RULE MAKING ACTIVITIES

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

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

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

Department of Agriculture and Markets

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Incorporate by Reference in 1 NYCRR of the 2015 Edition of National Institute of Standards and Technology (''NIST'') Handbook 133

I.D. No. AAM-28-15-00003-P

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

Proposed Action: This is a consensus rule making to amend section 221.11 of Title 1 NYCRR.

Statutory authority: Agriculture and Markets Law, sections 16, 18 and 179

Subject: Incorporate by reference in 1 NYCRR of the 2015 edition of National Institute of Standards and Technology (''NIST'') Handbook 133.

Purpose: To incorporate by reference in 1 NYCRR the 2015 edition of NIST Handbook 133.

Text of proposed rule: Section 221.11 of 1 NYCRR is amended to read as follows:

221.11 Test procedures, magnitude of permitted variations.

(a) The test procedures for testing packaged commodities shall be those contained in National Institute of Standards and Technology Handbook 133, [2014] *2015* Edition, Checking the Net Contents of Packaged Goods, as adopted by the *99th* National Conference on Weights and Measures. The document is available from the National Conference on Weights and Measures, 1135 M Street, Suite 110, Lincoln, NE 68508, or the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. It is available for public inspection and copying in the office of the Director of Weights and Measures, 10B Airline Drive, Albany, NY 12235 or in the office of the Department of State, One Commerce Plaza, 99 Washington Avenue, Suite 650, Albany, NY 12231.

(b) The magnitude of variations permitted under section 221.10 of this Part shall be those contained in the procedures and tables of National Institute of Standards and Technology Handbook 133, [2014] *2015* Edition, Checking the Net Contents of Packaged Goods, as adopted by the [95th] *99th* National Conference on Weights and Measures.

Text of proposed rule and any required statements and analyses may be obtained from: Michael Sikula, Director, NYS Department of Agriculture and Markets, 10B Airline Drive, Albany, New York 12235, (518) 457-3146, email: mike.sikula@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.

Consensus Rule Making Determination

The proposed rule will amend 1 NYCRR section 221.11 to incorporate by reference the 2015 edition of National Institute of Standards and Technology Handbook 133 in place of the 2014 edition which is presently incorporated by reference. Handbook 133 contains test procedures that are used by state regulatory officials to determine whether the actual weight of a packaged commodity is sufficiently consistent with the declaration of net weight set forth on its label.

The proposed rule is non-controversial. The 2015 edition of Handbook 133 has been adopted or is in use in the great majority of states; manufacturers of packaged commodities located in New York already, therefore, conform their operations to the provisions of this document in order to sell such commodities in interstate commerce. The proposed rule will not, therefore, have any adverse impact upon regulated businesses and is, therefore, non-controversial.

Job Impact Statement

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

The proposed rule will incorporate by reference in 1 NYCRR section 221.11 the 2015 edition of National Institute of Standards and Technology Handbook 133 (henceforth, "Handbook 133 (2015 edition)") which contains test procedures for weights and measures officials to determine whether the net weight declarations on labels of packaged commodities are accurate. The 2014 edition of Handbook 133 is presently incorporated by reference and Handbook 133 (2015 edition) differs substantively from the 2014 edition only to the extent that the 2015 edition provides greater detail for testing the net quantity of oysters labeled by volume. This substantive change in Handbook 133 (2015 edition) will help ensure that persons who purchase oysters receive the amount bargained for.

Handbook 133 (2015) edition has been adopted by or is in use in the great majority of states; manufacturers of packaged commodities located in New York already, therefore, conform their operations to the provisions of this document in order to sell their products in interstate commerce.

The proposed rule will not, therefore, have any adverse impact upon jobs or employment opportunities.

Department of Civil Service

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-25-14-00003-A
Filing No. 548
Filing Date: 2015-06-25
Effective Date: 2015-07-15

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:
Action taken: Amendment of Appendix 1 of Title 4 NYCRR.
Statutory authority: Civil Service Law, section 6(1)
Subject: Jurisdictional Classification.
Purpose: To classify a position in the exempt class.
Text or summary was published in the June 25, 2014 issue of the Register, I.D. No. CVS-25-14-00003-P.
Final rule as compared with last published rule: No changes.
Text of rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: jennifer.paul@cs.ny.gov
Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-47-14-00002-A
Filing No. 553
Filing Date: 2015-06-26
Effective Date: 2015-07-15

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:
Action taken: Amendment of Appendix 1 of Title 4 NYCRR.
Statutory authority: Civil Service Law, section 6(1)
Subject: Jurisdictional Classification.
Purpose: To delete positions from and classify positions in the exempt class.
Text or summary was published in the November 26, 2014 issue of the Register, I.D. No. CVS-47-14-00002-P.
Final rule as compared with last published rule: No changes.
Text of rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: jennifer.paul@cs.ny.gov
Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-47-14-00003-A
Filing No. 551
Filing Date: 2015-06-26
Effective Date: 2015-07-15

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:
Action taken: Amendment of Appendix 1 of Title 4 NYCRR.
Statutory authority: Civil Service Law, section 6(1)
Subject: Jurisdictional Classification.
Purpose: To delete a position from and classify a position in the exempt class.
Text or summary was published in the November 26, 2014 issue of the Register, I.D. No. CVS-47-14-00003-P.
Final rule as compared with last published rule: No changes.
Text of rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: jennifer.paul@cs.ny.gov
Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-47-14-00004-A
Filing No. 554
Filing Date: 2015-06-26
Effective Date: 2015-07-15

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:
Action taken: Amendment of Appendix 1 of Title 4 NYCRR.
Statutory authority: Civil Service Law, section 6(1)
Subject: Jurisdictional Classification.
Purpose: To classify a position in the exempt class.
Text or summary was published in the November 26, 2014 issue of the Register, I.D. No. CVS-47-14-00004-P.
Final rule as compared with last published rule: No changes.
Text of rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: jennifer.paul@cs.ny.gov
Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-47-14-00005-A
Filing No. 555
Filing Date: 2015-06-26
Effective Date: 2015-07-15

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:
Action taken: Amendment of Appendix 1 of Title 4 NYCRR.
Statutory authority: Civil Service Law, section 6(1)
Subject: Jurisdictional Classification.
Purpose: To classify a position in the exempt class.
Text or summary was published in the November 26, 2014 issue of the Register, I.D. No. CVS-47-14-00005-P.
Final rule as compared with last published rule: No changes.
Text of rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: jennifer.paul@cs.ny.gov
Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-47-14-00006-A
Filing No. 552
Filing Date: 2015-06-26
Effective Date: 2015-07-15

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:
Action taken: Amendment of Appendix 1 of Title 4 NYCRR.

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

Subject: Jurisdictional Classification.

Purpose: To delete subheading and positions from the exempt class.

Text or summary was published in the November 26, 2014 issue of the Register, I.D. No. CVS-47-14-00006-P.

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

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-47-14-00007-A

Filing No. 550

Filing Date: 2015-06-26

Effective Date: 2015-07-15

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

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

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

Subject: Jurisdictional Classification.

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

Text or summary was published in the November 26, 2014 issue of the Register, I.D. No. CVS-47-14-00007-P.

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

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

Assessment of Public Comment

The agency received no public comment.

Education Department

EMERGENCY RULE MAKING

Annual Professional Performance Reviews of Classroom Teachers and Building Principals

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

Filing No. 560

Filing Date: 2015-06-30

Effective Date: 2015-06-30

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

Action taken: Amendment of Subpart 30-2; and addition of Subpart 30-3 to Title 8 NYCRR.

Statutory authority: Education Law, sections 101 (not subdivided), 207 (not subdivided), 215 (not subdivided), 305(1), (2), 3009(1), 3012-c(1-10) and 3012-d(1-15); L. 2015, ch. 56, part EE, subparts D and E

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

Specific reasons underlying the finding of necessity: The proposed rule is necessary to implement Education Law sections 3012-c and 3012-d, as amended and added by Subpart E of Part EE of Chapter 56 of the Laws of 2015, regarding annual professional performance reviews (APPRs) of classroom teachers and building principals.

Since the Board of Regents meets at fixed intervals, the earliest the proposed rule can be presented for regular (non-emergency) adoption, after expiration of the required 45-day public comment period provided for in the State Administrative Procedure Act (SAPA) sections 201(1) and (5), would be the September 16-17, 2015 Regents meeting. Furthermore, pursuant to SAPA section 203(1), the earliest effective date of the proposed rule, if adopted at the September meeting, would be October 7, 2015, the date a Notice of Adoption would be published in the State Register. However, Chapter 56 of the Laws of 2015 was signed by the Governor on April 13, 2015, and the provisions of Subpart E of Part EE became effective immediately and require the Commissioner to promulgate regulations to implement the new Education Law § 3012-d by June 30, 2015. Therefore, emergency action is necessary at the June 15-16, 2015 Regents meeting for the preservation of the general welfare in order to immediately establish standards to timely implement the provisions of Subpart E of Part EE of Chapter 56 of the Laws of 2015 relating to a new annual evaluation system for classroom teachers and building principals and thereby ensure that school districts and BOCES may timely implement the new evaluation requirements for classroom teachers and building principals in accordance with the statute.

It is anticipated that the proposed rule will be presented for adoption as a permanent rule at the September 16-17, 2015 Regents meeting, which is the first scheduled meeting after expiration of the 45-day public comment period prescribed in the State Administrative Procedure Act for State agency rule makings.

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

Purpose: To Implement subparts D and E of part EE of chapter 56 of the Laws of 2015.

Substance of emergency rule: The Commissioner of Education proposes to amend Subpart 30-2 and add a new Subpart 30-3 of the Commissioner's regulations, relating to the Annual Professional Performance Reviews (APPR) for teachers in New York State. The rule has been adopted as an emergency action at the June 2015 Regents meeting. The following is a summary of the substance of the emergency rule.

The title of section 30-2 and section 30-2.1 is amended to clarify that Subpart 30-2 only applies to APPRs conducted prior to the 2015-2016 school year or APPRs conducted pursuant to a collective bargaining agreement (CBA) entered into on or before April 1, 2015 which remains in effect on or after April 1, 2015 until a subsequent agreement is reached.

Section 30-2.1(d) is amended to clarify that a school district or BOCES has an unfettered statutory right to terminate a probationary teacher or principal for any statutorily and constitutionally permissible reason, including but not limited to misconduct, and until a tenure decision is made, the performance of a teacher or principal in the classroom or school. Section 30-2.11 clarifies that a school district or BOCES may terminate a probationary teacher or principal during an appeal for any statutorily and constitutionally permissible reason, including a teacher's or principal's performance.

A new Subpart 30-3 is added to implement the new evaluation system.

Section 30-3.1 clarifies that the new evaluation system only applies to CBA's entered into after April 1, 2015 unless the agreement relates to the 2014-2015 school year only. It further clarifies that nothing in the new Subpart shall be construed to abrogate any conflicting provisions of any CBA in effect on effect on or after April 1, 2015 during the term of such agreement and until entry into a successor CBA agreement. It further clarifies that APPRs shall be a significant factor for employment decisions and teacher and principal development, consistent with the prior law, as well as the unfettered right to terminate a probationary teacher or principal for any statutorily and constitutionally permissible reason. This section also requires the Regents to convene workgroup(s) comprised of stakeholders and experts in the field to provide recommendations to the Regents on assessments and metrics that could be used for APPRs in the future.

Section 30-3.2 defines several terms used in the Subpart.

Section 30-3.3 prescribes the requirements for APPR plans submitted under the new Subpart.

Section 30-3.4 describes the standards and criteria for conducting APPRs of classroom teachers under the new law, including that teachers be evaluated based on two categories: the student performance category and the teacher observation category.

Section 30-3.5 describes the standards and criteria for conducting APPRs of building principals under the new law, including a principal evaluation system that is aligned to the new teacher evaluation system set forth in Education Law § 3012-d and evaluates principals based on two categories: the student performance category and the school visit category.

Section 30-3.6 describes how a teacher or principal's overall rating is computed, based on the evaluation matrix established by the new law, which combines the teacher's or principal's ratings on the student performance category and the observation/school visit category.

Section 30-3.7 lists the prohibited elements, as set forth in Education Law § 3012-d(6), which precludes districts/BOCES from using as part of a teacher's and/or principal's evaluation.

Sections 30-3.8 and 30-3.9 set forth the approval processes for student assessments and teacher and principal practice rubrics.

Section 30-3.10 sets forth the training requirements for evaluators and lead evaluators, which will require evaluators and lead evaluators to be trained on certain prescribed elements relating to observations and the applicable teacher/principal practice rubrics.

Section 30-3.11 addresses teacher and principal improvement plans (TIPS/PIPS) to make the existing provisions of Education Law § 3012-c(4) applicable to evaluations under Education Law § 3012-d, as required by § 3012-d(15). The proposed rule makes two changes with respect to TIPS/PIPS. It now allows the superintendent in the exercise of his/her pedagogical judgment to develop the improvement plans and requires that such plans be implemented by October 1st rather than within 10 days of the opening of classes in the school year.

Section 30-3.12 addresses appeal procedures to make the existing provisions of Education Law § 3012-c(5) applicable to evaluations under Education Law § 3012-d, as required by § 3012-d(15). Currently, Education Law § 3012-c sets forth the grounds for an appeal which includes the ability of a teacher or principal to challenge the substance of their APPR in an appeal. The proposed amendment defines the substance of an APPR to include appeals in circumstances where a teacher or principal is rated Ineffective on the student performance category, but rated Highly Effective on the observation/school visit category based on an anomaly.

Section 30-3.13 addresses monitoring and consequences for noncompliance to make the existing provisions of Education Law § 3012-c(9) applicable to evaluations under Education Law § 3012-d, as required by § 3012-d(15). The proposed rule incorporates § 3012-c(9) and the provisions on monitoring and corrective action in the regulations implementing § 3012-c(9) without change, except that the proposed amendment provides that the Department may require changes to a collective bargaining agreement as part of a corrective action.

Section 30-3.14 codifies the statutory requirement that no student be assigned to two teachers in the same subject in two consecutive school years, each of whom received a rating of Ineffective pursuant to an evaluation conducted pursuant to Education Law § 3012-d in the school year immediately prior to the year in which the student is placed in the teacher's classroom. The proposed amendment provides for a teacher-specific waiver from the Department from such requirement where it is impracticable to comply with this requirement as required by the statute.

