS is not required for the proposed rules.

Department of Agriculture and Markets

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Incorporation by Reference of the 2013 Edition of the Grade A Pasteurized Milk Ordinance ("PMO")

I.D. No. AAM-05-15-00002-P

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

Proposed Action: This is a consensus rule making to amend section 2.1 of Title 1 NYCRR.

Statutory authority: Agriculture and Markets Law, sections 16, 18, 46, 46-a, 50-k, 71-a, 71-n and 214-b

Subject: Incorporation by reference of the 2013 edition of the Grade A Pasteurized Milk Ordinance ("PMO").

Purpose: To require certain producers, processors and manufacturers of milk and milk products to comply with the 2013 edition of the PMO.

Text of proposed rule: Paragraph (1) of subdivision (b) of section 2.1 of 1 NYCRR is amended to read as follows:

(1) The sanitation provisions of this Part shall not apply to dairy farms or dairy farmers, or to milk plants and persons who operate milk plants, that have a sanitation compliance rating of 90 or better, as set forth in the latest Sanitation Compliance and Enforcement Ratings of interstate milk shippers list (IMS List), except as set forth in paragraph (2) of this subdivision. Dairy farms and dairy farmers, and milk plants and persons who operate milk plants, that have such a sanitation compliance rating shall comply with the sanitation requirements set forth in the Grade A Pasteurized Milk Ordinance, [2011] 2013 edition, published by the United States Department of Health and Human Services, Washington, DC (PMO) except to the extent that any provision of the PMO is in conflict with a provision of State and/or Federal law and except as provided in paragraph (2) of this subdivision. A copy of the PMO is available for public inspection at the Division of Milk Control and Dairy Services, Department of Agriculture and Markets, 10B Airline Drive, Albany, NY 12235, and at the Department of State, 41 State Street, Albany, NY 12231.

Subdivision (c) of section 2.1 of 1 NYCRR is amended to read as follows:

(c) Every term used in subdivision (b) of this section that is defined in the Grade A Pasteurized Milk Ordinance, [2011] 2013 edition, shall have the meaning ascribed to such term therein.

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

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

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

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

Consensus Rule Making Determination

The proposed rule will amend 1 NYCRR section 2.1 to incorporate by reference the 2013 edition of the Grade A Pasteurized Milk Ordinance ("the 2013 PMO") and make the provisions thereof applicable to producers, processors and manufacturers of "Grade A" milk and milk products that have a sanitation compliance rating of ninety or better, as set forth in

the latest Sanitation Compliance and Enforcement Ratings of the Interstate Milk Shippers Conference (“IMSC”), and who may, therefore, ship such foods in interstate commerce. The proposed rule is non-controversial. The 2013 PMO is a publication of the Food and Drug Administration (“FDA”) of the United States Department of Health and Human Services and contains sanitation guidelines for the production of raw milk that will be pasteurized, the processing of such milk for drinking, and the manufacture of milk products such as cottage cheese and yogurt. Pursuant to an agreement between the states, each state causes inspections to be made of the premises of each producer, processor and manufacturer of “Grade A” milk and milk products, located within its borders, that wishes to ship such foods in interstate commerce. After an inspection is conducted, the inspected business is given a “rating” that reflects its adherence to the sanitation guidelines set forth in the 2013 PMO. The states have agreed that no producer, processor or manufacturer of “Grade A” milk and milk products may ship such foods in interstate commerce unless and until it has received a sanitation compliance rating of ninety or better, indicating that it is in substantial compliance with such sanitation guidelines. As a result of this agreement between the states, every producer, processor and manufacturer of “Grade A” milk and milk products located in New York that ships such foods in interstate commerce must, and already does, have a sanitation compliance rating of ninety or better, indicating that it is in substantial compliance with the provisions of the 2013 PMO.

Based upon the preceding, the proposed rule will not have an adverse impact upon New York’s producers, processors and manufacturers of “Grade A” milk and milk products because those businesses that ship such foods in interstate commerce are already required to be in substantial compliance with the 2013 PMO. Furthermore, not only will the proposed rule have no adverse impact upon New York’s producers, processors and manufacturers of “Grade A” milk and milk products, but such businesses will favor adoption of such proposed rule because the FDA has indicated that New York’s ability to give “ratings” to such businesses will be jeopardized unless it adopts the 2013 PMO, which could, in turn, cause such businesses to no longer be able to ship such foods in interstate commerce.

For the preceding reasons, the proposed rule is non-controversial and is a consensus rule, as defined in State Administrative Procedure Act section 102(11).

Job Impact Statement

The proposed rule will not have an adverse impact on jobs or on employment opportunities.

The proposed rule will amend 1 NYCRR Part 2 to incorporate by reference the 2013 edition of the Grade A Pasteurized Milk Ordinance (“the 2013 PMO”) and make the provisions thereof applicable to producers, processors and manufacturers of “Grade A” milk and milk products, located in New York, that have a sanitation compliance rating of ninety or better, as set forth in the latest Sanitation and Compliance Enforcement Ratings of the Interstate Milk Shippers Conference (“IMSC”), and that may, therefore, ship such foods in interstate commerce. Such producers, processors and manufacturers are already practically required to substantially comply with the provisions of the 2013 PMO, and setting forth such requirement in regulations places no additional burden upon them. As such, the proposed rule will have no adverse impact upon jobs or employment opportunities.

Department of Corrections and Community Supervision

NOTICE OF EXPIRATION

The following notices have expired and cannot be reconsidered unless the Department of Corrections and Community Supervision publish new notices of proposed rule making in the NYS Register.

Privileged Correspondence

I.D. No.	Proposed	Expiration Date
CCS-02-14-00003-P	Jan. 15, 2014	Jan. 15, 2015

Inmate Telephone Calls

I.D. No.	Proposed	Expiration Date
CCS-02-14-00004-P	Jan. 15, 2014	Jan. 15, 2015

Education Department

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

Requirements for Teacher Certification

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

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

Proposed Action: Amendment of sections 80-3.3(b)(2)(i)(b), 80-3.4(b)(3)(i)(b) and 80-5.13(b)(1)(ii)(b) of Title 8 NYCRR.

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

Subject: Requirements for teacher certification.

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

Text of proposed rule: 1. Clause (b) of subparagraph (i) of paragraph (2) of subdivision (b) of section 80-3.3 of the Regulations of the Commissioner is amended, effective April 29, 2015, to read as follows:

(b) Except as otherwise provided in this section, for candidates applying for certification on or after May 1, 2014 or candidates who applied for certification on or before April 30, 2014 but did not meet all the requirements for an initial certificate on or before April 30, 2014, such candidates shall submit evidence of having achieved a satisfactory level of performance on the New York State Teacher Certification Examination teacher performance assessment, the educating all students test, the academic literacy skills test and the content specialty test(s) in the area of the certificate, except that a candidate seeking an initial certificate in the title of Speech and Language Disabilities (all grades) shall not be required to achieve a satisfactory level of performance on the content specialty test or the teacher performance assessment and a candidate seeking an initial certificate in the title of Educational Technology Specialist (all grades) shall not be required to achieve a satisfactory level of performance on the teacher performance assessment. Provided however, if a candidate applies for and meets all the requirements for an initial certificate on or before [June 30, 2015 (including completing and submitting for scoring the teacher performance assessment)] June 30, 2016, except the candidate does not [receive] *achieve* a satisfactory [score] *level of performance* on the teacher performance assessment, the candidate may meet the requirements for an initial certificate, if the candidate either:

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

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

2. Clause (b) of subparagraph (i) of paragraph (3) of subdivision (b) of section 80-3.4 of the Regulations of the Commissioner of Education is amended, effective April 29, 2015, as follows:

(b) Candidates who hold a transitional C certificate for career changers and others holding a graduate academic or graduate professional degree, pursuant to the requirements of section 80-5.14 this Part, and who apply for certification on or after May 1, 2014 or candidates who apply for professional certification on or before April 30, 2014 but do not meet all the requirements for a professional certificate on or before April 30, 2014 shall submit evidence of having achieved a satisfactory level of performance on the New York State Teacher Certification Examination teacher performance assessment. Provided however, if a candidate applies for and meets all the requirements for an initial certificate on or before [June 30, 2015 (including completing and submitting for scoring the teacher performance assessment)] June 30, 2016, except the candidate does not [receive] *achieve* a satisfactory [score] *level of performance* on the teacher performance assessment, the candidate may meet the requirements for an initial certificate, if the candidate either:

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

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

3. Clause (b) of subparagraph (ii) of paragraph (1) of subdivision (b) of

section 80-5.13 of the Regulations of the Commissioner of Education is amended, effective April 29, 2015, to read as follows:

(b) A candidate who applies for an initial certificate on or after May 1, 2014 or who applies for an initial certificate on or before April 30, 2014 but does not meet all the requirements for an initial certificate on April 30, 2014, shall submit evidence of having achieved a satisfactory level of performance on the teacher performance assessment, if applicable for that certificate title, and any other examination required for the provisional or initial certificate, as applicable, and/or a bilingual education extension of such certificate, as applicable. Provided however, if a candidate applies for and meets all the requirements for an initial certificate on or before [June 30, 2015 (including completing and submitting for scoring the teacher performance assessment)] *June 30, 2016*, except the candidate does not [receive] *achieve* a satisfactory [score] *level of performance* on the teacher performance assessment, the candidate may meet the requirements for an initial certificate, if the candidate either:

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

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

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

Data, views or arguments may be submitted to: Peg Rivers, State Education Department, Office of Higher Education, Room 979, Washington Avenue, 89 Washington Ave., Albany, NY 12234, (518) 486-3633, email: privers@mail.nysed.gov

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

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

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

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

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

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

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

2. LEGISLATIVE OBJECTIVES:

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

3. NEEDS AND BENEFITS:

In response to concerns raised by the field in relation to the edTPA, in April 2014, the Board of Regents adopted regulations, which were further revised in September 2014, to provide a "safety net" for certain teaching candidates who applied for and met all requirements for a teaching certificate, except the candidate took and failed the edTPA. The adopted regulations provide flexibility to teacher candidates who had taken and failed the edTPA and authorize the Commissioner to issue to a candidate who applied for and met all the requirements for an initial certificate on or before June 30, 2015, except he/she did not receive a satisfactory passing score on the teacher performance assessment, an initial certificate; provided that subsequent to receiving a score for the teacher performance assessment and prior to June 30, 2015, the candidate received a satisfactory level of performance on the written assessment of teaching skills examination in lieu of a satisfactory level of performance on the teacher performance assessment. Transitional C certificate holders (generally Career and Technical Education teachers who are career changers or hold a graduate academic or professional degree) are provided similar flexibility in meeting the edTPA requirement for a professional certificate.

Following the adoption of the 2014 regulations, the field expressed concern that some teaching candidates who have used or will use the

"safety net" may not be able to apply for and meet all the other requirements by June 30, 2015 in order to take advantage of the "safety net" because they need to pass all other exams, complete their education, etc. Under the current regulations, if they do not meet all other requirements, including passing all other exams, completing the DASA and all other workshops before June 30th, 2015, their score on the ATS-W would become invalid and they would then need to go back and re-take and pass the edTPA. This would be extremely difficult for many candidates who will no longer be enrolled in their program and would not have access to a classroom. It may also impose a financial burden since the department's ability to make fee vouchers available will be limited after June 30, 2015. In response to these concerns, the purpose of the proposed amendment is to extend the deadline to apply for, and meet, the certification requirements for one year- from June 30, 2015 to June 30, 2016. By extending the date to apply for and meet the other certification requirements, the proposed amendment provides teaching candidates with the time they need to meet the other certification requirements without further extending the deadline to take and pass the edTPA.

4. COSTS:

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

5. LOCAL GOVERNMENT MANDATES:

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

6. PAPERWORK

There are no additional paperwork requirements beyond those currently imposed.

7. DUPLICATION:

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

8. ALTERNATIVES:

There were no significant alternatives and none were considered.

9. FEDERAL STANDARDS:

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

10. COMPLIANCE SCHEDULE:

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

Regulatory Flexibility Analysis

In order to address the concerns raised by the field while at the same time recognizing the previous extension and investments made in faculty development around the edTPA, the proposed amendment attempts to provide additional flexibility for candidates who take and fail the edTPA on their first attempt. The proposed amendment authorizes the Commissioner to issue an initial certificate to a candidate who applies for and meets all the requirements for an initial certificate on or before June 30, 2016, except he/she does not achieve a satisfactory level of performance on the teacher performance assessment, if required; provided that the candidate receives a satisfactory level of performance on the written assessment of teaching skills examination in lieu of a satisfactory level of performance on the teacher performance assessment. Transitional C certificate holders (generally Career and Technical Education teachers who are career changers or hold a graduate academic or professional degree) would be provided similar flexibility in meeting the edTPA requirement for a professional certificate.

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

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed amendment will affect teacher candidates who are applying for an initial certificate and who have completed all the requirements for certification prior to June 1, 2016, except the teacher performance assessment (edTPA).

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

In order to address the concerns raised by the field while at the same time recognizing the previous extension and investments made in faculty

development around the edTPA, the proposed amendment attempts to provide additional flexibility for candidates who take and fail the edTPA on their first attempt. The proposed amendment authorizes the Commissioner to issue an initial certificate to a candidate who applies for and meets all the requirements for an initial certificate on or before June 30, 2016, except he/she does not achieve a satisfactory level of performance on the teacher performance assessment; provided that the candidate receives a satisfactory level of performance on the written assessment of teaching skills examination in lieu of a satisfactory level of performance on the teacher performance assessment. Transitional C certificate holders (generally Career and Technical Education teachers who are career changers or hold a graduate academic or professional degree) would be provided similar flexibility in meeting the edTPA requirement for a professional certificate.

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

3. COSTS:

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

4. MINIMIZING ADVERSE IMPACT:

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

5. RURAL AREA PARTICIPATION:

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

Job Impact Statement

In order to address the concerns raised by the field while at the same time recognizing the previous extension and investments made in faculty development around the edTPA, the proposed amendment attempts to provide additional flexibility for candidates who take and fail the edTPA on their first attempt. The proposed amendment authorizes the Commissioner to issue an initial certificate to a candidate who applies for and meets all the requirements for an initial certificate on or before June 30, 2016, except he/she does not achieve a satisfactory level of performance on the teacher performance assessment, if required; provided that the candidate receives a satisfactory level of performance on the written assessment of teaching skills examination in lieu of a satisfactory level of performance on the teacher performance assessment.

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

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Tuition Assistance Program

I.D. No. EDU-05-15-00009-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 145-2.2(b)(2)(ii) of Title 8 NYCRR.

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

Subject: Tuition Assistance Program.

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

Text of proposed rule: Subparagraph (ii) of paragraph (2) of subdivision (b) of section 145-2.2 of the Regulations of the Commissioner of Education is amended, effective April 29, 2015, to read as follows:

(ii) Following a determination that the recipient of an award has lost good academic standing, further payments of any award under article 13 or 14 of the Education Law shall be suspended for a minimum of one semester or its equivalent and until the student is [restored] reinstated to good academic standing by either:

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

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

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

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

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

(4) providing other evidence satisfactory to the Commissioner that the student will successfully complete the program.

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

Data, views or arguments may be submitted to: Peg Rivers, State Education Department, Office of Higher Education, Room 979, Washington Avenue, 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 101 continues the existence of the Education Department, with the Board of Regents at its head and the Commissioner of Education as the chief administrative officer, and charges the Department with the general management and supervision of public schools and the educational work of the State.

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.

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

Subdivision (2) of section 602 of the Education Law empowers the Commissioner of Education to promulgate regulations establishing requirements for the president to follow in determining student eligibility for State student aid relating to full-time study, part-time study, accelerated study, matriculation, loss of good academic standing, and permissible use of general and academic performance awards and loans. Subdivision (1) of section 602 of the Education Law empowers the Commissioner of Education to select qualified recipients of academic performance awards.

Subdivision (2) of section 661 of the Education Law grants the Board of Regents the power to establish times for which a student must provide certain information, as required by the Board of Regents, to his or her institution through the submission of a form provided by the Board of Regents.

Subdivision (6) of section 665 empowers the Commissioner of Education to establish standards for a student's good academic standing and loss thereof. Section 665 further empowers the Commissioner of Education to approve an institution's standard of assessing a student's satisfactory academic progress in accordance with the requirements set forth such section of law.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment carries out the legislative objectives of the above-referenced statutes by establishing standards in order to regain eligibility for receipt of rewards through the Tuition Assistance Program (TAP) for a candidate to be reinstated to "good standing" status.

3. NEEDS AND BENEFITS:

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

Education Law § 661 sets forth the eligibility requirements and conditions for receiving a TAP award. For a student to continue to receive an award under the TAP, Education Law § 665(6) requires that the student maintain good academic standing: (1) by meeting or exceeding minimum cumulative grade point average requirements; and (2) by making satisfactory progress toward the completion of his or her program's academic requirements, measured by credit hour accumulation. This section also establishes minimum thresholds for each of these two requirements based on the year the student first receives aid, the length of the student's program and whether the student is a remedial student. However, institu-

tions may establish and apply stricter standards of satisfactory academic progress, provided such standards include the required levels of achievement to be measured at the statutory intervals. If an institution implements stricter criteria for satisfactory academic progress, the criteria must include a minimum number of credit hours to be earned and a minimum cumulative grade point average, and must be measured at set intervals, such as semesters or trimesters. If a student fails to make satisfactory progress toward the completion of the program's academic requirements, or fails to maintain the minimum cumulative GPA, the student will not be in good academic standing and, thus, will become ineligible for awards under the TAP.

Regaining Good Academic Standing

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

- (a) pursuing the program of study in which he or she is enrolled and making satisfactory progress toward the completion of his or her program's academic requirements; or
- (b) establishing in some other way, to the satisfaction of the Commissioner, evidence of his or her ability to successfully complete an approved program.

Currently, the regulation is silent on whether a TAP award is suspended while the student is restoring his/her status of "good academic standing", and does not establish a minimum length of time a TAP award must be suspended while the student is in the process of regaining good academic standing.

In order to provide clarity to the field, the proposed amendment provides: (1) that no student will receive any TAP or any other state awards during the period when they are regaining good academic standing; and (2) provides that TAP awards shall be suspended for a minimum of one semester or its equivalent while the student is regaining good academic standing.

The current regulation also fails to define what evidence the Commissioner will accept as the students' promise to successfully complete an approved program in order to regain good academic standing under Education Law § 665(6); and the regulations do not contemplate the possibility of a student changing academic programs within the same institution to avoid the need to regain good academic standing in the original academic program.

In an effort to the address these issues and provide clarity to the field, the proposed amendment also identifies four options that the Commissioner would accept as satisfactory evidence of a students' promise to successfully complete an approved program for the limited purpose of regaining good academic standing. These options include:

- (1) making up any deficiencies in GPA or academic progress to regain good academic standing without the benefit of TAP, or other State support;
- (2) applying for and being re-admitted to the original institution after withdrawing as a student for a period of at least one academic year and by meeting the institution's academic requirements; or
- (3) transferring to another institution where the student must meet the new institution's admissions' requirements; or
- (4) providing other satisfactory evidence that the student will meet its promise to successfully complete the program.

4. COSTS:

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

(b) Costs to local government. None.

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

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

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment will not impose any new mandates, and accordingly, will not impose any additional duties or responsibilities on local governments.

6. PAPERWORK:

The proposed amendment does not impose any additional reporting requirements on any regulated party.

7. DUPLICATION:

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

8. ALTERNATIVES:

There are no viable alternatives to the proposed amendment, and none were considered.

9. FEDERAL STANDARDS:

The proposed amendment concerns eligibility requirements for students receiving State student aid through the tuition assistance program (TAP), and therefore, there are no applicable federal standards.

10. COMPLIANCE SCHEDULE:

The amendment would be effective on its stated effective date.

Regulatory Flexibility Analysis

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

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

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed amendment applies to all public and nonpublic colleges and universities, education opportunity centers, and other postsecondary institutions that are eligible, where applicable, to participate in the tuition assistance program (TAP) in New York State, including those located in the 44 rural counties having less than 200,000 inhabitants and the 71 towns in urban counties having a population density of 150 per square mile or less.

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

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

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

Regaining Good Academic Standing

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

- (a) pursuing the program of study in which he or she is enrolled and making satisfactory progress toward the completion of his or her program's academic requirements; or
- (b) establishing in some other way, to the satisfaction of the Commissioner, evidence of his or her ability to successfully complete an approved program.

Currently, the regulation is silent on whether a TAP award is suspended while the student is restoring his/her status of "good academic standing", and does not establish a minimum length of time a TAP award must be suspended while the student is in the process of regaining good academic standing.

In order to provide clarity to the field, the proposed amendment provides: (1) that no student will receive any TAP or any other state awards during the period when they are regaining good academic standing; and (2) provides that TAP awards shall be suspended for a minimum of one semester or its equivalent while the student is regaining good academic standing.

The current regulation also fails to define what evidence the Commissioner will accept as the students' promise to successfully complete an approved program in order to regain good academic standing under Education Law § 665(6); and the regulations do not contemplate the possibility of a student changing academic programs within the same institution to avoid the need to regain good academic standing in the original academic program.

In an effort to address these issues and provide clarity to the field, the proposed amendment also identifies four options that the Commissioner would accept as satisfactory evidence of a students' promise to successfully complete an approved program for the limited purpose of regaining good academic standing. These options include:

- (1) making up any deficiencies in GPA or academic progress to regain good academic standing without the benefit of TAP, or other State support;
- (2) applying for and being re-admitted to the original institution after withdrawing as a student for a period of at least one academic year and by meeting the institution's academic requirements; or
- (3) transferring to another institution where the student must meet the new institution's admissions' requirements; or
- (4) providing other satisfactory evidence that the student will meet its promise to successfully complete the program.

3. COSTS:

The proposed amendment will not impose any additional costs on State government, including the State Education Department or on regulated parties, including those located in rural areas of the State.

4. MINIMIZING ADVERSE IMPACT:

The amendment does not make any differentiation in eligibility based upon the geographic location of the student. In the interests of equity, uniform criteria are established for all students across the State.

5. RURAL AREA PARTICIPATION:

Comments on the proposed amendment were solicited from the Interagency Task Force on State financial assistance, which includes the Higher Education Services Corporation and members of SUNY, CUNY, the independent higher education sector and the proprietary sector, which have colleges and universities located in rural areas of this State.

Job Impact Statement

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

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

Department of Financial Services

NOTICE OF ADOPTION

Arbitration

I.D. No. DFS-29-14-00003-A

Filing No. 51

Filing Date: 2015-01-20

Effective Date: 2015-02-04

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

Action taken: Amendment of Subpart 65-4 (Regulation 68-D) of Title 11 NYCRR.

Statutory authority: Financial Services Law, sections 202 and 302; Insurance Law, sections 301 and 5201 and art. 51

Subject: Arbitration.

Purpose: To revise the fee structure awarded to attorneys who prevail in no-fault disputes on behalf of applicants.

Text of final rule: Section 65-4-6 is amended to read as follows:

Section 65-4.6 Limitations on attorney's fees pursuant to section 5106 of the Insurance Law.

The following limitations shall apply to the payment by insurers of applicants' attorney's fees for services necessarily performed in the resolution of no-fault disputes:

(a) If an arbitration was initiated or a court action was commenced by an attorney on behalf of an applicant and the claim or portion thereof was not denied or overdue at the time the arbitration proceeding was initiated or the action was commenced, no attorney's fees shall be granted.

(b) If the claim is resolved by the designated organization at any time prior to transmittal to an arbitrator and it was initially denied by the insurer or overdue, the payment of the applicant's attorney's fee by the insurer shall be limited [as follows:

(1) If the resolved claim was initially denied, the attorney's fee shall be \$80.

(2) If the resolved claim was overdue but not denied, the attorney's fee shall not exceed the amount of first-party benefits and any additional first-party benefits, plus interest thereon, which the insurer agreed to pay and the applicant agreed to accept in full settlement of the dispute submitted, subject to a maximum fee of \$60.

(3) In disputes solely involving interest, the attorney's fee shall be equal to the amount of interest which the insurer agreed to pay and the applicant agreed to accept in full settlement of the dispute submitted, subject to a maximum fee of \$60.

(4) Notwithstanding the limitations of this subdivision, the insurer may, at its discretion, offer a higher attorney's fee, subject to the limitations of subdivisions (d) or (e) of this section, in order to resolve the dispute during conciliation.