Section 30-3.15 describes the extent to which provisions of Education Law § 3012-c(2)(d), (k), (k-1), (k-2) and (l), (4), (5), (5-a), (9) and (10) are carried over into the new evaluation system, as required by Education Law § 3012-d(15).

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. EDU-27-15-00019-P, Issue of July 8, 2015. The emergency rule will expire September 27, 2015.

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

Education Law sections 101(not subdivided), 207(not subdivided), 215(not subdivided), 305(1) and (2), 3012-c(1-10) and 3012-d(1-15).

2. LEGISLATIVE OBJECTIVES:

The rule is necessary to implement Subparts D and E of Part EE of Chapter 56 of the Laws of 2015.

3. NEEDS AND BENEFITS:

The statute requires the Commissioner to adopt regulations necessary to implement the new evaluation system for teachers and principals by June 30, 2015, after consulting with experts and practitioners in the fields of education, economics and psychometrics.

4. COSTS:

a. Costs to State: The rule does not impose any costs beyond those imposed by statute.

b. Costs to local government: Costs are based on the following:

(1) estimated hourly rate for teachers of $53.18 (based on an average annual teacher salary of $76,572.00 divided by 1,440 hours per school year [180 days, 8 hours each day]);

(2) estimated hourly rate for principals of $67.20 (based on an average annual principal salary of $118,269.00 divided by 1,760 hours per school year [220 days, 8 hours each day]); and

(3) an estimated hourly rate for superintendents of $86.59 (based on an average annual superintendent of schools salary of $166,244.00 divided by 1,920 hours per school year [240 days, 8 hours each day]).

The estimated costs assume that school districts/BOCES will need to pay for extra time for personnel at current rates, most are or should be performing these activities currently. The Department does not have data on the hours currently dedicated to these activities.

The rule may result in additional costs on school districts/BOCES related to:

Collective bargaining. Since collective bargaining is already required by Education Law § 3012-d(10) and it is impossible to ascertain what issues might trigger additional bargaining in over 700 school districts and BOCES, the Department has no basis for determining additional collective bargaining costs beyond those imposed by statute.

Required Student Performance Category

For teachers whose courses end in a State-created or administered test for which there is a State-provided growth model and at least 50% of a teacher's students are covered under the State-provided growth measure, such teachers shall have a State-provided growth score based on such model, and there are no additional costs. For principals with at least 30% of their students covered under a State-provided growth measure, such principals shall have a State-provided growth score and there are no additional costs.

For a teacher whose course does not end in a State-created or administered test or where less than 50% of the teacher's students are covered under the State-provided growth measure, such teachers shall have a Student Learning Objective ("SLO") consistent with a goal setting process determined by the Commissioner that results in a student growth score; provided that for any teacher whose course ends in a State-created or administered assessment for which there is no State-provided growth model, such assessment must be used as the underlying assessment for such SLO. For a principal where less than 30% of their students are covered under a State-provided growth measure, such principals shall have a SLO consistent with a Commissioner-determined goal setting process that results in a student growth score; provided that for any principal whose course building/program includes courses that ends in a State-created or administered assessment for which there is no State-provided growth model, such assessment must be used as the underlying assessment for such SLO. The Department estimates a teacher/principal will spend approximately 3 hours to set goals and will take approximately 1 hour/year to work with a teacher/principal/superintendent on the goal setting process. The goal-setting process will cost $226.74 per teacher (3 teacher hours to set goals plus 1 principal hour to review goals with teacher) and $288.19 per principal (3 principal hours to set goals plus 1 superintendent hour to review goals with principal).

In grades/subjects where no State-created or administered assessment exists, the district/BOCES must use the SLO process with either an approved third-party assessment (at a cost per student of approximately $2.50-$14.00 per student), an approved district, regional, or BOCES-developed assessment (which would have minimal costs), or a State assessment (which would have no additional cost).

Optional Student Performance Category

Since optional, there are no additional costs for teachers or principals. If a district/BOCES elects to use a State-designed supplemental assessment, purchasing an assessment may cost approximately $2.50-$14.00 per student, depending on assessment selected. If a district/BOCES elects to use a second State-provided growth score, there should be no additional costs.

Teacher Observation/Principal School Visit Category

Based on models currently in use, a teacher will spend approximately 3 hours per classroom observation for pre- and post-conference meetings with the principal/evaluator, including the 1 hour in the observation itself, totaling to 6 hours per year (1 hour for pre-conference, 1 hour for observation, and 1 hour for post-observation). Depending on the model, estimates could decrease to 1 hour and 10 minutes for classroom observations that include a post-conference and walkthrough observation with the principal/evaluator, which would equate to 2 hours and 20 minutes for the year. Based on the extended-observation model, a principal/evaluator would spend approximately 1 hour for a teacher classroom observation and 3 additional hours for pre-conference and post-conference meetings associated with the conference (1 hour for each pre-conference, 1 hour for preparation for post-conference, and 1 hour in post-conference), equating to 4 hours/observation or 8 hours/teacher/year. For each teacher, approximately $856.68/year would be spent on classroom observations. This cost may vary depending on external independent evaluators selected.

Since use of peer observers is optional, there are no additional costs. However, if a district/BOCES elects to use peer observers, the Department estimates a peer observer for teachers may cost approximately $372.26 per observation (total time for teacher observation cycle plus total time for peer observer in the teacher observation cycle times the teacher hourly rate), and will be dependent upon the particular parameters determined locally. A principal will spend approximately 3 hours preparing for a school visit by a supervisor/other trained administrator and that a supervisor/other trained administrator will spend approximately 3 hours assessing and observing a principal's practice per visit. Therefore, for each principal, a school district or BOCES would spend approximately $1325.94 per year on school site visits. This cost may vary upon the use of external independent evaluators.

Since peer observers is optional, there are no additional costs for principals. However, if a district/BOCES elects to use peer observers, the Department estimates a peer observer may cost approximately $604.80 per site visit (total time for principal observation cycle plus total time for peer observer in the principal observation cycle times the principal hourly rate), and will dependent upon the particular parameters determined locally.

The majority of rubrics on State's approved list are available at no cost. While some rubrics may offer training for a fee and others may require proprietary training, any costs incurred for training are imposed by the statute. Most rubric providers do not require a school district/BOCES to receive training through the provider and some providers even provide free online training. Districts/BOCES can obtain a teacher or principal practice in the following price range: $0-$360 per educator evaluated. Some may charge an additional fee for training, estimated to cost approximately $0-$8,000, although most rubric providers do not require a user to receive training through the provider.

Reporting and Data Collection

The majority of this data is required under federal law and no additional costs are expected. To the extent such information is not required under federal law, the Department expects most districts/BOCES already compile this information and, therefore, these reporting requirements are minimal and should be absorbed by existing district/BOCES resources.

Verification of subjects/student rosters assigned to a teacher/principal is part of normal BEDS data verification process for principals and therefore any principal-related costs are minimal. For teachers, it will take a teacher 1.5 hours to review his/her student roster, costing $79.77 per teacher. School districts/BOCES are required to report many requirements contained in § 30-3.3under existing APPR regulation (§ 30-2.3). Therefore, reporting of such information would not impose any additional costs.

Vested Interest

Most districts have a security mechanism to ensure teachers/principals do not have a vested interest in the test results of students whose assessments they score, since it is a current requirement for evaluations conducted under Education Law § 3012-c. For those that don't, districts/BOCES can assign other teachers or faculty to score such assessments, and any costs are minimal.

Scoring

The rule does not impose any additional costs beyond those imposed by statute.

Training

Since training is required by statute, the only additional cost is associated with the district/BOCES' certification/recertification of lead evaluators, which would be negligible and capable of absorption using existing staff and resources.

Teacher and Principal Improvement Plans and Appeal Procedures

The rule does not impose any additional costs beyond those currently imposed by Education Law § 3012-c(4) and (5). Only change to the TIP/PIP requirement is with respect to its timing and clarification that superintendent/superintendent's designee, in exercise of pedagogical judgment develops the TIP/PIP. Neither change should generate costs. Only change to appeals provision is clarification that an appeal from the substance of the evaluation, which is a ground for appeal under Education Law § 3012-c(5), includes an instance in which the teacher/principal receives a Highly Effective rating on the observation/school visit category and an Ineffective rating on the student performance category and challenges the result based on an anomaly, as determined locally. This added ground for appeal may result in additional costs if the district/BOCES locally determines an appeal based on an anomaly may be taken where such an appeal could not be brought previously. The Department has no basis for determining extent to which that may occur or resulting costs from such appeals, since the appeals procedures negotiated locally vary widely in their scope and complexity.

c. Costs to private regulated parties: none.

5. LOCAL GOVERNMENT MANDATES:

The rule does not impose any mandates beyond those imposed by, or inherent in, the statute.

6. PAPERWORK:

Each school district shall adopt an APPR plan, and any materials changes, for its classroom teachers and building principals and submit such plan to the Commissioner for approval pursuant to the rule's requirements.

If use is sought of a teacher or principal practice rubric that is either a close adaptation of a rubric on the approved list, or a rubric that is self-developed, developed by a third-party or a newly developed, a variance must be sought from the Department.

The entire APPR must be completed and provided to the teacher/principal pursuant to the time limit specified in the rule. The teacher's/principal's score and rating on the observation/school visit category and in the optional subcomponent of the student performance category, if available, shall be computed and provided to the teacher or principal, in writing, pursuant to the time limit specified in the rule. A provider seeking to place a practice rubric on list of approved rubrics, or an assessment on list of approved assessments, shall submit to the Commissioner a written application that meets the requirements in the rule. The district is required to ensure evaluators have appropriate training before conducting an evaluation and the lead evaluator must be appropriately certified and periodically recertified.

If a teacher/principal is rated "Developing" or "Ineffective," the district/BOCES must develop/implement a TIP or PIP that complies with § 30-3.11.

A school district/BOCES must develop an appeals procedure through which a teacher/principal may challenge their APPR.

A student may not be instructed by two teachers in the same subject, in two consecutive years, by teachers who are rated ineffective. A waiver may be sought from the Commissioner under specified conditions.

7. DUPLICATION:

The rule does not duplicate existing State/Federal requirements.

8. ALTERNATIVES:

Since the major requirements are statutorily imposed, there were no significant alternatives and none were considered.

9. FEDERAL STANDARDS:

None.

10. COMPLIANCE SCHEDULE:

It is anticipated parties may achieve compliance by the rule's effective date.

Regulatory Flexibility Analysis

(a) Small businesses:

The proposed rule implements, and otherwise conforms the Commissioner's Regulations to, Subparts D and E of Part EE of Ch.56, L.2015, relating to Annual Professional Performance Review (APPR) of classroom teachers and building principals employed by school districts and boards of cooperative educational services (BOCES) in order to implement new Education Law § 3012-d. The rule does not impose any reporting, recordkeeping or other compliance requirements, and will not have an adverse economic impact, on small business. Because it is evident from the nature of the rule that it does not affect small businesses, no further steps were needed to ascertain that fact and one were taken. Accordingly, a regulatory flexibility analysis for small businesses is not required and one has not been prepared.

(b) Local governments:

1. EFFECT OF RULE:

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

2. COMPLIANCE REQUIREMENTS:

Each school district shall adopt an APPR plan, and any material changes, for its classroom teachers and building principals and submit such plan for Commissioner's approval.

If use is sought of a teacher or principal practice rubric that is either a close adaptation of a rubric on the approved list, or a rubric that is self-developed, developed by a third-party or a newly developed, a variance must be sought from the Department.

The entire APPR must be completed and provided to the teacher/principal pursuant to the time limit specified in the rule. The teacher's/principal's score and rating on the observation/school visit category and in the optional subcomponent of the student performance category, if available, shall be computed and provided to the teacher or principal, in writing, pursuant to the time limit specified in the rule. A provider seeking to place a practice rubric on list of approved rubrics, or an assessment on list of approved assessments, shall submit to the Commissioner a written application that meets the requirements in the rule. The district is required to ensure evaluators have appropriate training before conducting an evaluation and the lead evaluator must be appropriately certified and periodically recertified.

If a teacher/principal is rated "Developing" or "Ineffective," the district/BOCES must develop/implement a TIP or PIP that complies with § 30-3.11.

A school district/BOCES must develop an appeals procedure through which a teacher/principal may challenge their APPR.

A student may not be instructed by two teachers in the same subject, in two consecutive years, by teachers who are rated Ineffective. A waiver may be sought from the Commissioner under specified conditions.

3. PROFESSIONAL SERVICES:

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

4. COMPLIANCE COSTS:

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

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

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

6. MINIMIZING ADVERSE IMPACT:

The rule is necessary to implement, and otherwise conform the Commissioner's Regulations to, Subparts D and E of Part EE of Chapter 56 of the Laws of 2015 relating to the Annual Professional Performance Review (APPR) of classroom teachers and building principals employed by school districts and boards of cooperative educational services in order to implement new Education Law § 3012-d. Since these provisions of the Education Law apply equally to all school districts and BOCES throughout the State, it was not possible to establish different compliance and reporting requirements.

The proposed rule reflects areas of consensus among stakeholders, and in areas where there were varying recommendations, the Department attempted to reconcile those differences to reflect best practices while also taking into consideration recommendations in the Testing Reduction Report regarding the reduction of unnecessary testing.

7. LOCAL GOVERNMENT PARTICIPATION:

The new law requires the Commissioner to adopt regulations necessary to implement the evaluation system by June 30, 2015, after consulting with experts and practitioners in the fields of education, economics and psychometrics. It also required the Department to establish a process to accept public comments and recommendations regarding the adoption of regulations pursuant to the new law and consult in writing with the Secretary of the United States Department of Education on weights, measures and ranking of evaluation categories and subcomponents. It further required the release of the response from the Secretary upon receipt thereof, but in any event, prior to the publication of the regulations.

By letter dated April 28, 2015, the Department sought guidance from the Secretary of the United States Department of Education on the weights, measures and ranking of evaluation, as required under the new law and the Secretary responded.