(c) Except as provided in subdivisions (a) and (b) of this section, the minimum attorney's fee payable pursuant to this subpart shall be \$60.] *to 20 percent of the total amount of first-party benefits and any additional first-party benefits, plus interest thereon, for each applicant with whom the respective parties have agreed and resolved disputes, subject to a maximum fee of \$1,360.*

[(d)] (c) For disputes subject to arbitration [by the No-Fault Arbitration forum] *or court proceedings*, where one of the issues involves a policy issue as enumerated on the prescribed denial of claim form (NYS form NF-10), subject to [the provisions of subdivisions (a) and (c) of] this section, the attorney's fee for the arbitration *or litigation* of all issues shall be limited [as follows:] [(1) for preparatory services relating to the arbitration forum or court, the attorney shall be entitled to receive] *to a fee of up to \$70 per hour, subject to a maximum fee of \$1,400.]; and*

(2) *in] In addition, an attorney shall be entitled to receive a fee of up to \$80 per hour for each personal appearance before the arbitration forum or court.*

[(e)] (d) For all other disputes subject to arbitration *or court proceedings*, subject to the provisions of [subdivisions] *subdivision* (a) [and (c)] of this section, the attorney's fee shall be limited as follows: 20 percent of the *total amount of first-party benefits and any additional first-party benefits, plus interest thereon, for each applicant per arbitration or court proceeding* [awarded by the arbitrator or court], subject to a maximum fee of [\$850] *\$1,360*. If the nature of the dispute results in an attorney's fee [which] *that* could be computed in accordance with the limitations prescribed in both subdivision (c) and this subdivision, the higher attorney's fee shall be payable. [However, if the insurer made a written offer pursuant to section 65-4.2(b)(4) of this Subpart and if such offer equals or exceeds the amount awarded by the arbitrator, the attorney's fee shall be based upon the provisions of subdivision (b) of this section.

(f) (e) Notwithstanding the limitations [listed] *specified* in this section, if the arbitrator or a court determines that the issues in dispute were of such a novel or unique nature as to require extraordinary skills or services, the arbitrator or court may award an attorney's fee in excess of the limitations set forth in this section. An excess fee award shall detail the specific novel or unique nature of the dispute [which] *that* justifies the award. An excess award of an attorney's fee by an arbitrator shall be appealable to a master arbitrator.

[(g)] (f) If a dispute involving an overdue or denied claim is resolved by the parties after it has been forwarded [by the Department of Financial Services or the] *to the* conciliation center [to] *of the* appropriate arbitration forum or after a court action has been commenced, the [claimant's] attorney *for the applicant* shall be entitled to a fee, which shall be computed in accordance with the limitations set forth in this section.

[(h)] (g) No attorney shall demand, request or receive from the insurer any payment of fees not permitted by this section.¹

[(i)] (h) Notwithstanding any other provision of this section and with respect to billings on and after the effective date of this regulation, if the charges by a health care provider, who is an applicant for benefits, exceed the limitations contained in the schedules established pursuant to section 5108 of the Insurance Law, no attorney's fee shall be payable by the insurer. This provision shall not be applicable to charges that involve interpretation of such schedules or inadvertent miscalculation or error.

¹ Attorneys should be aware of the Appellate Division Rules prohibiting fees in connection with the collection of first-party no-fault benefits (22 NYCRR sections 603.7(e)(7), 691.20(e)(7), 806.13(f) and 1022.31(f)).

Final rule as compared with last published rule: Nonsubstantive changes were made in section 65-4.6(a).

Text of rule and any required statements and analyses may be obtained from: Camielle Barclay, NYS Department of Financial Services, One State Street, New York, NY 10004, (212) 480-5299, email: camielle.barclay@dfs.ny.gov

Revised Regulatory Impact Statement

The Department of Financial Services is withdrawing the non-substantive clarification that was made to Section 65-4.6(a). Because this withdrawal has no effect on the last published Regulatory Impact Statement, it is not necessary to revise the previously published Regulatory Impact Statement.

Revised Regulatory Flexibility Analysis

The Department of Financial Services is withdrawing the non-substantive clarification that was made to Section 65-4.6(a). Because this withdrawal has no effect on the last published Regulatory Flexibility Analysis for Small Businesses and Local Governments, it is not necessary to revise the previously published Regulatory Flexibility Analysis for Small Businesses and Local Governments.

Revised Rural Area Flexibility Analysis

The Department of Financial Services is withdrawing the non-substantive clarification that was made to Section 65-4.6(a). Because this withdrawal has no effect on the last published Rural Area Flexibility Analysis, it is not necessary to revise the previously published Rural Area Flexibility Analysis.

Revised Job Impact Statement

The Department of Financial Services is withdrawing the non-substantive change that was made to Section 65-4.6(a). Because this withdrawal has no effect on the last published Job Impact Statement, it is not necessary to revise the previously published Job Impact Statement.

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 Department received comments from 27 interested parties in response to its publication of the proposed rule in the New York State Register. The Department received comments from the following groups of interested parties:

- Property/casualty insurers;
- A health care provider;
- Trade associations comprised of New York State automobile insurers;
- Two coalitions comprised of consumer groups;
- A coalition of plaintiffs' attorneys, health care providers and other interested parties;
- A coalition of attorneys representing eligible injured persons;
- Hospitals; and
- Law firms that provide legal services to various health care providers.

Comments on specific parts of the proposed rule are discussed below.

Proposed 11 NYCRR 65-4.6(a) ("Limitations on attorney's fees")
Comment

Representatives of providers, hospitals, and injured persons, as well as consumer groups, expressed concern that the Department's proposed amendment that would substitute "and" for "or" in 11 NYCRR 65-4.6(a) would result in many attorneys being denied attorney's fees unless a claim was both denied and overdue at the commencement of a proceeding.

Department's Response

The Department intended this amendment to be a non-substantive clarification that both denied claims and overdue claims submitted to arbitration or court would be eligible for attorney's fees, and not to be interpreted as saying that a claim had to be both denied and overdue at the start of the proceeding. However, because of the overwhelming concern and confusion regarding this non-substantive change, the Department is withdrawing this amendment.

Proposed 11 NYCRR 65-4.6(b) ("Minimum Attorney's Fee")

Comments

Representatives of health care providers ("providers"), hospitals, and injured persons, as well as consumer groups, strongly oppose eliminating the \$60 minimum attorney's fee, asserting that such an amendment unduly favors insurers, will not achieve more consolidation of claims, and will have a negative impact on eligible injured persons ("EIPs") and providers with no-fault disputes involving low monetary value claims. They proffered the following arguments to support their objection to the proposed amendment:

(1) It will be difficult for EIPs and providers to retain attorneys willing to represent them in arbitration or in court with respect to small monetary value claims if the attorney's fee is limited to only 20 percent of the value of the claim plus interest;

(2) Providers will be reluctant to accept no-fault patients if it is difficult to retain attorneys to represent them in disputes against an insurer involving a small monetary value claim, or providers may treat patients unnecessarily in order to increase the total value of claims in dispute;

(3) Insurers will engage in the unlawful practice of improperly lowering the value of claims so as to reduce the attorney's fees, and the Department does not have the financial resources to take effective action against insurers that engage in such unlawful practice;

(4) There is no empirical evidence that having a minimum attorney's fee results in attorneys commencing multiple actions for related claims, and doing so is not cost effective;

(5) Courts have consistently severed consolidated cases where there are multiple EIPs and multiple accidents, and arbitration does not permit consolidation of disputes that do not arise out of the same action;

(6) The amount of time needed to arbitrate or litigate multiple claims is the same whether the issues are addressed in one action or individual actions;

(7) The Department failed to consider alternatives to the proposed rule although the proposal will have a deleterious effect on parties whose low monetary value claims may not be consolidated with other claims;

(8) Consolidation of cases is infeasible because the regulation requires a provider to bill an insurer within 45 days of treatment and to commence an action within 30 days of an insurer's denial of the claim or failure to pay within 30 days of the receipt of the bill in order to prevent interest from being tolled; and

(9) Providers and EIPs who delay filing arbitrations in order to consolidate claims will forfeit priority in scheduling hearings.

Department's Responses

With respect to comments (1), (2) and (3), the Department is not persuaded by the comments that attorneys will be reluctant to represent providers, including hospitals, in disputes involving low monetary value claims. Many law firms that handle no-fault matters specialize in this area and the success of this business is based on volume; therefore, those firms are unlikely to reject a no-fault claim solely because it is of low monetary value. Additionally, the Department informally discussed this issue with a trade organization representing hospitals. That organization asserted that hospitals typically retain attorneys to handle a block of business rather than just an individual no-fault claim, and if an attorney wants to remain a hospital's legal representative, that attorney will not decline to represent a hospital in arbitration or court solely because the dispute involves a low monetary value claim.

The Department also is not persuaded that a provider, in deciding whether to treat a no-fault patient, takes into account whether the provider will be able to retain an attorney to handle a dispute regarding payment for treating that patient. Further, the Department is skeptical that an honest provider would jeopardize its license by treating a patient unnecessarily in order to bolster the monetary value of claims in the event of a dispute in order to be able to be represented by an attorney. To do so would violate Insurance Law § 5109 and Insurance Regulation 68-E, the consequence of which would be a prohibition on demanding or requesting payment for medical services in connection with any no-fault claim. Likewise, the Department is confident that insurers are unlikely to engage in the unlawful claims settlement practice of lowering the value of claims to decrease attorney's fees because of the risk of regulatory action by the Department, and because, although provider attorneys would receive lower fees, an insurer would still incur additional costs for its legal representation at the prevailing rate, as well as assessments required to be paid to the American Arbitration Association.

With respect to comments (4), (5), (7), (8), and (9) regarding consolidation, nothing in the proposed regulation mandates consolidation of claims. The Department's intent in amending the minimum fee provision is to encourage consolidation of claims where feasible, but this does not include claims involving multiple accidents, providers, or EIPs, or where consolidation would otherwise violate or contradict any law or regulation. Further, the Department, in promulgating this amendment, considered all the alternatives that commentators suggested in response to the Department's solicitation for comments on this regulation and concluded that the provision as amended would significantly reduce the voluminous filings of low monetary value claims and curtail possible fraudulent activity in the no-fault system.

Finally, the Department finds that comment (6) is without merit because attorney's fees are based on the amount of the provider's bill and not on the time spent preparing for arbitration or a court proceeding.

Comment

Insurers and trade organizations representing insurers overwhelmingly support eliminating the minimum attorney's fee. They contended that this

amendment would reduce the number of individual filings of low monetary value claims made solely to generate attorney's fees, and that insurers no longer would be forced to settle such claims that they would otherwise contest but for the cost of litigating those claims. One insurer trade organization further recommended that the regulation require providers and their attorneys to file only one action for all disputes arising out of the same accident and involving the same EIP.

Department's Response

The Department agrees that the amendment is necessary to curtail the voluminous filings of low monetary value claims. However, the Department rejects the recommendation to require providers and their attorneys to commence a single action for all disputed claims arising out of the same accident and involving the same EIP, because to do so would violate Insurance Law § 5106(b), which grants an applicant the option to bring any dispute to arbitration.

Comment

Some of the insurers and an insurer trade organization requested that the Department clearly specify the effective date of this proposed amendment, and suggested that the proposed amendment to the fee structure apply as of the date of filing of an arbitration or lawsuit, rather than the date of loss or date of service.

Department's Response

Because section 65-4.6 applies to arbitrations or court proceedings, the amendment applies to all new arbitrations or court proceedings initiated on or after the effective date of the amendment, rather than to dates of service or dates of loss occurring on or after the effective date of the amendment.

Proposed 11 NYCRR 65-4.6(b) ("Maximum Attorney's Fee During the Conciliation Phase")

Comments

One insurer opposed eliminating the maximum \$60/\$80 attorney's fee during conciliation, asserting that to do so would result in hearings over disputes involving fees, which in turn would increase costs and prolong the resolution of no-fault claims. The insurer also opposed the proposed fee of 20 percent of first-party benefits and any additional first-party benefits, plus interest, up to a maximum of \$1,360, contending that the fee is excessive for the limited amount of work involved in filing a case for arbitration.

On the other hand, one insurer trade organization supported the proposed fee structure, asserting that this would discourage the filing of multiple no-fault claims in order to generate more attorney's fees and encourage consolidation of small monetary value claims, which would result in a more efficient no-fault system.

Department's Response

The Department disagrees that the maximum attorney's fee conciliation phase should not be increased because the current maximum attorney's fee is not commensurate with the increase in the amount of work an attorney must expend upon filing and during the conciliation phase of an arbitration case as a result of a regulatory change made ten years ago requiring early submission of case documents and legal arguments in arbitration.

Proposed 11 NYCRR 65-4.6(d) ("Maximum Attorney's Fee")

Comments

Representatives of providers, hospitals, and injured persons, as well as consumer groups, strongly agreed that the current \$850 maximum attorney's fee should be increased, but asserted that the Department's proposed increase to \$1,360 is insufficient to achieve the Department's objective of encouraging consolidation of claims. Those commentators suggested either increasing the maximum fee – some provider attorneys suggested increasing the maximum to \$2,000 and a hospital attorney suggested \$4,000 for hospital bills – or eliminating the maximum fee altogether.

Most insurers and insurer trade organizations opposed any increase to the maximum fee. They contended that the current \$850 maximum attorney's fee fairly compensates attorneys for the work involved in resolving a no-fault claim at arbitration or in court, and that there is no evidence that at the current fee providers would be hard pressed to find attorneys to represent them.

On the other hand, two insurers agree with the Department's amendment to the attorney's fees provisions of Insurance Regulation 68-D, asserting that those amendments should reduce the overwhelming number of low monetary value claims filed in order to maximize attorney's fees, as well as minimize the impact that fees have on pervasive fraud in the no-fault system.

Department's Response

The Superintendent, based on his knowledge and expertise in the area of no-fault law and regulation, as well as his responsibility to the public, finds that an increase in the maximum attorney's fee to \$1,360 is reasonable in order to achieve a more efficient resolution of no-fault claims that is equitable to both providers and insurers. The Superintendent also finds

the proposed maximum fee to be sufficient incentive for provider attorneys to consolidate disputes where feasible, while not so exorbitant as to unduly increase transaction and litigation costs.

Other Comments on Insurance Regulation 68-D Regarding Attorney's Fees

Interested parties submitted comments that were beyond the scope of changes to the regulation being implemented at this time. Accordingly, no changes to the regulation were made based upon those comments. Also, although the Department initially solicited comments on Section 65-4.6(f) of the current regulation, the Department did not propose any changes at this time, and therefore comments received on Section 65-4.6(f) are beyond the scope of changes to the regulation being implemented and are not discussed here.

Higher Education Services Corporation

EMERGENCY RULE MAKING

New York State Science, Technology, Engineering and Mathematics Incentive Program

I.D. No. ESC-05-15-00001-E

Filing No. 46

Filing Date: 2015-01-15

Effective Date: 2015-01-15

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

Action taken: Addition of section 2201.13 to Title 8 NYCRR.

Statutory authority: Education Law, sections 653, 655 and 669-e

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

Specific reasons underlying the finding of necessity: This statement is being submitted pursuant to subdivision (6) of section 202 of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation's ("HESC") Emergency Rule Making seeking to add a new section 2201.13 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

This regulation implements a statutory student financial aid program providing for awards to be made to students beginning with the fall 2014 term. Emergency adoption is necessary to avoid an adverse impact on the processing of awards to eligible scholarship applicants. The statute provides for tuition benefits to college-going students who, beginning August 2014, pursue an undergraduate program of study in science, technology, engineering, or mathematics at a New York State public institution of higher education. High school students entering college in August must inform the institution of their intent to enroll no later than May 1. Therefore, it is critical that the terms of the program as provided in the regulation be available immediately in order for HESC to process scholarship applications so that students can make informed choices. To accomplish this mandate, the statute further provides for HESC to promulgate emergency regulations to implement the program. For these reasons, compliance with section 202(1) of the State Administrative Procedure Act would be contrary to the public interest.

Subject: New York State Science, Technology, Engineering and Mathematics Incentive Program.

Purpose: To implement the New York State Science, Technology, Engineering and Mathematics Incentive Program.

Text of emergency rule: New section 2201.13 is added to Title 8 of the New York Code, Rules and Regulations to read as follows:

Section 2201.13 New York State Science, Technology, Engineering and Mathematics Incentive Program.

(a) *Definitions. The following definitions apply to this section:*

(1) *"Award" shall mean a New York State Science, Technology, Engineering and Mathematics Incentive Program award pursuant to section 669-e of the New York State education law.*

(2) *"Employment" shall mean continuous employment for at least thirty-five hours per week in the science, technology, engineering or mathematics field, as published on the corporation's web site, for a public or private entity located in New York State for five years after the completion of the undergraduate degree program and, if applicable, a higher*

degree program or professional licensure degree program and a grace period as authorized by section 669-e(4) of the education law.

(3) "Grace period" shall mean a six month period following a recipient's date of graduation from a public institution of higher education and, if applicable, a higher degree program or professional licensure degree program as authorized by section 669-e(4) of the education law.

(4) "High school class" shall mean the total number of students eligible to graduate from a high school in the applicable school year.

(5) "Interruption in undergraduate study or employment" shall mean a temporary period of leave for a definitive length of time due to circumstances as determined by the corporation, including, but not limited to, maternity/paternity leave, death of a family member, or military duty.

(6) "Program" shall mean the New York State Science, Technology, Engineering and Mathematics Incentive Program codified in section 669-e of the education law.

(7) "Public institution of higher education" shall mean the state university of New York, as defined in subdivision 3 of section 352 of the education law, a community college as defined in subdivision 2 of section 6301 of the education law, or the city university of New York as defined in subdivision 2 of section 6202 of the education law.

(8) "School year" shall mean the period commencing on the first day of July in each year and ending on the thirtieth day of June next following.

(9) "Science, technology, engineering and mathematics" programs shall mean those undergraduate degree programs designated by the corporation on an annual basis and published on the corporation's web site.

(10) "Successful completion of a term" shall mean that at the end of any academic term, the recipient: (i) met the eligibility requirements for the award pursuant to sections 661 and 669-e of the education law; (ii) completed at least 12 credit hours or its equivalent in a course of study leading to an approved undergraduate degree in the field of science, technology, engineering, or mathematics; and (iii) possessed a cumulative grade point average (GPA) of 2.5 as of the date of the certification by the institution. Notwithstanding, the GPA requirement is preliminarily waived for the first academic term for programs whose terms are organized in semesters, and for the first two academic terms for programs whose terms are organized on a trimester basis. In the event the recipient's cumulative GPA is less than a 2.5 at the end of his or her first academic year, the recipient will not be eligible for an award for the second academic term for programs whose terms are organized in semesters or for the third academic term for programs whose terms are organized on a trimester basis. In such case, the award received for the first academic term for programs whose terms are organized in semesters and for the first two academic terms for programs whose terms are organized on a trimester basis must be returned to the corporation and the institution may reconcile the student's account, making allowances for any other federal, state, or institutional aid the student is eligible to receive for such terms unless: (A) the recipient's GPA in his or her first academic term for programs whose terms are organized in semesters was a 2.5 or above, or (B) the recipient's GPA in his or her first two academic terms for programs whose terms are organized on a trimester basis was a 2.5 or above, in which case the institution may retain the award received and only reconcile the student's account for the second academic term for programs whose terms are organized in semesters or for the third academic term for programs whose terms are organized on a trimester basis. The corporation shall issue a guidance document, which will be published on its web site.

(b) Eligibility. An applicant for an award under this program pursuant to section 669-e of the education law must also satisfy the general eligibility requirements provided in section 661 of the education law.

(c) Class rank or placement. As a condition of an applicant's eligibility, the applicant's high school shall provide the corporation:

(1) official documentation from the high school either (i) showing the applicant's class rank together with the total number of students in such applicant's high school class or (ii) certifying that the applicant is in the top 10 percent of such applicant's high school class; and

(2) the applicant's most current high school transcript; and

(3) an explanation of how the size of the high school class, as defined in subdivision (a), was determined and the total number of students in such class using such methodology. If the high school does not rank the students in such high school class, the high school shall also provide the corporation with an explanation of the method used to calculate the top 10 percent of students in the high school class, and the number of students in the top 10 percent, as calculated. Each methodology must comply with the terms of this program as well as be rational and reasonable. In the event the corporation determines that the methodology used by the high school fails to comply with the term of the program, or is irrational or unreasonable, the applicant will be denied the award for failure to satisfy the eligibility requirements; and

(4) any additional information the corporation deems necessary to determine that the applicant has graduated within the top 10 percent of his or her high school class.

(d) Administration.

(1) Applicants for an award shall:

(i) apply for program eligibility on forms and in a manner prescribed by the corporation. The corporation may require applicants to provide additional documentation evidencing eligibility; and

(ii) postmark or electronically transmit applications for program eligibility to the corporation on or before the date prescribed by the corporation for the applicable academic year. Notwithstanding any other rule or regulation to the contrary, such applications shall be received by the corporation no later than August 15th of the applicant's year of graduation from high school.

(2) Recipients of an award shall:

(i) execute a service contract prescribed by the corporation;

(ii) apply for payment annually on forms specified by the corporation;

(iii) confirm annually their enrollment in an approved undergraduate program in science, technology, engineering, or mathematics;

(iv) receive such awards for not more than four academic years of full-time undergraduate study or five academic years if the program of study normally requires five years, as defined by the commissioner pursuant to article thirteen of the education law, excluding any allowable interruption of study; and

(v) respond to the corporation's requests for a letter from their employer attesting to the employee's job title, the employee's number of hours per work week, and any other information necessary for the corporation to determine compliance with the program's employment requirements.

(e) Amounts.

(1) The amount of the award shall be determined in accordance with section 669-e of the education law.

(2) Disbursements shall be made each term to institutions, on behalf of recipients, within a reasonable time upon successful completion of the term subject to the verification and certification by the institution of the recipient's GPA and other eligibility requirements.

(3) Awards shall be reduced by the value of other educational grants and scholarships limited to tuition, as authorized by section 669-e of the education law.

(f) Failure to comply.

(1) All award monies received shall be converted to a 10-year student loan plus interest for recipients who fail to meet the statutory, regulatory, contractual, administrative or other requirement of this program.

(2) The interest rate for the life of the loan shall be fixed and equal to that published annually by the U.S. Department of Education for undergraduate unsubsidized Stafford loans at the time the recipient signed the service contract with the corporation.

(3) Interest shall begin to accrue on the day each award payment is disbursed to the institution.

(4) Interest shall be capitalized on the day the award recipient violates any term of the service contract or the date the corporation deems the recipient was no longer able or willing to perform the terms of the service contract. Interest on this amount shall be calculated using simple interest.

(5) Where a recipient has demonstrated extreme hardship as a result of a total and permanent disability, labor market conditions, or other such circumstances, the corporation may, in its discretion, postpone converting the award to a student loan, temporarily suspend repayment of the amount owed, prorate the amount owed commensurate with service completed, discharge the amount owed, or such other appropriate action. Where a recipient has demonstrated in-school status, the corporation shall temporarily suspend repayment of the amount owed for the period of in-school status.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire April 14, 2015.

Text of rule and any required statements and analyses may be obtained from: Cheryl B. Fisher, NYS Higher Education Services Corporation, 99 Washington Avenue, Room 1325, Albany, New York 12255, (518) 474-5592, email: regcomments@hesc.ny.gov

Regulatory Impact Statement

Statutory authority:

The New York State Higher Education Services Corporation's ("HESC") statutory authority to promulgate regulations and administer the New York State Science, Technology, Engineering and Mathematics Incentive Program ("Program") is codified within Article 14 of the Education Law. In particular, Part G of Chapter 56 of the Laws of 2014 created the Program by adding a new section 669-e to the Education Law. Subdivision 5 of section 669-e of the Education Law authorizes HESC to promulgate emergency regulations for the purpose of administering this Program.

Pursuant to Education Law § 652(2), HESC was established for the purpose of improving the post-secondary educational opportunities of eligible students through the centralized administration of New York State financial aid programs and coordinating the State's administrative effort in student financial aid programs with those of other levels of government.

In addition, Education Law § 653(9) empowers HESC's Board of Trustees to perform such other acts as may be necessary or appropriate to carry out the objects and purposes of the corporation including the promulgation of rules and regulations.

HESC's President is authorized, under Education Law § 655(4), to propose rules and regulations, subject to approval by the Board of Trustees, governing, among other things, the application for and the granting and administration of student aid and loan programs, the repayment of loans or the guarantee of loans made by HESC; and administrative functions in support of state student aid programs. Also, consistent with Education Law § 655(9), HESC's President is authorized to receive assistance from any Division, Department or Agency of the State in order to properly carry out his or her powers, duties and functions. Finally, Education Law § 655(12) provides HESC's President with the authority to perform such other acts as may be necessary or appropriate to carry out effectively the general objects and purposes of HESC.

Legislative objectives:

The Education Law was amended to add a new section 669-e to create the "New York State Science, Technology, Engineering and Mathematics Incentive Program" (Program). This Program is aimed at increasing the number of individuals working in the fields of science, technology, engineering and mathematics (STEM) in New York State to meet the increasingly critical need for those skills in the State's economy.