In accordance with the requirements of the statute, the Department created an email box to accept comments on the new evaluation system (eval2015@nysed.gov). The Department has received and reviewed over 4,000 responses and has taken these comments into consideration in formulating the proposed amendments. In addition, the Department held a Learning Summit on May 7, 2015, wherein the Board of Regents hosted a series of panels to provide recommendations to the Board on the new evaluation system. Such panels included experts in education, economics, and psychometrics and State-wide stakeholder groups including but not limited to NYSUT, UFT, School Boards, NYSCOSS and principal and parent organizations. Since the new law was enacted in April, the Department has also been separately meeting with individual stakeholder groups and experts in psychometrics to discuss their recommendations on the new evaluation system.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

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

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

Each school district shall adopt an APPR plan, and any material changes, for its classroom teachers and building principals and submit such plan for Commissioner's approval.

If use is sought of a teacher or principal practice rubric that is either a close adaptation of a rubric on the approved list, or a rubric that is self-developed, developed by a third-party or a newly developed, a variance must be sought from the Department.

The entire APPR must be completed and provided to the teacher/principal pursuant to the time limit specified in the rule. The teacher's/principal's score and rating on the observation/school visit category and in the optional subcomponent of the student performance category, if available, shall be computed and provided to the teacher or principal, in writing, pursuant to the time limit specified in the rule. A provider seeking to place a practice rubric on list of approved rubrics, or an assessment on list of approved assessments, shall submit to the Commissioner a written application that meets the requirements in the rule. The district is required to ensure evaluators have appropriate training before conducting an evaluation and the lead evaluator must be appropriately certified and periodically recertified.

If a teacher/principal is rated "Developing" or "Ineffective," the district/BOCES must develop/implement a TIP or PIP that complies with § 30-3.11.

A school district/BOCES must develop an appeals procedure through which a teacher/principal may challenge their APPR.

A student may not be instructed by two teachers in the same subject, in two consecutive years, by teachers who are rated Ineffective. A waiver may be sought from the Commissioner under specified conditions.

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

3. COSTS:

See the Costs section of the Summary of the Regulatory Impact Statement submitted herewith for an analysis of the costs of the proposed rule, which include costs for school districts and BOCES across the State, including those located in rural areas.

4. MINIMIZING ADVERSE IMPACT:

The rule is necessary to implement, and otherwise conform the Commissioner's Regulations to, Subparts D and E of Part EE of Chapter 56 of the Laws of 2015, relating to the Annual Professional Performance Review (APPR) of classroom teachers and building principals employed by school districts and boards of cooperative educational services (BOCES) in order to implement new Education Law § 3012-d. Because the statute upon which the proposed amendment is based applies to all school districts and BOCES in the State, it is not possible to establish differing compliance or reporting requirements or timetables or to exempt schools in rural areas from coverage by the proposed amendment.

The proposed rule reflects areas of consensus among stakeholders, and in areas where there were varying recommendations, the Department attempted to reconcile those differences to reflect best practices while also taking into consideration recommendations in the Testing Reduction Report regarding the reduction of unnecessary testing.

5. RURAL AREA PARTICIPATION:

The new law requires the Commissioner to adopt regulations necessary to implement the evaluation system by June 30, 2015, after consulting with experts and practitioners in the fields of education, economics and psychometrics. It also required the Department to establish a process to accept public comments and recommendations regarding the adoption of regulations pursuant to the new law and consult in writing with the Secretary of the United States Department of Education on weights, measures and ranking of evaluation categories and subcomponents. It further required the release of the response from the Secretary upon receipt thereof, but in any event, prior to the publication of the regulations.

By letter dated April 28, 2015, the Department sought guidance from the Secretary of the United States Department of Education on the weights, measures and ranking of evaluation, as required under the new law and the Secretary responded.

In accordance with the requirements of the statute, the Department created an email box to accept comments on the new evaluation system (eval2015@nysed.gov). The Department has received and reviewed over 4,000 responses and has taken these comments into consideration in formulating the proposed amendments. In addition, the Department held a Learning Summit on May 7, 2015, wherein the Board of Regents hosted a series of panels to provide recommendations to the Board on the new evaluation system. Such panels included experts in education, economics, and psychometrics and State-wide stakeholder groups including but not limited to NYSUT, UFT, School Boards, NYSCOSS and principal and parent organizations. Since the new law was enacted in April, the Department has also been separately meeting with individual stakeholder groups and experts in psychometrics to discuss their recommendations on the new evaluation system.

Job Impact Statement

The purpose of proposed rule is to implement Subparts D and E of Part EE of Chapter 56 of the Laws of 2015 relating to Annual Professional Performance Reviews of classroom teachers and building principals employed by school districts and boards of cooperative educational services in order to implement Education Law § 3012-d. Because it is evident from the nature of the proposed rule that it will have no impact on the number of jobs or employment opportunities in New York State, no further steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

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

Special Education Itinerant Services (SEIS)

I.D. No. EDU-13-15-00030-ERP
Filing No. 557
Filing Date: 2015-06-30
Effective Date: 2015-07-01

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

Action Taken: Amendment of section 200.9 of Title 8 NYCRR.

Statutory authority: Education Law, sections 101 (not subdivided), 207 (not subdivided), 305(1), (2), (20), 4003(1), (2), 4401(5), 4405(4) and 4410(10); L. 2014, ch. 56, part A, section 11

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

Specific reasons underlying the finding of necessity: Currently, pursuant to Commissioner's Regulation section 200.9(f)(2)(ix)(d), Special Education Itinerant Services (SEIS) rates are paid on the basis of enrollment as defined in section 175.6(a)(1) and (2). Chapter 56 of the Laws of 2014 amended Education Law § 4410(10)(a)(i) to provide that, commencing with the 2015-16 school year, approved programs providing SEIS must be reimbursed based on the actual attendance of preschool children receiving SEIS services. According to the legislative intent contained in the 2014-15 Executive Budget Briefing Book, this provision was recommended by the Executive in order to limit "payment to program operators only for services that are actually provided, incentivizing delivery of these mandated services to children."

In order to effectuate the statutory requirement that SEIS be reimbursed based on actual attendance, section 200.9(f)(2)(ix)(d) would be amended to require SEIS rates be paid for each unit of service delivered, not to exceed the recommendations for such services in the student's IEP.

Section 200.9(f)(2)(ix)(c) currently requires that that SEIS billable time may not be less than 66 percent or more than 72 percent of any special education itinerant teacher's total employment hours in order to ensure that a certain percentage of teacher time is spent directly providing instructional services to students. Data analysis and stakeholder discussions conducted as part of a preschool tuition reimbursement study issued by the Department in December 2014 demonstrated that there are certain circumstances in which meeting this billable time threshold may be difficult, for example depending on varying travel time that may be required in certain regions of the State.

In order to allow for individual factors to be considered when applying the billable time adjustment, section 200.9(f)(2)(ix)(c) would be amended to provide that the approved tuition reimbursement methodology, developed by the Commissioner and approved by the Director of the Budget, may alter the billable time threshold.

Since publication of a Notice of Proposed Rule Making in the State Register on April 1, 2015, the proposed amendment has been substantially revised in response to public comment, as set forth in the Revised Regulatory Impact Statement submitted herewith. Since the Board of Regents meets at fixed intervals, and does not meet during the month of August, the earliest the proposed rule can be presented for regular (non-emergency) adoption, after expiration of the required 30-day public comment period provided for in State Administrative Procedure Act (SAPA) section 202(4-a), would be the September 16-17, 2015 Regents meeting. Furthermore, pursuant to SAPA section 203(1), the earliest effective date of the proposed rule, if adopted at the March meeting, would be October 7, 2015, the date a Notice of Adoption would be published in the State Register. However, Section 11 of Part A of Chapter 56 of the Laws of 2014 amended Education Law § 4410(10)(a)(i) to provide that, commencing with the 2015-16 school year, approved programs providing SEIS must be reimbursed based on the actual attendance of preschool children receiving SEIS services. The 2015-2016 school year begins on July 1, 2015.

Therefore, emergency action is necessary at the June 2015 Regents meeting for the preservation of the general welfare in order to immediately adopt revisions to the proposed amendment in response to public comment, and to otherwise ensure that the proposed amendment is timely implemented pursuant to statutory requirements.

It is anticipated that the proposed rule will be presented for adoption as a permanent rule at the September 16-17, 2015 Regents meeting, which is the first scheduled meeting after expiration of the 30-day public comment period prescribed in the State Administrative Procedure Act for State agency revised rule makings.

Subject: Special Education Itinerant Services (SEIS).

Purpose: To revise the SEIS tuition reimbursement methodology.

Text of emergency/revised rule:

Subparagraph (ix) of paragraph (2) of subdivision (f) of section 200.9 of the Regulations of the Commissioner of Education is amended, effective July 1, 2015, as follows:

(ix) The tuition rate for programs for preschool students with disabilities receiving special education itinerant services pursuant to section 4410(1)(k) of the Education Law, shall be established using the reimbursement methodology as set forth in paragraph (1) of this subdivision and subparagraphs (i) through (viii) of this paragraph, with the following modifications:

(a) . . .

(b) . . .

(c) Rates for the certified special education teacher providing special education itinerant services shall be published as half hour rates and billing by providers to municipalities must be done in half hour blocks of time. Billable time includes time spent providing direct and/or indirect special education itinerant services as defined in section 200.16(i)(3)(ii) of this Part in accordance with the student's individualized education program (IEP). The difference between the total number of hours employed in the special education itinerant teacher's standard work week minus the hours of direct and/or indirect special education itinerant service hours must be spent on required functions. Such functions include but are not limited to: coordination of service when both special education itinerant services and related services are provided to a student pursuant to section 4410(1)(j) of the Education Law; preparation for and attendance at committee on preschool special education meetings; conferencing with the student's parents; classroom observation; and/or travel for the express purposes of such functions as stated above. For the purpose of this subparagraph, parent conferencing may include parent education for the purpose of enabling parents to perform appropriate follow-up activities at home. Billable time shall not be less than 66 percent or more than 72 percent of any special education itinerant teacher's total employment hours*; provided that the approved reimbursement methodology, developed by the commissioner and approved by the Director of the Budget, may adjust this billable time threshold.* Providers shall maintain adequate records to document direct and/or indirect service hours provided as well as time spent on all other activities related to each student served.

(d) Special education itinerant service rates will be calculated so that reimbursable expenditures shall be divided by the product of the number of days in session for which the program operates times the number of direct and/or indirect special education itinerant service hours per day times two. In instances where the special education itinerant services are provided in a group session, i.e., two or more students with a disability within the same block of time, the half hour rate must be prorated to each student receiving services. Special education itinerant service rates shall be paid [on the basis of enrollment as defined in section 175.6(a)(1) and (2) of this Title for the period of enrollment as defined by the student's IEP] *based on the number of half hour units delivered, provided that the total number of units delivered shall not exceed the recommendations for such services in the student's IEP.*

(e) . . .

This notice is intended to serve as both a notice of emergency adoption and a notice of revised rule making. The notice of proposed rule making was published in the *State Register* on April 1, 2015, I.D. No. EDU-13-15-00030-P. The emergency rule will expire September 27, 2015.

Emergency rule compared with proposed rule: Substantive revisions were made in section 200.9(f)(2).

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

Data, views or arguments may be submitted to: James P. DeLorenzo, Assistant Commissioner P-12, State Education Department, Office of Special Education, State Education Building, Room 309, 89 Washington Ave., Albany, NY 12234, (518) 402-3353, email: spedpubliccomment@mail.nysed.gov

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

Revised Regulatory Impact Statement

Since publication of a Notice of Proposed Rule Making in the State Register on April 1, 2015, the proposed rule has been revised in response to public comment as follows.

Section 200.9(f)(2)(ix)(c) has been revised to remove "consultation with the student's regular early childhood provider" as one of the required functions of a special education itinerant teacher, for purposes of determining billable time for reimbursement for SEIS. Pursuant to current regula-

tion, "consultation with the student's regular early childhood provider" is a separate SEIS service defined in regulation as indirect SEIS and is included in the definition of billable time. Therefore, it would create a conflict to include this function as both a "billable time" service and a separate "required function" of a SEIS provider. The Department may seek to make this amendment in the future if the definition of SEIS as an indirect service is revisited.

Section 200.9(f)(2)(ix)(c) has been revised to retain that billable time shall not be more than 72 percent of any special education itinerant teacher's total employment hours to ensure that all required functions of a special education itinerant teacher are provided for each student as part of the provision of SEIS.

The above changes require that the "Needs and Benefits", "Costs", "Local Government Mandates", "Alternatives" and "Compliance Schedule" sections of the previously published Regulatory Impact Statement be revised to read as follows:

3. NEEDS AND BENEFITS:

Currently, pursuant to Commissioner's Regulation section 200.9(f)(2)(ix)(d), SEIS rates are paid on the basis of enrollment as defined in section 175.6(a)(1) and (2). Chapter 56 of the Laws of 2014 amended Education Law § 4410(10)(a)(i) to provide that, commencing with the 2015-16 school year, approved programs providing SEIS must be reimbursed based on the actual attendance of preschool children receiving SEIS services. According to the legislative intent contained in the 2014-15 Executive Budget Briefing Book, this provision was recommended by the Executive in order to limit "payment to program operators only for services that are actually provided, incentivizing delivery of these mandated services to children."

In order to effectuate the statutory requirement that SEIS be reimbursed based on actual attendance, section 200.9(f)(2)(ix)(d) would be amended to require SEIS rates be paid for each unit of service delivered, not to exceed the recommendations for such services in the student's IEP.

Section 200.9(f)(2)(ix)(c) currently requires that that SEIS billable time may not be less than 66 percent or more than 72 percent of any special education itinerant teacher's total employment hours in order to ensure that a certain percentage of teacher time is spent directly providing instructional services to students. Data analysis and stakeholder discussions conducted as part of a preschool tuition reimbursement study issued by the Department in December 2014 demonstrated that there are certain circumstances in which meeting this billable time threshold may be difficult, for example depending on varying travel time that may be required in certain regions of the State.

In order to allow for individual factors to be considered when applying the billable time adjustment, section 200.9(f)(2)(ix)(c) would be amended to maintain the current 66 percent minimum and 72 maximum restrictions but to further provide that the approved tuition reimbursement methodology, developed by the Commissioner and approved by the Director of the Budget, may alter the billable time threshold.