Needs and benefits:

According to a February 2012 report by President Obama's Council of Advisors on Science and Technology, there is a need to add to the American workforce over the next decade approximately one million more science, technology, engineering and mathematics (STEM) professionals than the United States will produce at current rates in order for the country to stay competitive. To meet this goal, the United States will need to increase the number of students who receive undergraduate STEM degrees by about 34% annually over current rates. The report also stated that fewer than 40% of students who enter college intending to major in a STEM field complete a STEM degree. Further, a recent Wall Street Journal article reported that New York state suffers from a shortage of graduates in STEM fields to fill the influx of high-tech jobs that occurred five years ago. At a plant in Malta, about half the jobs were filled by people brought in from outside New York and 11 percent were foreigners. According to the article, Bayer Corp. is due to release a report showing that half of the recruiters from large U.S. companies surveyed couldn't find enough job candidates with four-year STEM degrees in a timely manner; some said that had led to more recruitment of foreigners. About two-thirds of the recruiters surveyed said that their companies were creating more STEM positions than other types of jobs. There are also many jobs requiring a two-year degree. In an effort to deal with this shortage, companies are using more internships, grants and scholarships.

The Program is aimed at increasing the number New York graduates with two and four year degrees in STEM who will be working in STEM fields across New York state. Eligible recipients may receive annual awards for not more than four academic years of undergraduate full-time study (or five years if enrolled in a five-year program) while matriculated in an approved program leading to a career in STEM.

The maximum amount of the award is equal to the annual tuition charged to New York State resident students attending an undergraduate program at the State University of New York (SUNY), including state operated institutions, or City University of New York (CUNY). The current maximum annual award for the 2014-15 academic year is \$6,170. Payments will be made directly to schools on behalf of students upon certification of their successful completion of the academic term.

Students receiving a New York State Science, Technology, Engineering and Mathematics Incentive Program award must sign a service agreement and agree to work in New York state for five years in a STEM field and reside in the State during those five years. Recipients who do not fulfill their service obligation will have the value of their awards converted to a student loan and be responsible for interest.

Costs:

a. It is anticipated that there will be no costs to the agency for the implementation of, or continuing compliance with this rule.

b. The maximum cost of the program to the State is \$8 million in the first year based upon budget estimates.

c. It is anticipated that there will be no costs to Local Governments for the implementation of, or continuing compliance with, this rule.

d. The source of the cost data in (b) above is derived from the New York State Division of the Budget.

Local government mandates:

No program, service, duty or responsibility will be imposed by this rule upon any county, city, town, village, school district, fire district or other special district.

Paperwork:

This proposal will require applicants to file an electronic application for each year they wish to receive an award up to and including five years of eligibility. Recipients are required to sign a contract for services in exchange for an award. Recipients must submit annual status reports until a final disposition is reached in accordance with the written contract.

Duplication:

No relevant rules or other relevant requirements duplicating, overlapping, or conflicting with this rule were identified.

Alternatives:

The proposed regulation is the result of HESC's outreach efforts to financial aid professionals with regard to this Program. Several alternatives were considered in the drafting of this regulation. For example, several alternatives were considered in defining terms/phrases used in the regulation as well as the academic progress requirement. Given the statutory language as set forth in section 669-e of the Education Law, a "no action" alternative was not an option.

Federal standards:

This proposal does not exceed any minimum standards of the Federal Government, and efforts were made to align it with similar federal subject areas as evidenced by the adoption of the federal unsubsidized Stafford loan rate in the event that the award is converted into a student loan.

Compliance schedule:

The agency will be able to comply with the regulation immediately upon its adoption.

Regulatory Flexibility Analysis

This statement is being submitted pursuant to subdivision (3) of section 202-b of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation's ("HESC") Emergency Rule Making, seeking to add a new section 2201.13 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that it will not impose an adverse economic impact on small businesses or local governments. HESC finds that this rule will not impose any compliance requirement or adverse economic impact on small businesses or local governments. Rather, it has potential positive impacts inasmuch as it implements a statutory student financial aid program that provides tuition benefits to college students who pursue their undergraduate studies in the fields of science, technology, engineering, or mathematics at a New York State public institution of higher education. Students will be rewarded for remaining and working in New York, which will provide an economic benefit to the State's small businesses and local governments as well.

Rural Area Flexibility Analysis

This statement is being submitted pursuant to subdivision (4) of section 202-bb of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation's Emergency Rule Making, seeking to add a new section 2201.13 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that it will not impose an adverse impact on rural areas. Rather, it has potential positive impacts inasmuch as it implements a statutory student financial aid program that provides tuition benefits to college students who pursue their undergraduate studies in the fields of science, technology, engineering, or mathematics at a New York State public institution of higher education. Students will be rewarded for remaining and working in New York, which will benefit rural areas around the State as well.

This agency finds that this rule will not impose any reporting, record keeping or other compliance requirements on public or private entities in rural areas.

Job Impact Statement

This statement is being submitted pursuant to subdivision (2) of section 201-a of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation's Emergency Rule Making seeking to add a new section 2201.13 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that it will not have any negative impact on jobs or employment opportunities. Rather, it has potential positive impacts inasmuch as it implements a statutory student financial aid program that provides tuition benefits to college students who pursue their undergraduate studies in the fields of science, technology, engineering, or mathematics at New York State public institution of higher education. Students will be rewarded for remaining and working in New York, which will benefit the State as well.

Public Service Commission

NOTICE OF ADOPTION

Allowing Submetering of Electricity at 35 East 64th Street, New York, New York

I.D. No. PSC-11-14-00004-A

Filing Date: 2015-01-14

Effective Date: 2015-01-14

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

Action taken: On 1/8/15, the PSC adopted an order authorizing Plaza Athenee Company Limited to submeter electricity at 35 East 64th 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: Allowing submetering of electricity at 35 East 64th Street, New York, New York.

Purpose: To allow submetering of electricity at 35 East 64th Street, New York, New York.

Substance of final rule: The Commission, on January 8, 2015, adopted an order approving Plaza Athenee Company Limited to submeter electricity at 35 East 64th 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: Elaine Agresta, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2660, email: elaine.agresta@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-0052SA1)

NOTICE OF ADOPTION

Allowing EBNB 70 Pine Owner LLC to Submeter Electricity at 70 Pine Street, New York, NY

I.D. No. PSC-18-14-00007-A

Filing Date: 2015-01-14

Effective Date: 2015-01-14

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

Action taken: On 1/8/15, the PSC adopted an order authorizing EBNB 70 Pine Owner LLC to submeter electricity at 70 Pine Street, New York, NY.

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: Allowing EBNB 70 Pine Owner LLC to submeter electricity at 70 Pine Street, New York, NY.

Purpose: To allow submetering at 70 Pine Street, New York, NY.

Substance of final rule: The Commission, on January 8, 2015, adopted an order authorizing EBNB 70 Pine Owner LLC to submeter electricity at 70 Pine Street, New York, NY, 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: Elaine Agresta, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2660, email: elaine.agresta@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-0126SA1)

NOTICE OF ADOPTION

Approving 18 Gramercy Park Condominium's Petition to Submeter Electricity at 18 Gramercy Park, New York, NY

I.D. No. PSC-34-14-00008-A

Filing Date: 2015-01-14

Effective Date: 2015-01-14

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

Action taken: On 1/8/15, the PSC adopted an order authorizing 18 Gramercy Park Condominium to submeter electricity at 18 Gramercy Park, New York, NY.

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: Approving 18 Gramercy Park Condominium's petition to submeter electricity at 18 Gramercy Park, New York, NY.

Purpose: To approve 18 Gramercy Park Condominium's request to submeter electricity at 18 Gramercy Park, New York, NY.

Substance of Final Rule: The Commission, on January 8, 2015, adopted an order approving a petition filed by 18 Gramercy Park Condominium to submeter electricity at 18 Gramercy Park, New York, NY, 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: Elaine Agresta, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2660, email: elaine.agresta@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-0333SA1)

NOTICE OF ADOPTION

Allowing Submetering of Electricity at 1000 Palmer Road, Bronxville, NY

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

Filing Date: 2015-01-14

Effective Date: 2015-01-14

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

Action taken: On 1/8/15, the PSC adopted an order authorizing Kimball Brooklands Corporation to submeter electricity at 1000 Palmer Road, Bronxville, NY.

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: Allowing submetering of electricity at 1000 Palmer Road, Bronxville, NY.

Purpose: To allow submetering of electricity at 1000 Palmer Road, Bronxville, NY.

Substance of final rule: The Commission, on January 8, 2015, adopted an order approving Kimball Brooklands Corporation's Notice of Intent to submeter electricity at 1000 Palmer Road, Bronxville, 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: Elaine Agresta, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2660, email: elaine.agresta@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-0096SA1)

NOTICE OF ADOPTION

Approval of the Waiver of the Individual Metering Requirements for Residential Living Units

I.D. No. PSC-46-14-00006-A

Filing Date: 2015-01-14

Effective Date: 2015-01-14

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

Action taken: On 1/8/15, the PSC adopted an order approving the petition of Hegeman Avenue Housing L.P. (Hegeman) for a waiver of the individual residential living unit metering requirements.

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: Approval of the waiver of the individual metering requirements for residential living units.

Purpose: To approve the waiver of the individual metering requirements for residential living units.

Substance of final rule: The Commission, on January 8, 2015, adopted an order approving the petition of Hegeman Avenue Housing L.P., for a waiver of the individual metering requirements for residential living, conditioned on the continued use of 39 Hegeman Avenue, Brooklyn, New York as a residence for members of a special needs population, 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: Elaine Agresta, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2660, email: elaine.agresta@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.

(12-E-0543SA2)

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

Whether to Grant, Deny or Modify in Whole or in Part the Petition of Consolidated Edison for Rehearing and Clarification

I.D. No. PSC-05-15-00003-P

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

Proposed Action: The Public Service Commission is considering whether to grant, deny or modify in whole or in part the petition of Consolidated Edison Company of New York, Inc. for rehearing and clarification of the Order issued December 12, 2014.

Statutory authority: Public Service Law, sections 22, 65(1), 66(1), (2) and (12)(a)

Subject: Whether to grant, deny or modify in whole or in part the petition of Consolidated Edison for rehearing and clarification.

Purpose: Whether to grant, deny or modify in whole or in part the petition of Consolidated Edison for rehearing and clarification.

Substance of proposed rule: The Public Service Commission (Commission) is considering whether to grant, deny or modify, in whole or part, the petition for rehearing and reconsideration of the Commission's December 12, 2014 Order Establishing Brooklyn/Queens Demand Management Program (BQDM Program) filed by Consolidated Edison Company of New York, Inc. (Con Edison or the Company) on January 12, 2015.

Con Edison seeks rehearing on the linkage of the achievement of additional earnings in any given year from the BQDM Program and the Company's performance under its Reliability Performance Mechanism (RPM). According to the Company, there is no record basis for the linkage nor its discussed in the body of the Order and the linkage is unjustified and contrary to the advancement of the Commission's goals articulated in the Reforming the Energy Vision (REV) proceeding (Case 14-M-0101).

The Company also seeks reconsideration or clarification of six other issues: 1) it requests that the Commission allow the Company to own or operate distributed energy resources and claims that customers often prefer

to work with Con Edison to manage their energy use and to implement customer sided solutions; 2) it requests that the Commission clarify that the Company be allowed to consider the impacts of public open space or recreational space as one factor in its holistic evaluation of projects involving the City of New York, New York Power Authority and/or New York City Housing Authority; 3) it requests clarification of the details of the third-party oversight required in the Order, in particular, Company asks the Commission to determine that it is primarily responsible for selection of the projects, that the third-party and Staff review is focused on market power concerns, that the costs related to the independent third-party overseer should not be applied against the \$200 million spending cap for the BQDM Program, and asks the Commission to clarify how the process would work if Staff disagrees with the Company's project selections; 4) it requests clarification of the required benefit cost analysis (BCA) so that the Company need only submit semi-annual BCA reports commencing June 2015 and continuing until June 2018; 5) it requests clarification that the focus of the diversity index should be expanded to include direct customers as well as subcontractors, that the diversity index should serve to measure the diversity of technology offered, and that the Company and Staff should work together to modify the diversity index to address a technical fault that appears to award the full incentive so long as each vendor contributes the same proportion of megawatts; and, 6) it requests that the Commission clarify the limitations of its ownership of grid-based solutions so that commercial leases of real property are allowed and to clarify or reconsider the imposition of any limitations on its ownership of grid-based solutions. The Commission may also reconsider other aspects of the January 12, 2015 Order as a result of its reconsideration and rehearing of the issues raised by Con Edison in its petition.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.ny.gov/f96dir.htm>. For questions, contact: Elaine Agresta, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2660, email: Elaine.Agresta@dps.ny.gov

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

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

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

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

(14-E-0302SP2)

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

Whether to Permit the Use of the Eaton Power Xpert Multi-Point Meter for Submeter Applications

I.D. No. PSC-05-15-00004-P

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

Proposed Action: The Public Service Commission is considering whether to approve, deny or modify, in whole or in part, a petition filed by Eaton Corporation for approval to use the Eaton Power Xpert Multi-Point Meter for submetering applications.

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

Subject: Whether to permit the use of the Eaton Power Xpert Multi-Point Meter for submeter applications.

Purpose: Pursuant to 16 NYCRR Parts 93 and 96, the Commission must approve the Eaton Power Xpert Multi-Point for electric submetering.

Substance of proposed rule: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by Eaton Corporation for approval to use the Eaton Power Xpert Multi-Point Meter for submetering applications, and any other related matters.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.ny.gov/f96dir.htm>. For questions, contact: Elaine Agresta, Public Service Commission, Three Empire State Plaza, Albany, NY 12223, (518) 486-2660, email: Elaine.Agresta@dps.ny.gov

Data, views or arguments may be submitted to: Kathleen H. Burgess, Secretary, Public Service Commission, Three Empire State Plaza, Albany, NY 12223, (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-0003SP1)

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

Cost Recovery Surcharge and Gas Safety Performance Standards

I.D. No. PSC-05-15-00005-P

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

Proposed Action: The Commission is considering a tariff filing by KeySpan Gas East Corporation d/b/a National Grid implementing a surcharge for cost recovery for leak prone pipe removal and related construction, as well as changes to gas safety performance standards.

Statutory authority: Public Service Law, sections 65 and 66

Subject: Cost recovery surcharge and gas safety performance standards.

Purpose: To determine issues related to gas safety surcharge implementation.

Substance of proposed rule: On January 16, 2015, KeySpan Gas East Corporation d/b/a National Grid (KEDLI), in compliance with a December 15, 2014, Commission Order in Case 14-G-0214 submitted a proposal to create a surcharge to recover the costs related to leak prone pipe replacement. The Commission’s December 15, 2014, Order also notes that when considering the Company’s proposed surcharge, the Commission will consider modifications to the Company’s existing gas safety performance standards. The Commission can approve, deny or modify, in whole or in part KEDLI’s proposed surcharge, and will consider the gas safety performance standards applicable to KEDLI in their entirety, as well as any other related matters.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.ny.gov/f96dir.htm>. For questions, contact: Elaine Agresta, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2660, email: Elaine.Agresta@dps.ny.gov

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

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

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

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

(14-G-0214SP2)

Department of State

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

Addition of Provisions Relating to “Sparkling Devices” to the State Uniform Fire Prevention and Building Code

I.D. No. DOS-05-15-00007-EP

Filing No. 50

Filing Date: 2015-01-20

Effective Date: 2015-01-20

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

Proposed Action: Addition of section 1228.3 to Title 19 NYCRR.

Statutory authority: Executive Law, section 377(1)

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

Specific reasons underlying the finding of necessity: This rule is adopted as an emergency measure to preserve public safety and because time is of the essence.

The State Uniform Fire Prevention and Building Code (the Uniform Code) prescribes building and fire safety requirements for buildings and structures in all parts of the State (except New York City, which has its own building code). Currently, fireworks are illegal in this State, and the Uniform Code has few provisions expressly applicable to buildings or structures where fireworks of any kind on manufactured, stored, sold or used. Chapter 477 of the Laws of 2014 amends sections 270.00 and 405.00 of the Penal Law to amend the definition of fireworks to include several categories of devices, including “sparkling devices,” and to authorize any city or county (outside New York City) to make sparkling devices legal in such city or county. Chapter 477 of the Laws of 2014 became effective on December 21, 2014, and cities and counties could begin to legalize sparkling devices at any time on or after that date.

This rule amends the Uniform Code to provide additional requirements applicable to buildings and structures where “sparkling devices” are manufactured, stored or used. This rule also adds other restrictions on the use of “sparkling devices” intended to minimize the danger of fire in buildings and structures. Adoption of this rule on an emergency basis is necessary to protect public safety by assuring that these new requirements applicable to buildings and structures where “sparkling devices” are manufactured, stored or used and these new restrictions on the use of “sparkling devices” intended to minimize the danger of fire in buildings and structures are added to and become enforceable parts of the Uniform Code before “sparkling devices” become legal in any city or county.

At its meeting held on January 15, 2015, the State Fire Prevention and Building Code Council determined that establishing the date of filing of the Notice of Emergency Adoption and Proposed Rule Making as the effective date of this rule is necessary to protect the public safety and to assure that the new requirements applicable to buildings and structures where “sparkling devices” are manufactured, stored or used and the new restrictions on the use of “sparkling devices” intended to minimize the danger of fire in buildings and structures are added to and become enforceable parts of the Uniform Code before “sparkling devices” become legal in any city or county. Therefore, this rule will be effective on the date of filing of the Notice of Emergency Adoption and Proposed Rule Making of this rule.

Subject: Addition of provisions relating to “sparkling devices” to the State Uniform Fire Prevention and Building Code.

Purpose: To amend the Uniform Code to provide additional requirements applicable to buildings and structures where “sparkling devices” are manufactured, stored or used and add other restrictions on the use of “sparkling devices”.

Public hearing(s) will be held at: 9:00 a.m., March 24, 2015 at Department of State, 99 Washington Ave., Rm. 505, Albany, NY.

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

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

Substance of emergency/proposed rule (Full text is not posted on a State website): This rule amends the State Uniform Fire Prevention and Building Code (the Uniform Code) by adding a new section 1228.3 to Part 1228 of Title 19 of the NYCRR. The provisions of new section 1228.3 apply to the possession, manufacture, storage, handling, sale, and use of sparkling devices. Any building or structure where sparkling devices are manufactured, stored, handled, sold or used shall be subject to the provisions of new section 1228.3 and to all other provisions of the Uniform Code applicable to such building or structure.

In this rule, the term “sparkling devices” has the meaning ascribed to that term by section 270.00(1)(a)(vi) of the Penal Law (as amended by Chapter 477 of the Laws of 2014), and shall include “ground-based or hand-held devices” and “novelties.”

The provisions of new section 1228.3 are in addition to, and not in limitation of, (1) all other provisions of the Uniform Code applicable to any building or structure where sparkling devices are manufactured, stored, handled, sold or used and (2) all other statutes, rules, regulations, local laws, and ordinances applicable to the possession, manufacture, storage, handling, sale and/or use of sparkling devices, including but not limited to sections 270.00 and 405.00 of the Penal Law; section 392-j of the General Business Law; section 156-h of the Executive Law; Part 225

of Title 9 of the NYCRR; Part 39 of Title 12 of the NYCRR (Industrial Code Rule 39); and local laws, ordinances or regulations relating to operating permits as contemplated by 19 NYCRR section 1203.3(g). Nothing in new section 1228.3 shall be construed as permitting the possession, manufacture, handling, sale and/or use of sparkling devices in violation of any other law, statute, rule, regulation, local law or ordinance applicable to the possession, manufacture, storage, handling, sale and/or use of sparkling devices. Nothing in new section 1228.3 shall be construed as permitting the possession, manufacture, handling, sale and/or use of sparkling devices in any jurisdiction where the possession, manufacture, handling, sale and/or use of sparking devices has not been made legal in accordance with the provisions of section 405.00 of the Penal Law.

New section 1228.3 will prohibit the use of any sparkling device inside any building or structure unless (i) such sparkling device is listed for indoor use and (ii) the use of such sparkling device inside such building or structure has been approved.

New section 1228.3 will prohibit the use of any sparkling device within 10 feet of any building or structure unless (i) such sparkling device is listed for indoor use or for use within 10 feet of a building or structure and (ii) the use of such sparkling device within 10 feet of such building or structure has been approved.

New section 1228.3 will prohibit constructing retail displays of sparkling devices or offering sparkling devices for sale, upon highways, sidewalks or public property or in a Group A or E occupancy.

Sparkling devices displayed for retail sale shall not be made readily accessible to the public.

A minimum of one pressurized-water portable fire extinguisher complying with section 906 of the 2010 FCNYS shall be located not more than 15 feet (4572 mm) and not less than 10 feet (3048 mm) from each area where sparkling devices are stored or displayed for retail sale.

"No Smoking" signs complying with section 310 of the 2010 FCNYS shall be conspicuously posted in each area where sparkling devices are stored or displayed for retail sale.

The code enforcement official is authorized to limit the quantity of sparkling devices permitted at a given location. In particular, but not by way of limitation, the code enforcement official is authorized to limit the quantity of sparkling devices permitted to be kept or stored at any one- or two-family dwelling, townhouse, or any building or structure containing any Group R occupancy.

No person or entity shall conduct a sparkling device display unless such person or entity shall have designated a person as the person in charge of such sparkling device display. The person in charge of a sparkling device display shall be not less than 21 years of age; shall demonstrate knowledge of all safety precautions related to the storage, handling, and use of sparkling devices; and at the time of such sparkling device display shall not be under the influence of alcohol or drugs that impair sensory or motor skills. Whenever in the opinion of the code enforcement official or the operator a hazardous condition exists, the sparkling device display shall be discontinued immediately until such time as the dangerous situation is corrected.

The code enforcement official is authorized to require any sparkling device display or any other use of sparkling devices to be supervised at any time by the code enforcement official in order to determine compliance with all safety and fire regulations.

Sparkling devices that are being manufactured, stored, handled, stored or used in violation of any provision of new section 1228.3 or in violation of any other applicable provision of the Uniform Code may be removed and disposed of in an appropriate manner, at the expense of the owner of the sparkling devices. In a jurisdiction where the possession of sparkling devices has been made legal in accordance with the provisions of section 405.00 of the Penal Law, the code enforcement official is authorized to remove and dispose of the sparkling devices. In other jurisdictions, the sparkling devices shall be removed and disposed of by a police officer, peace officer, or other person authorized by law to do so.

Accidents involving the use of sparkling devices that result in death, personal injury or property damage shall be reported to the code enforcement official immediately.

Manufacturers of sparkling devices shall maintain records of chemicals, chemical compounds and mixtures required by the U.S. Department of Labor regulations set forth in 29 CFR Part 1910.1200 and Section 407 of the 2010 FCNYS.

The manufacture, assembly, and testing of sparkling devices, and facilities where the manufacture, assembly and/or testing of sparkling devices occur, shall comply with the requirements of this subdivision and NFPA 495 or NFPA 1124. Emergency plans, emergency drills, employee training and hazard communication shall conform to the provisions of new section and Sections 404, 405, 406 and 407 of the 2010 FCNYS. Detailed Hazardous Materials Management Plans (HMMP) and Hazardous Materials Inventory Statements (HMIS) complying with the requirements of Section 407 of the 2010 FCNYS shall be prepared and submitted to the lo-

cal emergency planning committee, the code enforcement official, and the local fire department. A copy of the required HMMP and HMIS shall be maintained on site and furnished to the code enforcement official on request. Workers who handle or dispose of sparkling devices shall be trained in the hazards of the materials and processes in which they are to be engaged and with the safety rules governing such materials and processes. Approved emergency procedures shall be formulated for each facility where sparkling devices are manufactured, assembled and/or tested. Such procedures shall include personal instruction in any emergency that may be anticipated. All personnel shall be made aware of an emergency warning signal.

Whenever in the opinion of the code enforcement official or the operator a hazardous condition exists, the use of sparkling devices shall be discontinued immediately until such time as the dangerous situation is corrected.

The storage or temporary storage of sparkling devices shall comply with the applicable requirements of NFPA 1124 and, in addition, shall be subject to the provisions of subdivision (f) of new section 1228.3.

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 April 19, 2015.

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

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

Public comment will be received until: 60 days after publication of this notice.

Additional matter required by statute: Executive Law § 378 (15)(a) provides that "no change to the [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 [State Fire Prevention and Building Code Council (the Code Council)] finds that (i) an earlier effective date is necessary to protect health, safety and security; or (ii) the change to the code will not impose any additional compliance requirements on any person."

At its meeting held on January 15, 2015, the Code Council found (1) that 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 by adding provisions to the Uniform Code relating to buildings and structures where sparkling devices will be manufactured, stored, sold and/or used, such provisions now being necessary in light of the amendment of section 270.00 and 405.00 of the Penal Law to define the term fireworks as including several categories of devices, including sparkling devices, and to authorize any city or county outside New York City to legalize sparkling devices in such city or county; and (2) that making this rule effective immediately upon the filing of the Notice of Emergency Adoption and Proposed Rule Making is required to protect health, safety and security because Chapter 477 of the Laws of 2014 (the chapter law amending sections 270.00 and 405.00 of the Penal Law) became effective on December 21, 2014 and cities and counties may begin to legalize sparkling devices at any time on or after such effective date.