4. COSTS:

a. Costs to State government: None.

b. Costs to local governments: None.

c. Costs to regulated parties: None.

d. Costs to the State Education Department of implementation and continuing compliance: None.

The proposed amendment is necessary to implement § 11 of Part A of Chapter 56 of the Laws of 2014 and does not impose any additional costs on the State, local governments, private regulated parties or the State Education Department beyond those inherent in the statute. Consistent with § 11 of Part A of Chapter 56 of the Laws of 2014, which requires that SEIS be reimbursed based on actual attendance, section 200.9(f)(2)(ix)(d) would be amended to require SEIS rates be paid for each unit of service delivered, not to exceed the recommendations for such services in the student's individualized education program (IEP). The proposed amendment would also allow flexibility in how the minimum billable units of service adjustment are applied.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment is necessary in part to implement § 11 of Part A of Chapter 56 of the Laws of 2014 and does not impose any additional program, service, duty or responsibility upon local governments beyond those inherent in the statute. Consistent with § 11 of Part A of Chapter 56 of the Laws of 2014, which requires that SEIS be reimbursed based on actual attendance, section 200.9(f)(2)(ix)(d) would be amended to require SEIS rates be paid for each unit of service delivered, not to exceed the recommendations for such services in the student's individualized education program (IEP). The proposed amendment would also allow flexibility in how the minimum billable units of service adjustment are applied.

8. ALTERNATIVES:

There are no significant alternatives to the rule and none were considered. The proposed amendment is necessary to implement § 11 of Part A of Chapter 56 of the Laws of 2014. The proposed amendment would also allow flexibility in how the minimum billable units of service adjustment are applied.

10. COMPLIANCE SCHEDULE:

It is anticipated that regulated parties will be able to achieve compliance with the proposed amendment by its effective date. The proposed amendment is necessary in part to implement § 11 of Part A of Chapter 56 of the Laws of 2014 and does not impose any additional compliance requirements or costs beyond those inherent in the statute. Consistent with § 11 of Part A of Chapter 56 of the Laws of 2014, which requires that SEIS be reimbursed based on actual attendance, section 200.9(f)(2)(ix)(d) would be amended to require SEIS rates be paid for each unit of service delivered, not to exceed the recommendations for such services in the student's individualized education program (IEP). The proposed amendment would also allow flexibility in how the minimum billable units of service adjustment are applied.

Revised Regulatory Flexibility Analysis

Since publication of a Notice of Proposed Rule Making in the State Register on April 1, 2015, the proposed rule has been revised in response to public comment as set forth in the Revised Regulatory Impact Statement submitted herewith.

The above changes require that the Compliance Requirements, Compliance Costs and Minimizing Adverse Impact sections of the previously published Regulatory Flexibility Analysis be revised to read as follows:

2. COMPLIANCE REQUIREMENTS:

The proposed amendment does not impose any additional compliance requirements. Currently, pursuant to Commissioner's Regulation section 200.9(f)(2)(ix)(d), SEIS rates are paid on the basis of enrollment as defined in section 175.6(a)(1) and (2). Chapter 56 of the Laws of 2014 amended Education Law § 4410(10)(a)(i) to provide that, commencing with the 2015-16 school year, approved programs providing SEIS must be reimbursed based on the actual attendance of preschool children receiving SEIS services. According to the legislative intent contained in the 2014-15 Executive Budget Briefing Book, this provision was recommended by the Executive in order to limit "payment to program operators only for services that are actually provided, incentivizing delivery of these mandated services to children."

In order to effectuate the statutory requirement that SEIS be reimbursed based on actual attendance, section 200.9(f)(2)(ix)(d) would be amended to require SEIS rates be paid for each unit of service delivered, not to exceed the recommendations for such services in the student's IEP.

Section 200.9(f)(2)(ix)(c) currently requires that that SEIS billable time may not be less than 66 percent or more than 72 percent of any special education itinerant teacher's total employment hours in order to ensure that a certain percentage of teacher time is spent directly providing instructional services to students. Data analysis and stakeholder discussions conducted as part of a preschool tuition reimbursement study issued by the Department in December 2014 demonstrated that there are certain circumstances in which meeting this billable time threshold may be difficult, for example depending on varying travel time that may be required in certain regions of the State.

In order to allow for individual factors to be considered when applying the billable time adjustment, section 200.9(f)(2)(ix)(c) would be amended to maintain the current 66 percent minimum and 72 maximum restrictions but to further provide that the approved tuition reimbursement methodology, developed by the Commissioner and approved by the Director of the Budget, may alter the billable time threshold.

4. COMPLIANCE COSTS:

The proposed amendment is necessary to implement § 11 of Part A of Chapter 56 of the Laws of 2014 and does not impose any additional costs on the State, local governments, private regulated parties or the State Education Department beyond those inherent in the statute. Consistent with § 11 of Part A of Chapter 56 of the Laws of 2014, which requires that SEIS be reimbursed based on actual attendance, section 200.9(f)(2)(ix)(d) would be amended to require SEIS rates be paid for each unit of service delivered, not to exceed the recommendations for such services in the student's individualized education program (IEP). The proposed amendment would also allow flexibility in how the minimum billable units of service adjustment are applied.

6. MINIMIZING ADVERSE IMPACT:

The proposed amendment is necessary to implement § 11 of Part A of Chapter 56 of the Laws of 2014 and does not impose any additional compliance requirements or costs. Consistent with § 11 of Part A of Chapter 56 of the Laws of 2014, which requires that SEIS be reimbursed based on actual attendance, section 200.9(f)(2)(ix)(d) would be amended to require SEIS rates be paid for each unit of service delivered, not to exceed the recommendations for such services in the student's individualized education program (IEP). The proposed amendment would also allow flexibility in how the minimum billable units of service adjustment are applied.

Revised Rural Area Flexibility Analysis

Since publication of a Notice of Proposed Rule Making in the State Register on April 1, 2015, the proposed rule has been revised in response

to public comment as set forth in the Revised Regulatory Impact Statement submitted herewith.

The above changes require that the Reporting, Recordkeeping and Other Compliance Requirements; and Professional Services, Compliance Costs and Minimizing Adverse Impact sections of the previously published Rural Area Flexibility Analysis be revised to read as follows:

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

The proposed amendment does not impose any additional compliance requirements on entities in rural areas. Currently, pursuant to Commissioner's Regulation section 200.9(f)(2)(ix)(d), SEIS rates are paid on the basis of enrollment as defined in section 175.6(a)(1) and (2). Chapter 56 of the Laws of 2014 amended Education Law § 4410(10)(a)(i) to provide that, commencing with the 2015-16 school year, approved programs providing SEIS must be reimbursed based on the actual attendance of preschool children receiving SEIS services. According to the legislative intent contained in the 2014-15 Executive Budget Briefing Book, this provision was recommended by the Executive in order to limit "payment to program operators only for services that are actually provided, incentivizing delivery of these mandated services to children."

In order to effectuate the statutory requirement that SEIS be reimbursed based on actual attendance, section 200.9(f)(2)(ix)(d) would be amended to require SEIS rates be paid for each unit of service delivered, not to exceed the recommendations for such services in the student's IEP.

Section 200.9(f)(2)(ix)(c) currently requires that that SEIS billable time may not be less than 66 percent or more than 72 percent of any special education itinerant teacher's total employment hours in order to ensure that a certain percentage of teacher time is spent directly providing instructional services to students. Data analysis and stakeholder discussions conducted as part of a preschool tuition reimbursement study issued by the Department in December 2014 demonstrated that there are certain circumstances in which meeting this billable time threshold may be difficult, for example depending on varying travel time that may be required in certain regions of the State.

In order to allow for individual factors to be considered when applying the billable time adjustment, section 200.9(f)(2)(ix)(c) would be amended to maintain the current 66 percent minimum and 72 maximum restrictions but to further provide that the approved tuition reimbursement methodology, developed by the Commissioner and approved by the Director of the Budget, may alter the billable time threshold.

3. COMPLIANCE COSTS:

The proposed amendment is necessary to implement § 11 of Part A of Chapter 56 of the Laws of 2014 and does not impose any additional costs on the State, local governments, private regulated parties or the State Education Department beyond those inherent in the statute. Consistent with § 11 of Part A of Chapter 56 of the Laws of 2014, which requires that SEIS be reimbursed based on actual attendance, section 200.9(f)(2)(ix)(d) would be amended to require SEIS rates be paid for each unit of service delivered, not to exceed the recommendations for such services in the student's individualized education program (IEP). The proposed amendment would also allow flexibility in how the minimum billable units of service adjustment are applied.

4. MINIMIZING ADVERSE IMPACT:

The proposed amendment is necessary to implement § 11 of Part A of Chapter 56 of the Laws of 2014 and does not impose any additional compliance requirements or costs on entities in rural areas beyond those inherent in the statute. Consistent with § 11 of Part A of Chapter 56 of the Laws of 2014, which requires that SEIS be reimbursed based on actual attendance, section 200.9(f)(2)(ix)(d) would be amended to require SEIS rates be paid for each unit of service delivered, not to exceed the recommendations for such services in the student's individualized education program (IEP). The proposed amendment would also allow flexibility in how the minimum billable units of service adjustment are applied.

Because the statute and Regents policy upon which the proposed amendment is based applies to all SEIS providers in the State, it is not possible to establish differing compliance or reporting requirements or timetables or to exempt providers in rural areas from coverage by the proposed amendment.

Revised Job Impact Statement

Since publication of a Notice of Proposed Rule Making in the State Register on April 1, 2015, the proposed rule has been revised in response to public comment as set forth in the Revised Regulatory Impact Statement submitted herewith. The proposed amendment, as revised, relates to modifications of the reimbursement methodology for preschool Special Education Itinerant Services (SEIS), and will not have an adverse impact on jobs or employment opportunities. The revised proposed amendment is necessary to conform the Commissioner's Regulations with § 11 of Part A of Chapter 56 of the Laws of 2014, which amended Education Law § 4410 to require that SEIS be reimbursed based on actual attendance. Consistent with the statute, the proposed amendment requires SEIS rates be paid for each unit of service delivered, not to exceed the recommendations for such services in the student's individualized education program (IEP). The revised proposed amendment would also allow flexibility in how the minimum billable units of service adjustment are applied. Because it is evident from the nature of the revised proposed amendment that it will have a positive impact, or no impact, on jobs or employment opportunities, no further steps were needed to ascertain those facts and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

Assessment of Public Comment

Since publication of a Notice of Proposed Rule Making in the State Register on April 1, 2015, the State Education Department received the following comments:

1. COMMENT:

There is a lack of specificity in the proposed regulation regarding the circumstance in which a teacher travels to the location where services are to be dispensed but the student is absent or unavailable to receive those services on that day. The proposed regulation is silent as to what costs (notably travel and time spent in transit, but also reports and other associated paperwork to account for the missing session) shall be reimbursed and how these costs shall be accounted for. There is no mention of make-up sessions and the costs associated with that. Such circumstances and reimbursements must be standardized and not left to the whims of each individual county creating unequal policies throughout the State.

DEPARTMENT RESPONSE:

The reimbursable expenditures per the regulations will remain the same. Specifically, the rate includes reimbursement for time spent as "billable time" and other required functions which include: "coordination of service when both special education itinerant services and related services are provided to a student pursuant to section 4410(1)(j) of the Education Law; preparation for and attendance at committee on preschool special education meetings; conferencing with the student's parents; classroom observation; and/or travel for the express purposes of such functions as stated above." The change to reimbursement upon the delivery of service will result in providers not being reimbursed for missed sessions or time associated with the missed session. The 2015-16 certified rate will be paid upon the delivery of the service whether the service be performed as a regularly scheduled session or make-up session and should not be subject to individual county policies.

2. COMMENT:

It is unclear to what extent "consultation with the student's regular early childhood provider" will be reimbursed or under what circumstances. There is no mention of whether the student or parent must be present during such consultation.

DEPARTMENT RESPONSE:

Section 200.9(f)(2)(ix)(c) has been revised to delete "consultation with the student's regular early childhood provider" as a required function of special education itinerant teachers. Pursuant to current regulation, "consultation with the student's regular early childhood provider" is a separate SEIS service defined in regulation as indirect SEIS and is included in the definition of billable time. Therefore, it would create a conflict to include this function as both a "billable time" service and a separate "required function" of a SEIS provider. However, The Department may seek to make this amendment in the future if the definition of SEIS as an indirect service is revisited.

3. COMMENT:

The proposed regulation lifts the current ceiling (72 percent) of the amount of the "total employment hours" that a special education itinerant teacher may bill for a session, but there is no indication as to what the new ceiling will be adjusted to so as to know whether those percentages will allow for full inclusion of actual costs incurred for services delivered or attempted to be delivered.

DEPARTMENT RESPONSE:

Section 200.9(f)(2)(ix)(c) has been revised to retrain the current regulation that requires that billable time shall not be more than 72 percent of an special education itinerant teacher's total employment hours to ensure that all required functions of a special education itinerant teacher are provided for each student as part of the provision of SEIS. The Department will review data trends and program monitoring to determine whether a different ceiling should be considered at a future date or whether a rate adjustment pertaining to this requirement is warranted.

4. COMMENT:

There is a substantial question as to what will be allowed for travel time costs. There is a misconception that the travel time and cost is always greater in rural areas where the distance between locations tends to be greater. However, in some urban and suburban areas the travel time may actually be greater even though the distance is less because of traffic congestion. Because the proposed regulation defers these policy determi-

nations for a later time, to be decided by the Commissioner and the Director of the State Budget, it is impossible to access the adequacy and effectiveness of what is being proposed.

DEPARTMENT RESPONSE:

The revised rule is intended to give administrative flexibility to allow for different circumstances to be reflected in SEIS provider's certified rates. This would be subject to annual recommendation of the Commissioner and approval of the rate-setting methodology by the Division of the Budget.

5. COMMENT:

The proposed regulation states there will be no additional costs to local governments or regulated parties, but there is no mention made as to whether local governments will have the necessary software and aptitude to facilitate the new billing protocol. Should they not be prepared by July 1, 2015, the financial impact to providers in terms of interrupted cash flow from delayed reimbursements could be dire. This potential problem to some extent is caused by the lateness of the proposed regulation, which will not be promulgated until literally days before the statutory effective date. More than just a few days or weeks between the final promulgation and its effective date is needed for a smooth transition.

DEPARTMENT RESPONSE:

This component of the regulation that amends the billing protocol for local governments and regulated parties so that reimbursement is based upon the delivery of services is in conformance with an amendment to section 4410 of the Education Law as amended by Section 11 of Part A of Chapter 56 of the Laws of 2014 (signed into law on March 31, 2014). The new billing protocol will replace the existing billing protocol which is similar in all aspects except that rather than reimbursement for all mandated sessions reimbursement will be provided upon the actual delivery of sessions. This is similar to the protocol local governments utilize for reimbursement of related services and the Department has worked to ensure that SEIS reporting requirements to the Department remain constant or duplicate existing requirements used for related services. Prior to the proposed regulations, the Department held six stakeholder meetings with members of the Preschool Special Education Fiscal Advisory Committee, comprised of provider organizations and representatives of the counties, in the fall of 2014. The change to "fee for service" reimbursement was discussed in detail at these meetings and included in a study the Department released in December of 2014 on the preschool special education tuition rate methodology. With the statutory effective date of July 2015, the public stakeholder discussions, and public release of the study, the Department believes that local governments and regulated parties have had sufficient notice of the proposed changes in order to make appropriate plans in preparation for July 2015 implementation.

6. COMMENT:

Given that the recently enacted 2015-2016 State budget requires a new "Regional Rate" structure for the SEIS program to be implemented on or before July 1, 2016, it is disconcerting and confusing that there is no mention as to how such new rates will impact the entire Fee for Service structure including reconciliation/clawbacks and related SED procedures. Since the change to regional rates will occur within close proximity, if not simultaneously, to the commencement of Fee for Service, the procedures involving a regional rate and how that might impact the Fee for Service conversion should be discussed in the regulation, including providing a time frame as to when a regional rate will replace the individually calculated rate for each agency and provider of service. It is requested that SED take the necessary steps to insure that the implementation of the final regulation provides sufficient time for providers and counties to successfully and seamlessly transition to the Fee for Service paradigm. As a matter of good public policy and best practice, there should be at least 90 days lead time between the final adoption of the regulation and its implementation.

DEPARTMENT RESPONSE:

The "fee for service" amendment to the regulation is in conformance with an amendment to section 4410 of the Education Law as amended by Chapter 56 of the Laws of 2014. July 1, 2015 is the internal effective date of the statute which was signed into law on March 31, 2014. The Department is mindful that, in addition to the "fee for service" change in reimbursement as required by statute, further changes to SEIS reimbursement, such as regional rates and adjustments to reimbursable costs, should be phased-in over time in order to allow SEIS providers lead time to transition to the new rates. The Department will be developing a recommendation to gradually phase-in these elements over a four year period as required by the 2015-16 enacted state budget.

7. COMMENT:

Concern was expressed that the proposed regulation reflects only limited elements of the substantive changes anticipated to be necessary upon the redesign of the reimbursement methodology. As the redesign has not yet been finalized, concern was expressed that the revision to the programmatic standards and policies in support of the redesign may be premature. Support was expressed for the redefinition of the parameters of "billable time", removing the upward parameter of 72% to allow greater flexibility. However, again without a fuller understanding of the context within which this specific proposal shall be set, concern was expressed that the initiative may be premature. Support was also expressed for the clarification that only "direct" services shall be recognized as discretely billable events, but further amendment of the regulations which define direct/indirect services is urged to assure consistency.

The implementation of Chapter 56 will require significant changes to current regulations and Departmental guidance, and the Department is encouraged to proceed in measured steps. A good number of policies must be established before meaningful revision of the regulations including: determination of whether SEIS retains its "program" designation; the effect of the reimbursement changes on provider eligibility for 611/619 funding; and whether the "enrollment" process is still warranted.

DEPARTMENT RESPONSE:

Traditionally, many aspects of methodology are included within the administrative process of the annually approved tuition rate-setting methodology rather than specified in regulation. The Department agrees that, following required changes to State regulations, additional policy related aspects of the approved methodology will be developed and related policy guidance released.

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

Self-Administration of Certain Medications by Students

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

Filing No. 558

Filing Date: 2015-06-30

Effective Date: 2015-07-01

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

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

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

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

Specific reasons underlying the finding of necessity: The proposed rule is necessary to implement Education Law sections 916, 916-a, 916-b, 902-a, 902-b and 921, as added and amended by Chapter 423 of the Laws of 2014. The proposed rule sets forth standards for the self-administration by students of prescribed inhaled rescue medications and epinephrine auto-injectors, and standards for allowing students to carry and self-administer prescribed insulin, carry glucagon, and carry and use equipment and supplies necessary to check blood glucose and/or ketone levels, during the school day on school property and at a school function, including requirements for the written consent of the parent or person in parental relation and written permission (also referred to as an order) and an attestation from a duly authorized health care provider providing certain specified information including the expiration date of the order, name and dose of prescribed medication, times when medication is to be self-administered, and circumstances which may warrant the use of the medication. The proposed rule is also necessary to establish standards for the training of unlicensed school personnel to administer prescribed epinephrine auto-injectors and glucagon to specific students under specified conditions, consistent with Chapter 423 of the Laws of 2014, for those school districts and BOCES that choose to provide such training.

Since publication of a Notice of Proposed Rule Making in the State Register on April 8, 2015, the proposed amendment has been substantially revised in response to public comment, as set forth in the Revised Regulatory Impact Statement submitted herewith. Since the Board of Regents meets at fixed intervals, and does not meet during the month of August, the earliest the proposed rule can be presented for regular (non-emergency) adoption, after expiration of the required 30-day public comment period provided for in State Administrative Procedure Act (SAPA) section 202(4-a), would be the September 16-17, 2015 Regents meeting. Furthermore, pursuant to SAPA section 203(1), the earliest effective date of the proposed rule, if adopted at the March meeting, would be October 7, 2015, the date a Notice of Adoption would be published in the State Register. However, the proposed rule is necessary to implement Education Law sections 916, 916-a, 916-b, 902-a, 902-b and 921, as added and amended by Chapter 423 of the Laws of 2014, which takes effect on July 1, 2015.

Therefore, emergency action is necessary at the June 2015 Regents meeting for the preservation of the general welfare in order to immediately adopt revisions to the proposed amendment in response to public comment, and to otherwise ensure that the proposed amendment is timely implemented pursuant to statutory requirements.

It is anticipated that the proposed rule will be presented for adoption as a permanent rule at the September 16-17, 2015 Regents meeting, which is the first scheduled meeting after expiration of the 30-day public comment period prescribed in the State Administrative Procedure Act for State agency revised rule makings.

Subject: Self-administration of certain medications by students.

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

Substance of emergency/revised rule: Since publication of a Notice of Proposed Rule Making in the State Register on April 8, 2015, the proposed rule has been substantially revised as set forth in the Revised Regulatory Impact Statement submitted herewith.

The following is a summary of the revised proposed rule.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(vii) notification of appropriate school personnel; and

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

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

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

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

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

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

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

(vi) observation of the trainee using a glucagon training device;
(vii) steps for providing ongoing care while waiting for emergency services;
(viii) notification of appropriate school personnel; and
(ix) methods of safely storing, handling, and disposing of glucagon and used needles and syringes.

This notice is intended to serve as both a notice of emergency adoption and a notice of revised rule making. The notice of proposed rule making was published in the *State Register* on April 8, 2015, I.D. No. EDU-14-15-00003-P. The emergency rule will expire September 27, 2015.

Emergency rule compared with proposed rule: Substantive revisions were made in section 136.7(d)(1) and (3).

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

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

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

Revised Regulatory Impact Statement

Since publication of a Notice of Proposed Rule Making in the State Register on April 8, 2015, the proposed rule has been revised in response to public comment to make technical corrections to clarify the text, consistent with the statute, as follows:

Section 136.7(d)(1) has been amended to include the following underlined language to make technical corrections which conform to the statute:

"Each board of education or trustees of each school district and each board of cooperative educational services shall allow a student to carry and self-administer their prescribed insulin through an appropriate medication delivery device, carry glucagon…"

Section 136.7(d)(3) has been amended to include the following underlined language to make technical corrections which conform to the statute:

"(3) Upon written request of a parent or person in parental relation, the school district or board of cooperative educational service shall allow the student to maintain extra insulin, insulin delivery system, glucagon, blood glucose meter and related supplies to treat such student's diabetes provided by the parent or person in parental relation in the care and custody of a licensed nurse, nurse practitioner, physician assistant, or physician employed by such district of board of cooperative education services, and shall be readily accessible to such pupil."

The above revisions to the proposed rule do not require any changes to the previously published Regulatory Impact Statement.

Revised Regulatory Flexibility Analysis

Since publication of a Notice of Proposed Rule Making in the State Register on April 8, 2015, the proposed rule has been revised in response to public comment as set forth in the Statement Concerning the Regulatory Impact Statement submitted herewith.

The above revisions to the proposed rule do not require any changes to the previously published Regulatory Flexibility Analysis.

Revised Rural Area Flexibility Analysis

Since publication of a Notice of Proposed Rule Making in the State Register on April 8, 2015, the proposed rule has been revised in response to public comment as set forth in the Statement Concerning the Regulatory Impact Statement submitted herewith.

The above revisions to the proposed rule do not require any changes to the previously published Rural Area Flexibility Analysis.

Revised Job Impact Statement

Since publication of a Notice of Proposed Rule Making in the State Register on April 8, 2015, the proposed rule has been revised in response to public comment as set forth in the Statement Concerning the Regulatory Impact Statement submitted herewith.

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

Assessment of Public Comment

Since publication of a Notice of Proposed Rule Making in the State Register on April 8, 2015, the State Education Department (SED) received the following comments:

1. COMMENT:

Revise provisions in § 136.7(b)(3)(i), (c)(3)(i), (d)(3)(i), providing a school district is not required to hire a nurse, to instead provide that: "While a school district is not required to hire a school nurse, best practice would encourage that each school has a school nurse who is licensed to administer to the medical needs of children with diabetes, life-threatening anaphylaxis, and other special health care needs.''

DEPARTMENT RESPONSE:

The language in 136.7(b)(3)(i), (c)(3)(i), (d)(3)(i) reflects the language in the statute upon which the proposed rule is based [see Chapter 423 of the Laws of 2014; more specifically Education Law § § 916(1), 916-a(1), 916-b(1)]. While SED agrees that best practice would encourage each school to provide a school nurse to address the needs of students with chronic health conditions, such best practice is not specifically required by Chapter 423 to be codified in regulation, and is more appropriately left to guidance. SED may consider issuing guidance as to what is best practice.

2. COMMENT:

Support expressed for proposed rule, related to self-administration of prescribed inhaled rescue medications. Students diagnosed with asthma should have unobstructed access to their prescribed medication on school property and at school sponsored events/functions with documentation of training by the child's medical practitioner and parental consent.

DEPARTMENT RESPONSE:

SED appreciates the support for the proposed rule. Students who meet the requirements of the law will have unobstructed access to their inhaled rescue medications during the school day, on school property, and at any school function. The parent/guardian may provide additional rescue medication to the school, and such medication shall be made available to the student as needed in accordance with the school's policy along with the authorized health care provider's orders.

3. COMMENT:

What if staff refuses to administer medication? Is it only going to be for students that have the medication ordered by their own doctor and not standing orders by school physician? Does this include every school activity after school hours?

DEPARTMENT RESPONSE:

Chapter 423 of the Laws of 2014, and the proposed rule which conforms to the statute, establish a framework by which school districts, BOCES and nonpublic schools are required to permit students diagnosed with asthma or other respiratory conditions, allergies, and diabetes to carry and self-administer such prescribed medications during the school day, on school property and at any school function. Students who are permitted to self-carry and use such medications must provide written consent from the parent/guardian, along with written permission of a physician or other duly authorized health care provides attesting to the student's diagnosis, and that the student has demonstrated that he/she can self-administer the medication effectively.

In addition to the framework established for students to carry and self-administer prescribed medications under this section, Chapter 423 provides that boards of education or trustees of each school district and board of cooperative educational services (BOCES) and nonpublic schools are authorized, but not obligated, to permit licensed registered professional nurses, nurse practitioners, physician assistants, and physicians train unlicensed school personnel to inject prescribed glucagon or epinephrine auto injectors in emergency situations, where an appropriately licensed health professional is not available, to pupils who have the written permission of a physician or other duly authorized health care provider along with written parental consent. The law permits, but does not require, schools to allow unlicensed personnel to be trained to administer such medication in an emergency to students who have both written parental consent and the written order of a physician or other duly authorized health care provider for the administration of such medication during the school day, on school property and at any school function.

For purposes of clarification, it should be noted that Chapter 423 and the proposed rule relating to the administration of medication by unlicensed personnel, apply solely to those students who have the written permission of a physician or other duly authorized health care provider for the administration of injectable glucagon or emergency epinephrine auto injector, along with written parental consent.

4. COMMENT:

Does this regulation apply to school bus drivers and/or school bus attendants/monitors? That is to say, are those individuals or other school transportation officials (such as supervisors or dispatchers) included in the definition of unlicensed school personnel? If this regulation does apply to those individuals, will there be State-authorized training and preparation to ensure they carry out their responsibilities? This becomes significant since the regulation could apply to school functions which are defined to include extra-curricular events or activities regardless of their location, including out-of-state locations.

DEPARTMENT RESPONSE:

Chapter 423 of the Laws of 2014 and the proposed rule state that boards of education or trustees of each school district and BOCES and nonpublic schools are authorized, but not obligated, to permit licensed registered professional nurses, nurse practitioners, physician assistants, and physicians to train unlicensed school personnel to inject prescribed glucagon or epinephrine auto injectors in emergency situations, where an appropriately licensed health professional is not available, to pupils who have the written permission of a physician or other duly authorized health care provider. The term "unlicensed school personnel" is inclusive of all school personnel who are not licensed health professionals as defined by 8 NYCRR § 136.1(b).