Accordingly, this rule will become effective immediately upon the filing of this Notice of Emergency Adoption and Proposed Rule Making.

Regulatory Impact Statement

1. STATUTORY AUTHORITY.

Executive Law § 377(1) authorizes the State Fire Prevention and Building Code Council to amend the provisions of the New York State Uniform Fire Prevention and Building Code ("Uniform Code") from time to time.

This rule amends the Uniform Code to provide additional requirements applicable to buildings and structures where sparkling devices are manufactured, stored or used. This rule also adds other restrictions on the use of sparkling devices intended to minimize the danger of fire in buildings and structures.

2. LEGISLATIVE OBJECTIVES.

Executive Law § 378(1) directs that the Uniform Code shall address standards for the construction of "all buildings or classes of buildings, or the installation of equipment therein, including standards for materials to be used in connection therewith, and standards for safety and sanitary conditions."

Executive Law § 371(2)(b) provides that it shall be the public policy of this State "to provide for the promulgation of a uniform code addressing building construction and fire prevention in order to provide a basic minimum level of protection to all people of the state from hazards of fire and inadequate building construction. . . ."

Prior to the effective date of Chapter 477 of the Laws of 2014, only persons who obtained a special permit were allowed to possess, sell or use fireworks of any type. In light of this general prohibition on the possession, sale, and use of fireworks, the Uniform Code currently has few, if any, provisions relating specifically to fireworks.

Section 270.00 Of the Penal Law, as amended by Chapter 477 of the Laws of 2014, defines the term “fireworks” as including several categories of devices, including “sparkling devices.” Sections 270.00 and 405.00 of the Penal Law, as amended by Chapter 477 of the Laws of 2014, provide, in substance, that except in cities having a population in excess of 1,000,000, a city or a county may adopt enact a local law legalizing sparkling devices within such city or county. With the 2014 amendments to Sections 270.00 and 405.00 of the Penal Law, the possession, sale, and use of sparkling devices will be legal in cities and counties that elect to legalize those devices.

This rule fulfills the legislative objectives set forth in Executive Law § 378(1) and Executive Law § 371(2)(b) by amending the Uniform Code to provide additional requirements applicable to buildings and structures where sparkling devices are manufactured, stored or used; and additional requirements applicable to the use of sparkling devices intended to minimize the danger of fire in buildings and structures.

3. NEEDS AND BENEFITS.

While perhaps not as dangerous as the other categories of “fireworks” included in the amended definition in Penal Law § 270.00, sparkling devices do include pyrotechnic compositions and do present an additional risk of fire, particularly if sparkling devices are manufactured, stored or used improperly.

The 2010 edition of the Fire Code of New York State (the 2010 FCNYS) is one of the publications that currently make up the Uniform Code. The 2010 FCNYS is based on the 2006 edition of the International Fire Code (the 2006 IFC), a model code published by the International Code Council. The 2006 IFC contains an entire chapter devoted to explosives and fireworks. Because of the general prohibition against all types of fireworks in this State, the 2010 FCNYS currently contains only an abbreviated version of the 2006 IFC’s explosives and fireworks chapter.

This rule will add those provisions in the 2006 IFC’s explosives and fireworks chapter which are currently missing from the 2010 FCNYS and which, in the opinion of the Department of State and the Code Council, are required to address the additional fire and safety concerns posed by the potential legalization of sparkling devices in this State (or in certain cities and counties in this State).

4. COSTS.

It is anticipated that regulated parties will not incur any significant costs to comply with this rule initially and no significant costs to continue to comply with this rule.

For the most part, this rule will impose no significant requirements on buildings or structures where sparkling devices will be manufactured, stored, sold or used over and above those requirements imposed on such buildings or structures by other already existing provisions of the Uniform Code or by other already existing laws, statutes, rules, and regulations. Rather, this rule serves more as a clarification that those other already existing requirements will apply to buildings and structures where previously prohibited activities (the manufacture, storage, sale or use of sparkling devices) will occur. For example, new 19 NYCRR Section 1228.3(k) to be added by this rule provides that manufacturers of sparkling devices must maintain records of chemicals, chemical compounds and mixtures required by the U.S. Department of Labor regulations set forth in 29 CFR Part 1910.1200 and Section 407 of the 2010 FCNYS. This provision will not add to the current requirements under 29 CFR Part 1910.1200 and Section 407 of the 2010 FCNYS. Rather, this provision will simply clarify that the requirements already in existence 29 CFR Part 1910.1200 and Section 407 of the 2010 FCNYS will apply to the newly-legalized activity of manufacturing sparkling devices.

Similarly, new 19 NYCRR Section 1228.3(l) to be added by this rule will clarify that certain requirements that already exist under Section 3305 of the 2010 FCNYS will apply to the manufacture, assembly, and testing of sparkling devices, and facilities where the manufacture, assembly and/or testing of sparkling devices occur.

Other provisions to be added by this rule will restrict the use of sparkling devices in ways intended to reduce fire caused by sparkling devices; it is anticipated that these provisions will impose little or no costs on regulated parties. For example, new 19 NYCRR Section 1228.3(d) will restrict the use of sparkling devices in or within 10 feet of buildings and structures; new 19 NYCRR Section 1228.3(e) will prohibit the sale of sparkling devices on highways, sidewalks or public property and in assembly occupancies and in educational occupancies; new 19 NYCRR Section 1228.3(f) will authorize the code enforcement official to limit the amount of sparkling devices in any location; new 19 NYCRR Section 1228.3(h) will authorize the code enforcement official to supervise sparkling device displays and other uses of sparkling devices; new 19 NYCRR Section 1228.3(i) will authorize the removal and disposal of sparkling devices manufactured, stored, sold or used in violation of the Uniform Code; new 19 NYCRR Section 1228.3(m) will authorize the code enforcement official to discontinue the use of sparkling devices when a hazardous conditions exists; and new 1228.3(n) will prohibit keeping or storing any sparkling devices at any place of habitation or within 100 feet thereof.

Other provisions to be added by this rule will impose certain new obligations on regulated parties; however, the Department of State anticipates that the cost of complying with these new obligations will be minimal. For example:

New Section 1228.3(e) will require places where retail sales of sparkling devices take place to have fire extinguishers and “no smoking” signs. The Department of State estimates that the cost of a fire extinguisher will be \$35 and that the annual cost of testing and maintaining a fire extinguisher will be \$10. The Department of State estimates that the cost of obtaining and posting a “no smoking” sign will be \$17.

New 19 NYCRR Section 1228.3(g) will require that sparkling device displays be conducted under the supervision of a person with knowledge of all safety precautions related to the storage, handling, and use of sparkling devices; if a person chooses to conduct a sparkling device display, but is unwilling or unqualified to supervise the display, he or she will be required to engage the services of a person with the required knowledge of the applicable safety precautions.

New 19 NYCRR Section 1228.3(j) will require regulated parties to report accidents that result in death, personal injury or property damage to the code enforcement official.

New 19 NYCRR Section 1228.3(n) will provide that the storage of sparkling devices shall comply with the applicable requirements of NFPA 1124.

There are no costs to the Department of State for the implementation of this rule. The Department is not required to develop any additional regulations or develop any programs to implement this rule.

There are no costs to the State of New York or to local governments for the implementation of the provisions to be added by this rule, except as follows:

First, the State and all local governments are subject to the Uniform Code. If the State or any local government chooses to manufacture, store, sell or use sparkling devices, the State or such local government will have to comply with this rule to the same degree as any other regulated party.

Second, since this rule adds provisions to the Uniform Code, the authorities responsible for administering and enforcing the Uniform Code will have additional items to verify in the process of reviewing building permit applications, conducting construction inspections, and (where applicable) conducting periodic fire safety and property maintenance inspections. However, the need to verify compliance with this rule should not have a significant impact on the already existing permitting and inspection processes.

5. PAPERWORK.

New 19 NYCRR Section 1228.3(j) will require regulated parties to report accidents that result in death, personal injury or property damage to the code enforcement official.

6. LOCAL GOVERNMENT MANDATES.

This rule will not impose any new program, service, duty or responsibility upon any county, city, town, village, school district, fire district or other special district, except as follows:

First, if any county, city, town, village, school district, fire district or other special district chooses to manufacture, store, sell or use sparkling devices, such county, city, town, village, school district, fire district or other special district will have to comply with this rule to the same degree as any other regulated party.

Second, cities, towns and villages (and sometimes counties) are charged by Executive Law section 381 with the responsibility of administering and enforcing the Uniform Code. Since this rule adds provisions to the Uniform Code, the aforementioned local governments will be responsible for administering and enforcing the requirements of this rule along with all other provisions of the Uniform Code.

The rule does not otherwise impose any new program, service, duty or responsibility upon any county, city, town, village, school district, fire district or other special district.

7. DUPLICATION.

As discussed in the “Costs” section of this Regulatory Impact Statement, this rule will clarify that certain Federal and State requirements already in existence will apply to newly legalized activities (the manufacture, storage, sale, and use of sparkling devices) and to buildings and structures where those activities will occur. However, the Department of State believes that such clarification is appropriate because the Uniform Code does not currently have any provisions expressly addressing sparkling devices.

The rule does not otherwise duplicate any existing Federal or State requirement.

8. ALTERNATIVES.

The alternative of adding no new provisions expressly dealing with sparkling devices was considered. However, since the recent amendments to the Penal Law will legalize sparkling devices in cities and counties that so elect, the Department of State determined that the issuance of a rule both clarifying that certain requirements already in existence will apply to

buildings where this newly legalized activity will occur and adding certain new restrictions on the use of the newly legalized devices, was more appropriate.

The alternative of incorporating all of the currently omitted provisions in the 2006 IFC's chapter on explosives and fireworks was considered. However, since the recent amendments to the Penal Law legalize one category of fireworks, the Department of State determined that adding only those provisions appropriate for sparkling devices was more appropriate.

9. FEDERAL STANDARDS.

There are no standards of the Federal Government which address the subject matter of the rule. The United States Consumer Product Safety Commission, the United States Department of Labor, and the United States Department of Transportation regulate fireworks, but do not address building code-related topics.

10. COMPLIANCE SCHEDULE.

The Department of State anticipates that regulated parties will be able to comply with this rule immediately.

Regulatory Flexibility Analysis

1. EFFECT OF RULE:

Section 270.00 of the Penal Law, as amended by Chapter 477 of the Laws of 2014, defines "fireworks" as including certain categories of devices, including "sparkling devices." Section 405.00 of the Penal Law, as amended by Chapter 477 of the Laws of 2014, permits cities and counties outside New York City to provide that "sparkling devices" will be legal in such city or county. This rule amends the State Fire Prevention and Building Code to provide additional requirements applicable to buildings and structures where "sparkling devices" are manufactured, stored or used. This rule also adds other restrictions on the use of "sparkling devices" intended to minimize the danger of fire in buildings and structures.

This rule will affect any small business or local government that owns a building or structure in which sparkling devices will be manufactured, stored, sold or used. The number of small businesses and local governments that will be affected will depend on the number of cities and counties that choose to make sparkling devices legal and on the number of small businesses in those cities and counties that choose to manufacture, store, sell or use sparkling devices. The Department of State is not able to estimate the number of small businesses and local governments that will be so affected.

Since this rule adds provisions to the Uniform Code, each local government that is responsible for administering and enforcing the Uniform Code will be affected by this rule. The Department of State estimates that approximately 1,600 local governments (mostly cities, towns and villages, as well as several counties) are responsible for administering and enforcing the Uniform Code.

2. COMPLIANCE REQUIREMENTS:

New 19 NYCRR Section 1228.3(e) will require places where retail sales of sparkling devices take place to have fire extinguishers and "no smoking" signs.

New 19 NYCRR Section 1228.3(g) will require sparkling device displays to be conducted under the supervision of a person with knowledge of all safety precautions related to the storage, handling, and use of sparkling devices; if a person chooses to conduct a sparkling device display, but is unwilling or unqualified to supervise the display, he or she will be required to engage the services of a person with the required knowledge of the applicable safety precautions.

New 19 NYCRR Section 1228.3(n) will provide that the storage of sparkling devices shall comply with the applicable requirements of NFPA 1124.

New 19 NYCRR Section 1228.3(j) will require regulated parties to report accidents that result in death, personal injury or property damage to the code enforcement official. No other reporting or record keeping requirements are imposed upon regulated parties by the rule. (Note: New 19 NYCRR Section 1228.3(k) to be added by this rule provides that manufacturers of sparkling devices must maintain records of chemicals, chemical compounds and mixtures required by the U.S. Department of Labor regulations set forth in 29 CFR Part 1910.1200 and Section 407 of the 2010 FCNYS. This provision will not add to the current requirements under 29 CFR Part 1910.1200 and Section 407 of the 2010 FCNYS. Rather, this provision will simply clarify that the requirements already in existence under 29 CFR Part 1910.1200 and Section 407 of the 2010 FCNYS will apply to the newly-legalized activity of manufacturing sparkling devices.)