5. COMMENT:

Given that insulin can only be self-administered through an appropriate medication delivery device, and consistent with the statute, revise § 136.7(d)(1) as follows: "Each board of education or trustees of each school district and each board of cooperative educational services shall allow a student to carry and self-administer their prescribed insulin through an appropriate medication delivery device, carry glucagon. . ."

DEPARTMENT RESPONSE:

The proposed rule has been revised to include the suggested language.

6. COMMENT:

In § 136.7(d)(2), please include the underlined language to simplify needed documentation: "(2) A written diabetes management plan shall be provided and may include written permissions and attestation."

DEPARTMENT RESPONSE:

Chapter 423 of the Laws of 2014 and the proposed rule merely require that before a student is permitted to carry and self-administer such medication, such student must obtain the written permission of a physician or other duly authorized health care provider, and does not specify where a written provider's order must be placed. The existing language requiring a written diabetes management plan does not exclude the written permissions and attestation from the diabetes management plan, therefore orders could be placed on the diabetes management plan or could be on a separate document. Accordingly, there is no need to explicitly specify this possibility in § 136.7(d)(2) of the proposed rule.

7. COMMENT:

Revise § 136.7(d)(3) as follows, to ensure a student has access to needed medications and supplies: "(3) Upon written request of a parent or person in parental relation, the school district or board of cooperative educational service shall allow the student to maintain extra insulin, insulin delivery system, glucagon, blood glucose meter and related supplies to treat such student's diabetes provided by the parent or person in parental relation in the care and custody of a licensed nurse, nurse practitioner, physician assistant, or physician employed by such district of board of cooperative education services, and shall be readily accessible to such pupil."

DEPARTMENT RESPONSE:

The proposed rule has been revised to include the suggested language.

8. COMMENT:

Revise § 136.7(d)(6) as follows, to clarify that this authorization is not restricted to students who self-manage: "(6) Licensed nurses, nurse practitioners, physician assistants, or physicians employed by school districts or boards of cooperative educational services are authorized to calculate prescribed insulin dosages, administer prescribed insulin, program the prescribed insulin pump, refill the reservoir in the insulin pump, change the infusion site, inject prescribed glucagon, teach an unlicensed person to administer glucagon to an individual, and perform other authorized services pursuant to the scope of practice of the licensed individual under Title VIII of the Education Law, to students diagnosed with diabetes by a physician or other duly authorized health care provider and who [are] may be permitted under this section to self-administer their prescribed insulin and carry glucagon, and carry and use equipment and supplies necessary to check blood glucose and/or ketone levels during the school day. . ."

DEPARTMENT RESPONSE:

The proposed rule specifically addresses the requirements of Education Law § 902-a, which is limited to students who have received a written provider order and parent/guardian consent to carry and use their insulin and glucagon. The intent of this section is to clarify that appropriate licensed health professionals may administer the self-managing student's insulin or glucagon, or assist in other aspects of diabetes management if needed- inclusive of training an unlicensed person to administer the student's glucagon.

As stated in § 136.7(e), only licensed health professionals may administer medication to a student in a school setting, except as otherwise permitted by law. Nothing in the proposed rule changes the scope of practice of certain licensed health professionals to administer medications to students. Therefore students who are unable to self-manage would still be able to have their medications administered, or have other aspects of their diabetes management performed by an appropriate licensed health professional.

9. COMMENT:

The language in § 136.7(d)(7) does not reflect the statute in that glucagon can be needed by any student with diabetes, not just students who self-manage their diabetes. Revise the rule as follows, to clarify that unlicensed personnel can administer glucagon to any child with diabetes for which there is an appropriate prescription for glucagon and related permission: "(7) The board of each school district and board of cooperative educational services and nonpublic schools are authorized, but not required to have licensed registered professional nurses, nurse practitioners, physician assistants, and physicians train unlicensed school personnel to administer prescribed glucagon in emergency situations where an appropriately licensed health care professional is not available, to pupils who have the written permission of a physician or other duly authorized health care provider for the administration of injectable glucagon, along with written parental consent, during the school day on school property and at any school function.[to students who are permitted under this section to self-administer their prescribed insulin and carry glucagon, and carry and use equipment and supplies necessary to check blood glucose and/or ketone levels during the school day.] Training by the licensed health professional is to be provided in a competent manner and in accordance with subdivision (f) of this section."

DEPARTMENT RESPONSE:

The intent of this paragraph is to clarify that unlicensed persons trained by appropriate licensed health professionals may administer the self-administering student's glucagon if needed. The needs of students who are not able to self-manage their diabetes are addressed in Education Law § 921, which provides that appropriate licensed health professionals may train unlicensed personnel to administer glucagon to a student with a provider order and written parent/guardian consent, where an appropriate licensed health professional is not available.

10. COMMENT:

Revise § 136.7(e) as follows, to affirm that unlicensed personnel are authorized to administer glucagon and epinephrine: "(e) In accordance with Title 1, Section 921 of the Education Law, trained unlicensed personnel may administer glucagon and epinephrine to a student in a school setting."

DEPARTMENT RESPONSE:

The proposed rule which governs the use and self-administration of certain medications, provides that only licensed health professionals may administer certain medications to a student in a school setting, except as otherwise permitted by law and provides a list of the laws permitting exceptions, including § 921(as added by Chapter 423 of the Laws of 2014). Education Law § 921 specifically applies to any student with a provider order and written parent/guardian consent, and provides that appropriate licensed health professionals, may train unlicensed personnel to administer glucagon to a student with a provider order and written parent/guardian consent, in an emergency where an appropriate licensed health professional is not available. The proposed rule § 136.7(f)(2) specifies how appropriate licensed health professionals may train unlicensed personnel to administer glucagon to any such student.

Higher Education Services Corporation

EMERGENCY RULE MAKING

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

I.D. No. ESC-28-15-00002-E

Filing No. 549

Filing Date: 2015-06-25

Effective Date: 2015-06-25

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 September 22, 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.

Justice Center for the Protection of People with Special Needs

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Protocols for Interviewing Service Recipients During Investigations of Abuse or Neglect

I.D. No. JCP-28-15-00008-EP

Filing No. 559

Filing Date: 2015-06-30

Effective Date: 2015-07-01

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

Proposed Action: Addition of Part 705 to Title 14 NYCRR.

Statutory authority: Executive Law, sections 553(20) and 561(6); L. 2014, ch. 394, section 3

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

Specific reasons underlying the finding of necessity: The immediate adoption of this Part is necessary for the preservation of the health, safety, and welfare of individuals receiving services as defined by the Protection of People with Special Needs Act (PPSNA).

In December, 2012, the Governor signed the PPSNA, which, effective June 30, 2013, created the Justice Center for the Protection of People with Special Needs (Justice Center) and established many new protections for vulnerable persons, including a new system for incident management in certain programs and facilities operated, licensed or certified by the Office for People with Developmental Disabilities (OPWDD), the Office of Mental Health (OMH), for Office of Alcoholism and Substance Abuse Services (OASAS), the Office of Children and Family Services (OCFS), the Department of Health (DOH) and the New York State Education Department (SED). Under the PPSNA, all allegations of abuse or neglect that are accepted by the Justice Center must be investigated, either by the Justice Center or by another agency delegated to conduct such an investigation.

By Ch. 394, L. 2014, the Justice Center is required to establish protocols to ensure the safety of persons with special needs who are interviewed during investigations of abuse or neglect reported to the Justice Center, including a procedure to inform vulnerable persons and/or their personal representatives that the vulnerable person may be questioned or subject to an interview. Under Ch. 394, L. 2014, the Justice Center is required to develop protocols and procedures to implement the requirements of the law. Regulations describing and implementing these protocols are to be finalized by April 1, 2015. Because these final regulations would not become effective until they are published and promulgated through the SAPA process, the new regulations must become effective on July 1, 2015.

Part 705 is necessary to implement the protocols required by Ch. 394, L. 2014.

The promulgation of these regulations is essential to preserve the health, safety and welfare of service recipients who may be interviewed as part of an investigation of abuse or neglect. If the Justice Center did not promulgate regulations on an emergency basis, many of the protections established by Ch. 394, L. 2014, that are incorporated into the Justice Center's protocols would not be implemented in a timely manner, or would be implemented ineffectively. According to the sponsor's memorandum in support of this Chapter, the protocols that would be implemented by these regulations are meant to protect the health, safety and welfare of service recipients. As a result, it is crucial that this regulation become effective immediately to ensure that the new requirements under Ch. 394, L. 2014, and the protocols issued thereunder, are implemented in a coordinated fashion.

For all of the reasons outlined above, this rule is being adopted on an Emergency basis until such time as it has been formally adopted through the SAPA rule promulgation process.

Subject: Protocols for interviewing service recipients during investigations of abuse or neglect.

Purpose: To enhance protections for people with special needs during investigations of abuse or neglect.

Text of emergency/proposed rule: *Part 705 The Justice Center Protocols for Interviewing People Who Receive Services*

§ 705.1 Background and Intent

(a) The Protection of People with Special Needs Act (the "Act") established the Justice Center for the Protection of People with Special Needs (the "Justice Center"). The Act charges the Justice Center with establishing consistent safeguards for vulnerable persons to protect against abuse, neglect and other conduct that may jeopardize their health, safety and welfare.

(b) To accomplish this goal, the Act requires the Justice Center to establish procedures for the timely response to, and effective investigation of, allegations of reportable incidents against individuals who receive services. During the course of an investigation of abuse and neglect it is often necessary for individuals who receive services to be interviewed. This regulation outlines the procedures developed by the Justice Center to ensure that interviews of individuals who receive services during the course of an investigation of alleged abuse and neglect are conducted in a safe and appropriate manner.

§ 705.2 Applicability

This regulation applies to all investigations of alleged abuse and neglect conducted by the Justice Center, as well as investigations conducted by state agencies whose programs are under the jurisdiction of the Justice Center and by the facilities and programs defined in section 488(4) of the Social Services Law when acting as the delegate investigatory entity.

§ 705.3 Legal Authority

Subdivision 28 of section 553 of the Executive Law requires the Justice Center to develop protocols to ensure the safety of individuals receiving services who may have evidence relevant to an investigation of alleged abuse or neglect. The Executive Law requires that the protocols be developed in consultation with the Justice Center's statutorily created Advisory Council and the relevant State Oversight Agencies. These agencies include: the Office of Mental Health, the State Education Department, the Office of Alcoholism and Substance Abuse Services, the Office for People With Developmental Disabilities, the Office of Children and Family Services and the Department of Health.

§ 705.4 Definitions

Whenever used in this Part:

(a) "Delegate Investigatory Entity" shall mean a facility or provider agency, or any other entity authorized by the regulations of a state

oversight agency or the Justice Center to conduct an investigation of a reportable incident.

(b) "Justice Center" means the Justice Center for the Protection of People with Special Needs.

(c) "Personal Representative" shall mean a person authorized under state, tribal, military or other applicable law to act on behalf of a vulnerable person in making health care decisions or, for programs that serve children under the jurisdiction of the State Education Department or the Office of Children and Family Services, the service recipient's parent, guardian or other person legally responsible for such person as defined in subdivision 10 of section 488 of the Social Services Law. For other programs that serve children, the personal representative of the child would be the parent, guardian or other person authorized under law to make health care decisions.

(d) "Potential Witness" shall mean any service recipient known to be physically present in the place and at the time of the alleged abuse or neglect. It can also include any service recipient known to have information that could be useful to an investigation.

(e) "Service Provider" shall mean a provider of services as defined in subdivision 4 of section 488 of the Social Services Law.

(f) "Service Recipient" shall mean an individual who resides or is an inpatient in a residential facility or who receives services from a facility or provider agency, as defined in subdivision 9 of section 488 of the Social Services Law.

§ 705.5 Notification Protocols

(a) Process for providing notification to alleged victims and/or their personal representatives.

(1) When a service provider is notified that a report of alleged abuse or neglect in their program has been accepted by the Justice Center, the service provider or state oversight agency shall immediately attempt to notify any service recipients who are alleged victims of that alleged abuse or neglect, and/or their personal representatives, that the service recipient may be interviewed as part of the investigation. This notification may be completed through oral communication or in writing.

(2) The service provider or state oversight agency shall not make such notification to a personal representative if the alleged victim objects to such notification or if it would violate relevant confidentially laws, be contrary to court order, or is otherwise contrary to the best interests of the alleged victim or if the investigator has notified the service provider or state oversight agency that such notification would compromise the investigation. Service providers who are required to provide notifications pursuant to section 33.23 of the Mental Hygiene Law shall do so regardless of the exemptions outlined here.

(3) The service provider or state oversight agency shall document in writing that such notification was made or that there was a diligent effort to make such notification. Such documentation should be included in the investigative record. Those service providers or state oversight agencies who do not have access to the investigative record should give the documentation to the investigator for inclusion in the investigative record. If an alleged victim's personal representative is not notified for the reasons outlined in paragraph (2) of subdivision (a) of this Section, the service provider or state oversight agency shall document the reason.

(b) Process for providing notification to potential witnesses and/or their personal representatives.

(1) When a service provider is notified that a report of alleged abuse or neglect in their program has been accepted by the Justice Center, the service provider shall make a good faith effort to ascertain whether any service recipients in its program are potential witnesses to such incident, and shall attempt to notify those service recipients and/or their personal representatives that the service recipient may be interviewed as part of the investigation. This notification may be completed through oral communication or in writing.

(2) The service provider or state oversight agency shall not make such notification to a personal representative if the potential witness objects to such notification or if such notification would violate relevant confidentially laws, be contrary to court order, or is otherwise contrary to the best interests of the potential witness or if the investigator notifies the service provider that such notification would compromise the investigation.

(3) The service provider or state oversight agency shall document in writing that such notification was made or that there was a diligent effort to make such notification. Such documentation should be included in the investigative record. Those service providers or state oversight agencies who do not have access to the investigative record should give the documentation to the investigator for inclusion in the investigative record. If a potential witness' personal representative is not notified for the reasons outlined in Part 705.5(b)(2), the service provider or state oversight agency shall document the reason.

(4) If the personal representative of a potential witness is contacted, the service provider or state oversight agency shall not disclose confidential information regarding the allegation of abuse or neglect to the personal representative.

(c) Inquiry of personal representative. The service provider shall ask the personal representative if he or she has additional information not known to the service provider concerning the most effective ways to communicate with the service recipient in order to support the interview process.

(d) Exceptions to notification requirements.

(1)Those service providers who are required to provide notifications pursuant to section 33.23 of the Mental Hygiene Law are not required to provide additional notification pursuant to this regulation.

(2) If an alleged victim or potential witness does not have a personal representative, there is no need for a service provider to comply with these documentation requirements.

§ 705.6 Interview Protocols

(a) Determinations regarding appropriateness of conducting an interview.

(1) Prior to commencing an interview, an investigator must determine if the interview can be conducted in a safe and timely manner. To make this determination, an investigator may consider any relevant facts or circumstances, including: the setting where and circumstances under which the interview is to be conducted; the opinion of a service recipient's personal representative; the service recipient's diagnosis; any information received after consulting with the service recipient's licensed health professionals; information in the service recipient's files; observations of the service recipient's behavior; information obtained from service provider employees; the service recipient's capability to provide information to assist the investigation; and information obtained from engaging in preliminary inquiries with service recipients to establish that proceeding with an interview would be appropriate.

(2) A formal clinical assessment is not required prior to interviewing a service recipient.

(3) If conducting an interview of the service recipient would be clinically contraindicated, despite the provision of appropriate accommodations, the interview shall not take place, except where certain circumstances exist. These circumstances include but shall not be limited to: an investigator reasonably believes that a service recipient has information relevant to maintaining or securing the safety of service recipients; an investigator reasonably believes that failure to interview a service recipient may allow for the destruction of evidence; the delay in interviewing a service recipient may allow a subject to evade law enforcement; or an investigator has been directed to proceed with the interview after consultation with his or her supervisor. An investigator shall document in the investigative record the reason why it was appropriate to proceed with the interview under these limited circumstances.

(b) Information from a service provider.

(1) An investigator must notify a service provider if he or she will need specific information from a service provider to determine whether to proceed with an interview, including the identity of any additional service recipient witnesses for whom the service provider did not make the required notification as set forth in Section 705.5(b)(1).

(2) The service provider shall supply the Justice Center or the delegate investigatory entity with the requested information within 72 hours of receiving such notification from an investigator.

(3) The requested information may be conveyed verbally or in writing.

(c) Communication. If an investigator determines that a service recipient may have difficulty comprehending questions due to cultural or linguistic barriers, such investigator shall work with a service provider to provide the service recipient with the means to communicate with the investigator.

(d) Personal Representative Presence at an Interview.

(1) A personal representative may be permitted to accompany a service recipient who is an alleged victim or a potential witness during an interview, except under the following circumstances: the service recipient objects to the personal representative being present during the interview; or the investigator believes the presence of the personal representative would impede the investigation. Objections by a service recipient to a personal representative being present during an interview should be reviewed on an individual basis consistent with the existing standards a service provider uses to determine the ability of a service recipient to consent to services, programs and treatment.

(2) Even if the personal representative requests to be present for an interview, the request need not be honored if the confidential nature of the information that would be disclosed during the interview would preclude the personal representative's presence.

(3) If a personal representative is allowed to be present during an interview, the personal representative may not interfere with the interview. If an investigator believes that the personal representative is interfering with the interview, the investigator may take appropriate actions to stop the interview. If an investigator determines that a personal representative

should not be present or should leave an interview once it is underway, the investigator must document the rationale for such decision in the investigative record.

(4) If a personal representative cannot attend an interview in a timely manner, the service provider may provide appropriate technology to allow the personal representative to participate in the interview. This may entail the use of a conference call line or a video conference, if available. An investigator shall not be required to unreasonably delay an interview to allow for a personal representative to participate.

(e) Information for service recipients. Prior to beginning an interview with a service recipient, the investigator shall advise service recipients and/or their personal representatives about what to expect in an interview. The investigator shall explain that participation in an interview is voluntary. In addition, and as applicable, the investigator shall advise the service recipient and/or his or her personal representative about searches of the service recipient's personal property and searches of the service recipient's person for the purposes of non-criminal investigations.

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 September 27, 2015.

Text of rule and any required statements and analyses may be obtained from: Robin A. Forshaw, Justice Center for the Protection of People with Special Needs, 161 Delaware Avenue, Delmar, NY 12054, (518) 549-0200, email: Robin.Forshaw@Justice Center.ny.gov

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

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

Regulatory Impact Statement

1. Statutory Authority: Executive Law § 553(20) authorizes the Justice Center for the Protection of People with Special Needs (Justice Center) to take any actions necessary to carry out its functions, powers and duties. Executive Law § 561(6) provides that the Justice Center's Advisory Council shall advise and assist the Justice Center in developing proposed regulations to carry out its functions, powers and duties. Section 3 of Ch. 394, L.2014, requires the Justice Center to develop and promulgate regulations to carry out new protocols for interviewing service recipients, as established by that chapter.

2. Legislative Objectives: These regulations further the legislative objectives embodied in Ch. 394, L. 2014.

3. Needs and Benefits: The regulations include new requirements that must be followed when service recipients are being interviewed in connection with an investigation of an allegation of abuse or neglect that has been accepted by the Justice Center. These new requirements are embodied in protocols developed by the Justice Center, as required by Ch. 394, L. 2014, and the protocols will be implemented by these regulations.

4. Costs:

(a) Costs to the Agency and to the State and its local governments: The Justice Center will not incur significant additional costs as a result of these regulations. The regulations will impose some new requirements on providers, including State and local governments that operate programs subject to the Justice Center's jurisdiction, but it is difficult to estimate the cost impact on these entities. However, the Justice Center expects that costs to providers will be minimal. The Protection of People with Special Needs Act (PPSNA), Ch. 501, L. 2012, which created the Justice Center, already requires the reporting and investigation of alleged abuse and neglect of service recipients served by programs under the Justice Center's jurisdiction. Ch. 394, L. 2014, requires the Justice Center to develop new protocols governing investigations of these allegations, and specifically requires that this protocol contain a provision requiring that service recipients and/or their personal representatives be notified when a service recipient will be questioned or interviewed during such an investigation. The burden to provide these notifications will necessarily fall on the provider agencies, which know which service recipients are self-advocating, and which have personal representatives and who they are. There also may be minimal one-time costs associated with training of provider staff on these protocols. Moreover, Ch. 394, L. 2014, creates these new obligations, and the Justice Center is required to establish protocols to implement them.

(b) Costs to private regulated parties: It is difficult to estimate the cost impact on private regulated parties, including licensed and certified provider agencies whose programs and facilities are under the jurisdiction of the Justice Center. However, the Justice Center expects that costs to providers will be minimal, as set forth in (4)(a), above.

The Justice Center anticipates that generally any potential costs incurred will be mitigated by savings that the provider will realize from the improvements implemented by the PPSNA. The Justice Center expects and hopes that in the long term, the reforms made by the PPSNA will ultimately reduce incidents of abuse and neglect in the systems of care under the jurisdiction of the Justice Center. The Justice Center is not able to quantify the minor potential costs or the savings that might be realized by the promulgation of these amendments.

5. Local Government Mandates: There are no new requirements imposed by the rule on any county, city, town, village; or school, fire, or other special district.

6. Paperwork: The new regulations require additional paperwork to be completed by providers. This includes the need to document that the statutorily required notifications to service recipients and/or personal representatives have been made before a service recipient is interviewed or questioned in connection with an investigation of an allegation of abuse or neglect.

7. Duplication: The amendments do not duplicate any existing State or Federal requirements that are applicable to investigations of abuse or neglect of vulnerable persons.

8. Alternatives: The Justice Center considered other methods to satisfy the statutory requirements, including requiring facilities and provider agencies under the Justice Center's jurisdiction to make only a general notification, either at the time of admission of a service recipient to a facility or program, or on a periodic basis, that service recipients could be subject to being interviewed or questioned any time they witnessed or were victims of abuse or neglect. However, this alternative was deemed to provide fewer protections for the health, safety and welfare of service recipients, and the Justice Center chose instead to include in its protocols a requirement that notification be given each time that a service recipient may be interviewed or questioned. The Justice Center also considered requiring the investigator assigned to conduct the investigation to make the personal representative notification. This was determined not to be feasible for two reasons: (1) the investigator typically will not have the contact information for the personal representative, and obtaining that information would cause additional delays in completing the investigation; and (2) even after obtaining the information, the investigator would then have to make the notification and wait for a response before he or she could question a service recipient, resulting in additional delays in the investigative process. Because the law requires that investigations be completed in a timely manner (Social Services Law § 493(1)), these delays were determined to be unacceptable, in particular because they could lead to additional costs to provider agencies by increasing the length of time that staff who are the subject of investigations may be on leave.

9. Federal Standards: The amendments do not exceed any minimum standards of the federal government for the same or similar subject areas.

10. Compliance Schedule: The regulations will be effective on July 1, 2015, to ensure compliance with Ch. 394, L. 2014. The Justice Center has already developed and published the protocols implemented by these regulations, and has developed and made available to regulated parties training to assist them with compliance.

Regulatory Flexibility Analysis

1. Effect on small business: The Justice Center for the Protection of Special Needs (Justice Center) has jurisdiction to investigate or cause the investigation of abuse or neglect of vulnerable persons served by certain facilities and provider agencies licensed or certified by six State agencies: the Office for People with Developmental Disabilities (OPWDD), the Office of Mental Health (OMH), for Office of Alcoholism and Substance Abuse Services (OASAS), the Office of Children and Family Services (OCFS), the Department of Health (DOH) and the New York State Education Department (SED). The Justice Center is unable to unable to estimate the portion of these providers that may be considered to be small businesses (under 100 employees).

However, the statutorily mandated regulatory requirements included in Part 705 have been reviewed by the Justice Center in light of their impact on small businesses. The Justice Center anticipates that generally any potential costs incurred will be mitigated by savings that the provider will realize from the reforms enacted by the PPSNA. The Justice Center expects and hopes that in the long term, these reforms will reduce incidents of abuse and neglect in the systems of care under the jurisdiction of the Justice Center. The Justice Center is not able to quantify the minor potential costs or the savings that might be realized by the promulgation of these regulations. In any event, these changes are required by statute and the Justice Center considers that the improvements in protections for people with special needs will help safeguard individuals from harm and abuse; thus, the benefits more than outweigh any potential negative impact on providers.

2. Compliance requirements: The regulations add several new requirements with which providers must comply. New regulations associated with the implementation of Chapter 394 include a requirement that providers make notifications to service recipients and/or their personal representatives that a service recipient may be questioned or interviewed during an investigation of abuse or neglect, and that the fact of the notification be documented.

Current law already requires that certain personal representatives be notified when a service recipient has been the victim of abuse or neglect,

and in those cases the burden of making the additional notification required by Chapter 394 will be minimal. In other cases, where personal representative notifications are not currently required, any additional compliance activities associated with these enhanced requirements are expected to be minimal.

3. Professional services: There are not expected to be additional professional services required for small business providers as a result of these new regulatory requirements.

4. Compliance costs: There may be modest costs for small business providers associated with documenting that the newly required notifications have been made, but the Justice Center is unable to determine the cost impact. In the long term, compliance activities associated with the implementation of the PPSNA and Chapter 394 are expected to reduce future incidents of abuse or neglect, resulting in savings for providers as well as benefits to the wellbeing of individuals receiving services.

5. Economic and technological feasibility: The new requirements in Part 705 do not impose any requirements for the use of new technological processes on small business providers.

6. Minimizing adverse impact: The amendments may result in an adverse economic impact for small business providers due to additional compliance activities and associated compliance costs. However, as stated earlier, the Justice Center expects that compliance with these new regulations will result in savings in the long term.

The Justice Center has reviewed the regulations to determine if there were any viable approaches for minimizing adverse economic impact as suggested in section 202-b(1) of the State Administrative Procedure Act; no feasibly alternatives were readily identified. The Justice Center did not consider the exemption of small businesses from these amendments or the establishment of differing notification or compliance requirements since the legislation mandating this notification requirement clearly states that compliance with the new notification requirement is crucial to the health, safety, and welfare of the individuals served by small business providers.

7. Small business participation: Ch. 394, L. 2014, was not proposed by any State agency, but was introduced in the legislature and available for public review and comment before it was enacted. Providers have had the opportunity to become familiar with its provisions since it was made available on various government websites. Furthermore, drafts of the protocols that are implemented by Part 705 were shared with both State agencies impacted by them, and with some private provider agencies whose programs will be impacted by the protocols, and their comments were considered in the final version of the protocols that are now posted on the Justice Center's website. Finally, in accordance with statutory requirements, the proposed regulations to implement Chapter 394 were presented to the Justice Center's Advisory Council, which includes members from providers of services, for review and recommendations.

Rural Area Flexibility Analysis

1. Types and estimated number of rural areas: Programs serving vulnerable persons who are subject to the protections contained in Chapter 394 are present in every county in New York State. Forty-three counties have a population of less than 200,000: Allegany, Cattaraugus, Cayuga, Chautauqua, Chemung, Chenango, Clinton, Columbia, Cortland, Delaware, Essex, Franklin, Fulton, Genesee, Greene, Hamilton, Herkimer, Jefferson, Lewis, Livingston, Madison, Montgomery, Ontario, Orleans, Oswego, Otsego, Putnam, Rensselaer, St. Lawrence, Schenectady, Schoharie, Schuyler, Seneca, Steuben, Sullivan, Tioga, Tompkins, Ulster, Warren, Washington, Wayne, Wyoming and Yates. Additionally, 10 counties with certain townships have a population density of 150 persons or less per square mile: Albany, Broome, Dutchess, Erie, Monroe, Niagara, Oneida, Onondaga, Orange, and Saratoga.

The Justice Center has reviewed the regulatory requirements contained in Part 705 in light of their impact on rural areas. The regulations contain new obligations, as required by Chapter 394, with respect to conducting interviews of service recipients who are victims f, or witnesses to, abuse and neglect. These new requirement will necessitate some changes in compliance activities and may result in additional costs and savings to providers, including those in rural areas. However, the Justice Center is unable to quantify the potential additional costs and savings to providers as a result of these new requirements. In any event, the Justice Center considers that the improvements in protections for people with special needs will help safeguard individuals from harm and that the benefits more than outweigh any potential negative impacts on all providers.