Since this rule amends the Uniform Code, local governments that administer and enforce the Uniform Code will be required to check for compliance with this rule when reviewing applications for building permits, when performing construction inspections, and when performing periodic fire safety and property maintenance inspections.

3. PROFESSIONAL SERVICES:

No professional services will be required to comply with the rule.

4. COMPLIANCE COSTS:

For the owner of a building where retail sales of sparkling devices will occur, the initial capital costs of complying with the rule will include the cost of purchasing and installing the fire extinguishers and "no smoking" signs. The Department of State estimates that the cost of purchasing and installing a fire extinguisher will be \$35 and the cost of purchasing and installing a "no smoking" sign will be \$17. Such costs are not likely to vary for small businesses or local governments of different types and differing sizes.

For the owner of a building where retail sales of sparkling devices will occur, the annual costs of complying with this rule will include the cost of testing and maintaining the fire extinguishers. The Department of State estimates that the annual cost of testing and maintaining a fire extinguisher will be \$10. Such costs are not likely to vary for small businesses or local governments of different types and differing sizes.

A person who conducts a sparkling device display must either have knowledge of all safety precautions related to the storage, handling, and use of sparkling devices; or designate a person who has such knowledge to supervise the display. The qualifications to supervise a display are minimal: such person must be at least 21 years of age; and demonstrate knowledge of all safety precautions related to the storage, handling, and use of sparkling devices; and at the time of such sparkling device display must not be under the influence of alcohol or drugs that impair sensory or motor skills. Therefore, the Department of State anticipates that in most cases, the person conducting the display will be qualified to act as the person in charge. The Department of State also anticipates that even where a third party is designated as the person in charge, the fee, if any, charged by such person will be minimal in most cases.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

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

6. MINIMIZING ADVERSE IMPACT:

Prior to the enactment of Chapter 477 of the Laws of 2014, all fireworks were, for the most part, illegal in this State (exceptions were made for fireworks used pursuant to a permit issued under section 405.00 of the Penal Law). As a result of Chapter 477 of the Laws of 2014, sparkling devices will be legal in cities and counties that elect to legalize such devices.

The 2010 edition of the Fire Code of New York State (the 2010 FCNYS) is one of the publications that currently make up the Uniform Code. The 2010 FCNYS is based on the 2006 edition of the International Fire Code (the 2006 IFC), a model code published by the International Code Council. The 2006 IFC contains an entire chapter devoted to explosives and fireworks. Because of the general prohibition against all types of fireworks in this State, the 2010 FCNYS currently contains only an abbreviated version of the 2006 IFC's explosives and fireworks chapter.

This rule will add those provisions in the 2006 IFC's explosives and fireworks chapter which are currently missing from the 2010 FCNYS and which, in the opinion of the Department of State and the Code Council, are required to address the additional fire and safety concerns posed by the potential legalization of sparkling devices in this State (or in certain cities and counties in this State).

The alternative of incorporating all of the currently omitted provisions in the 2006 IFC's chapter on explosives and fireworks was considered. However, since the recent amendments to the Penal Law legalize one category of fireworks, the Department of State determined that adding only those provisions appropriate for sparkling devices was more appropriate.

The establishment of differing compliance requirements or timetables with respect to buildings owned or operated by small businesses or local governments was not considered because the fire and safety-related requirements to be imposed by this rule apply without regard to the identity of the owner of the building or structure where sparkling devices are to be manufactured, stored, sold or used.

Providing exemptions from coverage by the rule was not considered because such exemptions would endanger public safety.

7. SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION:

The Department of State notified interested parties throughout the State of the proposed adoption of this rule by means of notices posted on the Department'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 which is prepared by the Department of State and which is currently distributed to approximately 10,000 subscribers, including local governments, design professionals and others involved in all aspects of the construction industry.

8. VIOLATIONS AND PENALTIES ASSOCIATED WITH VIOLATIONS:

This rule will neither establish or modify a violation nor establish or modify penalties associated with a violation. Therefore, for the purposes of Chapter 524 of the Laws of 2011 and subdivision 1-a of section 202-b of the State Administrative Procedure Act, this rule is not required to

include a cure period or other opportunity for ameliorative action, the successful completion of which will prevent the imposition of penalties on the party or parties subject to enforcement.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBERS OF RURAL AREAS.

Section 270.00 of the Penal Law, as amended by Chapter 477 of the Laws of 2014, defines "fireworks" as including certain categories of devices, including "sparkling devices." Section 405.00 of the Penal Law, as amended by Chapter 477 of the Laws of 2014, permits cities and counties outside New York City to provide that "sparkling devices" will be legal in such city or county. This rule amends the State Fire Prevention and Building Code to provide additional requirements applicable to buildings and structures where "sparkling devices" are manufactured, stored or used. This rule also adds other restrictions on the use of "sparkling devices" intended to minimize the danger of fire in buildings and structures. Since the Uniform Code applies in all areas of the State (other than New York City), this rule will apply in all rural areas of the State.

2. REPORTING, RECORDKEEPING AND OTHER COMPLIANCE REQUIREMENTS.

New 19 NYCRR Section 1228.3(e) will require places where retail sales of sparkling devices take place to have fire extinguishers and "no smoking" signs.

New 19 NYCRR Section 1228.3(g) will require that sparkling device displays be conducted under the supervision of a person with knowledge of all safety precautions related to the storage, handling, and use of sparkling devices; if a person chooses to conduct a sparkling device display but is unwilling or unqualified to supervise the display, he or she will be required to engage the services of a person with the required knowledge of the applicable safety precautions.

New 19 NYCRR Section 1228.3(n) will provide that the storage of sparkling devices shall comply with the applicable requirements of NFPA 1124.

New 19 NYCRR Section 1228.3(j) will require regulated parties to report accidents that result in death, personal injury or property damage to the code enforcement official. No other reporting or record keeping requirements are imposed upon regulated parties by the rule. (Note: New 19 NYCRR Section 1228.3(k) to be added by this rule provides that manufacturers of sparkling devices must maintain records of chemicals, chemical compounds and mixtures required by the U.S. Department of Labor regulations set forth in 29 CFR Part 1910.1200 and Section 407 of the 2010 FCNYS. This provision will not add to the current requirements under 29 CFR Part 1910.1200 and Section 407 of the 20p10 FCNYS. Rather, this provision will simply clarify that the requirements already in existence under 29 CFR Part 1910.1200 and Section 407 of the 2010 FCNYS will apply to the newly-legalized activity of manufacturing sparkling devices.)

3. COMPLIANCE COSTS.

For the owner of a building where retail sales of sparkling devices will occur, the initial capital costs of complying with the rule will include the cost of purchasing and installing the fire extinguishers and "no smoking" signs. The Department of State estimates that the cost of purchasing and installing a fire extinguisher will be \$35 and the cost of purchasing and installing a "no smoking" sign will be \$17. Such costs are not likely to vary for small businesses or local governments of different types and differing sizes.

For the owner of a building where retail sales of sparkling devices will occur, the annual costs of complying with this rule will include the cost of testing and maintaining the fire extinguishers. The Department of State estimates that the annual cost of testing and maintaining a fire extinguisher will be \$10. Such costs are not likely to vary for small businesses or local governments of different types and differing sizes.

A person who conducts a sparkling device display must either have knowledge of all safety precautions related to the storage, handling, and use of sparkling devices; or designate a person who has such knowledge to supervise the display. The qualifications to supervise a display are minimal: such person must be at least 21 years of age; must demonstrate knowledge of all safety precautions related to the storage, handling, and use of sparkling devices; and at the time of such sparkling device display must not be under the influence of alcohol or drugs that impair sensory or motor skills. Therefore, the Department of State anticipates that in most cases, the person conducting the display will be qualified to act as the person in charge. The Department of State also anticipates that even where a third party is designated as the person in charge, the fee, if any, charged by such person will be minimal in most cases.

4. MINIMIZING ADVERSE IMPACT.

Prior to the enactment of Chapter 477 of the Laws of 2014, all fireworks were, for the most part, illegal in this State (exceptions were made for fireworks used pursuant to a permit issued under section 405.00 of the Penal Law). As a result of Chapter 477 of the Laws of 2014, sparkling devices will be legal in cities and counties that elect to legalize such devices.

The 2010 edition of the Fire Code of New York State (the 2010 FCNYS) is one of the publications that currently make up the Uniform Code. The 2010 FCNYS is based on the 2006 edition of the International Fire Code (the 2006 IFC), a model code published by the International Code Council. The 2006 IFC contains an entire chapter devoted to explosives and fireworks. Because of the general prohibition against all types of fireworks in this State, the 2010 FCNYS currently contains only an abbreviated version of the 2006 IFC's explosives and fireworks chapter.

This rule will add those provisions in the 2006 IFC's explosives and fireworks chapter which are currently missing from the 2010 FCNYS and which, in the opinion of the Department of State and the Code Council, are required to address the additional fire and safety concerns posed by the potential legalization of sparkling devices in this State (or in certain cities and counties in this State).

The alternative of incorporating all of the currently omitted provisions in the 2006 IFC's chapter on explosives and fireworks was considered. However, since the recent amendments to the Penal Law legalize one category of fireworks, the Department of State determined that adding only those provisions appropriate for sparkling devices was more appropriate.

The establishment of differing compliance requirements or timetables with respect to buildings and operations in rural areas was not considered because the fire and safety-related requirements to be imposed by this rule apply without regard to the location of the building or structure where sparkling devices are to be manufactured, stored, sold or used.

Providing exemptions from coverage by the rule was not considered because such exemptions would endanger public safety.

5. RURAL AREA PARTICIPATION.

The Department of State notified interested parties throughout the State of the proposed adoption of this rule by means of notices posted on the Department'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 which is prepared by the Department of State and which is currently distributed to approximately 10,000 subscribers, including local governments, design professionals and others involved in all aspects of the construction industry.

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 provide additional requirements applicable to buildings and structures where sparkling devices are manufactured, stored or used. This rule also adds other restrictions on the use of sparkling devices intended to minimize the danger of fire in buildings and structures.

For the most part, this rule will impose no significant requirements on buildings or structures where sparkling devices will be manufactured, stored, sold or used over and above those requirements imposed on such buildings or structures by other already existing provisions of the Uniform Code or by other already existing laws, statutes, rules, and regulations. Rather, this rule serves more as a clarification that those other already existing requirements will apply to buildings and structures where previously prohibited activities (the manufacture, storage, sale or use of sparkling devices) will occur.

Other provisions to be added by this rule will restrict the use of sparkling devices in ways intended to reduce fire caused by sparkling devices; it is anticipated that these provisions will impose little or no costs on regulated parties.

Other provisions to be added by this rule will impose certain new obligations on regulated parties; however, the Department of State anticipates that the cost of complying with these new obligations will be minimal. For example, new Section 1228.3(e) will require places where retail sales of sparkling devices take place to have fire extinguishers and "no smoking" signs. The Department of State estimates that the cost of a fire extinguisher will be \$35 and that the annual cost of testing and maintaining a fire extinguisher will be \$10. The Department of State estimates that the cost of obtaining and posting a "no smoking" sign will be \$17.

Therefore, this rule should have no substantial adverse impact on the cost of buildings or structures where sparkling devices will be manufactured, stored, sold or used and, consequently, this rule should have no substantial adverse impact on jobs and employment opportunities related to the manufacture, storage, sale or use of sparkling devices.

State University of New York

NOTICE OF ADOPTION

Tuition and Fees at State-Operated Units of State University

I.D. No. SUN-47-14-00009-A

Filing No. 45

Filing Date: 2015-01-14

Effective Date: 2015-02-04

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

Action taken: Amendment of section 302.1(a) of Title 8 NYCRR.

Statutory authority: Education Law, section 355(2)(b) and (h)

Subject: Tuition and fees at State-operated units of State University.

Purpose: To amend the in-state tuition rates where so required under State or Federal law.

Text or summary was published in the November 26, 2014 issue of the Register, I.D. No. SUN-47-14-00009-P.

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

Text of rule and any required statements and analyses may be obtained from: Lisa S. Campo, State University of New York, State University Plaza, Albany, New York 12246, (518) 320-1400, email: Lisa.Campo@SUNY.edu

Assessment of Public Comment

The agency received no public comment.