The geographic location of any given program (urban or rural) will not be a contributing factor to any additional costs to providers.

2. Compliance requirements: New regulations associated with the implementation of Chapter 394 include a requirement that providers make notifications to service recipients and/or their personal representatives that a service recipient may be questioned or interviewed during an investigation of abuse or neglect, and that the fact of the notification be documented.

Current law already requires that certain personal representatives be notified when a service recipient has been the victim of abuse or neglect, and in those cases the burden of making the additional notification required by Chapter 394 will be minimal. In other cases, where personal representative notifications are not currently required, any additional compliance activities associated with these enhanced requirements are expected to be minimal.

3. Professional services: There are not expected to be additional professional services required for small business providers as a result of these new regulatory requirements.

4. Compliance costs: There may be modest costs for small business providers associated with documenting that the newly required notifications have been made, but the Justice Center is unable to determine the cost impact. In the long term, compliance activities associated with the implementation of the PPSNA and Chapter 394 are expected to reduce future incidents of abuse or neglect, resulting in savings for providers as well as benefits to the wellbeing of individuals receiving services.

5. Minimizing adverse impact: In the long term, compliance activities associated with the implementation of the PPSNA and Chapter 394 are expected to reduce future incidents of abuse or neglect, resulting in savings for providers as well as benefits to the wellbeing of individuals receiving services.

The Justice Center considered other methods to satisfy the statutory requirements, including requiring facilities and provider agencies under the Justice Center's jurisdiction to make only a general notification, either at the time of admission of a service recipient to a facility or program, or on a periodic basis, that service recipients could be subject to being interviewed or questioned any time they witnessed or were victims of abuse or neglect. However, this alternative was deemed to be less protective of the health, safety and welfare of service recipients, and the Justice Center chose instead to include in its protocols a requirement that notification be given each time that a service recipient may be interviewed or questioned. The Justice Center also considered requiring the investigator assigned to conduct the investigation to make the personal representative notification. This was determined not to be feasible for two reasons: (1) the investigator typically will not have the contact information for the personal representative, and obtaining that information would cause additional delays in completing the investigation; and (2) even after obtaining the information, the investigator would then have to make the notification and wait for a response before he or should could question a service recipient, resulting in additional delays in the investigative process. Because the law requires that investigations be completed in a timely manner (Social Services Law § 493(1)), these delays were determined to be unacceptable, in particular because they could lead to additional costs to provider agencies by increasing the length of time that staff who are the subject of investigations may be on leave.

6. Participation of public and private interests in rural areas: Ch. 394, L. 2014, was introduced in the legislature and available for public review and comment before it was enacted. Providers have had the opportunity to become familiar with its provisions since it was made available on various government websites. Furthermore, drafts of the protocols that are implemented by Part 705 were shared with State agencies impacted by them, and with some private provider agencies who run programs throughout New York State whose programs will be impacted by the protocols, and their comments were considered in the final version of the protocols that are now posted on the Justice Center's website. Finally, in accordance with statutory requirements, the proposed regulations to implement Chapter 394 were presented to the Justice Center's Advisory Council, which includes members from providers of services from throughout New York State, for review and recommendations.

Job Impact Statement

A Job Impact Statement for these amendments is not being submitted because the Justice Center does not anticipate a substantial adverse impact on jobs and employment opportunities.

The new Part 705 implements statutorily required protocols governing the process by which service recipients may be interviewed when they are victims of or witnesses to abuse or neglect. However, it is not anticipated that these reforms will negatively impact jobs or employment opportunities. The new regulatory provisions that impose new requirements on providers, such as additional notification and documentation requirements, will not result in an adverse impact on jobs. The Justice Center anticipates that there will be no effect on jobs as agencies will utilize current staff to perform the required compliance activities.

It is therefore apparent from the nature and purpose of the rule that it will not have a substantial adverse impact on jobs and employment opportunities.

Office of Mental Health

EMERGENCY RULE MAKING

Implementation of the Protection of People with Special Needs Act and Reforms to Incident Management

I.D. No. OMH-28-15-00001-E
Filing No. 547
Filing Date: 2015-06-24
Effective Date: 2015-06-24

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

Action taken: Amendment of Parts 501 and 550; Repeal of Part 524; and addition of new Part 524 to Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 7.07, 7.09 and 31.04

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

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

In December, 2012, the Governor signed the Protection of People with Special Needs Act (PPSNA). This new law created the Justice Center for the Protection of People with Special Needs (Justice Center) and established many new protections for vulnerable persons, including a new system for incident management in services operated or licensed by OMH and new requirements for more comprehensive and coordinated pre-employment background checks.

The amendment of OMH regulations is necessary to implement many of the provisions contained in the PPSNA.

The promulgation of these regulations is essential to preserve the health, safety and welfare of individuals with mental illness who receive services in the OMH system. If OMH did not promulgate regulations on an emergency basis, many of the protections established by the PPSNA vital to the health, safety and welfare of individuals with mental illness would not be implemented or would be implemented ineffectively. Further, protections for individuals receiving services would be threatened by the confusion resulting from inconsistent requirements. For example, the emergency regulations change the categories of incidents to conform to the categories established by the PPSNA. Without the promulgation of these amendments, agencies would be required to report incidents based on one set of definitions to the Justice Center and incidents based on a different set of definitions to OMH. Requirements for the management of incidents would also be inconsistent. Especially concerning regulatory requirements related to incident management and pre-employment background checks, it is crucial that OMH regulations be changed to support the new requirements in the PPSNA so that this initiative is implemented in a coordinated fashion.

For all of the reasons outlined above, this rule is being adopted on an Emergency basis until such time as it has been formally adopted through the SAPA rule promulgation process.

Subject: Implementation of the Protection of People with Special Needs Act and reforms to incident management.

Purpose: To enhance protections for people with mental illness served in the OMH system.

Substance of emergency rule: The emergency regulations are intended to conform regulations of the Office of Mental Health (OMH) to Chapter 501 of the Laws of 2012 (Protection of People with Special Needs Act or PPSNA). The primary changes include:

- 14 NYCRR Part 501 is amended by adding a new Subdivision (a) to Section 501.5, "Obsolete or Outdated References," that replaces any reference throughout OMH regulations to the Commission on Quality of Care and Advocacy for Persons with Disabilities with a reference to the Justice Center for the Protection of People with Special Needs.
- 14 NYCRR Part 524 (Incident Management) has been repealed and revised to incorporate categories of "reportable incidents" as established by the PPSNA and includes enhanced provisions regarding incident investigations. The amendments make changes related to definitions, reporting, investigation, notification and committee review of events and situations that occur in providers of mental health services licensed or operated by OMH. It is OMH's expectation that implementation of these amendments will enhance safeguards for persons with mental illness, which, in turn, will allow individuals to focus on their recovery. The amendments also require distribution of the Code of Conduct, developed by the Justice Center, to all employees. Providers must maintain signed documentation from such employees, indicating that they have received, and understand, the Code.
- Revisions to 14 NYCRR Part 550 are intended to facilitate and implement the consolidation of the criminal background check function in the Justice Center, and to make other conforming changes to the criminal background check function established by the PPSNA.

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 September 21, 2015.

Text of rule and any required statements and analyses may be obtained from: Sue Watson, NYS Office of Mental Health, 44 Holland Avenue, Albany, NY 12229, (518) 474-1331, email: regs@omh.ny.gov

Regulatory Impact Statement

1. Statutory Authority: Chapter 501 of the Laws of 2012, i.e., "The Protection of People with Special Needs Act," establishes Article 20 of the Executive Law, Article 11 of the Social Services Law, and makes a number of amendments in other statutes, including the Mental Hygiene Law.

Section 7.07 of the Mental Hygiene Law, charges the Office of Mental Health with the responsibility for seeing that persons with mental illness are provided with care and treatment, that such care, treatment, and rehabilitation are of high quality and effectiveness, and that the personal and civil rights of persons with mental illness receiving care and treatment are adequately protected.

Sections 7.09 and 31.04 of the Mental Hygiene Law grant the Commissioner of the Office of Mental Health the authority and responsibility to adopt regulations that are necessary and proper to implement matters under his or her jurisdiction.

2. Legislative Objectives: These regulatory amendments further the legislative objectives embodied in the Protection of People with Special Needs Act, as well as Sections 7.07, 7.09, and 31.04 of the Mental Hygiene Law. The amendments incorporate a number of reforms to regulations of the Office of Mental Health (OMH) in order to increase protections and improve the quality of services provided to persons receiving services from mental health providers operated or licensed by OMH.

3. Needs and Benefits: The amendments include new and modified requirements for incident management programs, codified at 14 NYCRR Part 524, and also add and revise provisions of Parts 501 and 550 to implement Chapter 501 of the Laws of 2012. Known as "The Protection of People with Special Needs Act," this new law requires the establishment of comprehensive protections for vulnerable persons, including persons with mental illness, against abuse, neglect and other harmful conduct.

The Act created a Justice Center with responsibilities for effective incident reporting and investigation systems, fair disciplinary processes, informed and appropriate staff hiring procedures, and strengthened monitoring and oversight systems. The Justice Center operates a 24/7 hotline for reporting allegations of abuse, neglect and significant incidents in accordance with Chapter 501's provisions for uniform definitions, mandatory reporting and minimum standards for incident management programs. In collaboration with OMH, the Justice Center is also charged with developing and delivering appropriate training for caregivers, their supervisors and investigators. Additionally, the Justice Center is responsible for conducting criminal background checks for applicants, including those who will be working in the OMH system.

Chapter 501 of the Laws of 2012 also created a Vulnerable Persons' Central Register (VPCR). This register contains the names of custodians found to have committed substantiated acts of abuse or neglect using a preponderance of evidence standard. All custodians found to have committed such acts have the right to a hearing before an administrative law judge to challenge those findings. Custodians having committed egregious or repeated acts of abuse or neglect are prohibited from future employment in providing services for vulnerable persons, and may be subject to criminal prosecution. Less serious acts of misconduct are subject to progressive discipline and retraining. Job applicants with criminal records who seek employment serving vulnerable persons will be individually evaluated as to suitability for such positions.

Pursuant to Chapter 501 of the Laws of 2012, the Justice Center is charged with recommending policies and procedures to OMH for the protection of persons with mental illness. This effort involves the development of requirements and guidelines in areas including but not limited to incident management, rights of people receiving services, criminal background checks, and training of custodians. In accordance with Chapter 501, these requirements and guidelines must be reflected, wherever appropriate, in OMH's regulations. Consequently, the amendments incorpo-

rate the requirements in regulations and guidelines recently developed by the Justice Center.

The amendments make changes to OMH's incident management process to strengthen the process and to provide further protection to people receiving services from harm and abuse. For example, the amendments make changes related to definitions, reporting, investigation, notification, and committee review of events and situations that occur in providers of mental health services licensed or operated by OMH. It is OMH's expectation that implementation of the amendments will enhance safeguards for persons with mental illness, which will in turn allow individuals to focus on their recovery.

4. Costs:

(a) Costs to the Agency and to the State and its local governments: OMH will not incur significant additional costs as a provider of services. While the regulations impose some new requirements on providers, OMH expects that it will comply with the new requirements with no additional staff. There may be minimal one-time costs associated with notification and training of staff.

Chapter 501 created the Justice Center, which assumes some designated functions previously performed by OMH. The Justice Center manages the criminal background check process and conducts some investigations that had previously been conducted by OMH. OMH experienced savings associated with the reduction in staff performing these functions; however, because the staff shifted to the Justice Center, the net effect is cost neutral.

There may be some minor costs associated with necessary modifications to NIMRS (the New York Incident Management Reporting System developed by OMH) to reflect Justice Center requirements.

Any costs or savings will have no impact on Medicaid rates, prices or fees. Therefore, there is no impact on New York State in its role paying for Medicaid services.

There are no costs to local governments as there are no changes to Medicaid reimbursement.

(b) Costs to private regulated parties: It is difficult to estimate the cost impact on private regulated parties; however, OMH expects that costs to providers will be minimal. OMH already requires the reporting and investigation of incidents. The implementation of these reforms in general will not result in costs. There may also be additional costs associated with the need for medical examinations in cases of alleged physical abuse or clinical assessments needed to substantiate a finding of psychological abuse. Again, OMH is not able to estimate these cost impacts. There are no costs associated with a check of the Staff Exclusion List. Other amendments made in the rule making merely clarify existing requirements or interpretive guidance, or can be implemented without cost to the provider.

OMH anticipates that generally any potential costs incurred will be mitigated by savings that the provider will realize from the improvements to the incident management process. OMH expects that in the long term, the amendments will ultimately reduce incidents and abuse in its system and increase efficiency and quality in the reporting, investigation, notification, and review of such events. OMH is not able to quantify the minor potential costs or the savings that might be realized by the promulgation of these amendments.

5. Local Government Mandates: There are no new requirements imposed by the rule on any county, city, town, village; or school, fire, or other special district.

6. Paperwork: The new regulations require additional paperwork to be completed by providers. Examples of additional paperwork are found in new requirements pertaining to reporting reportable incidents to the Justice Center and making additional notifications. However, the Justice Center will likely predominantly utilize electronic format for incident reporting.

7. Duplication: The amendments do not duplicate any existing State or Federal requirements that are applicable to services for persons with mental illness. In some instances, the regulations reiterate current requirements in New York State law.

8. Alternatives: Current definitions of incidents in OMH regulations that require reporting and investigation exceed the criteria in the new statutory definitions in Chapter 501. OMH considered reducing or eliminating requirements applying to events and situations that do not meet the criteria in the statutory definitions for "reportable incidents." However, OMH chose to propose the continuation of protections associated with these events and situations.

9. Federal Standards: The amendments do not exceed any minimum standards of the federal government for the same or similar subject areas.

10. Compliance Schedule: The regulations will be effective immediately upon filing to ensure compliance with Chapter 501 of the Laws of 2012. OMH intends thereafter to continue to develop and transmit implementation guidance to regulated parties to assist them with compliance.

Regulatory Flexibility Analysis

1. Effect on small business: OMH has determined, through its Bureau of Inspection and Certification, that approximately 732 agencies provide services which are certified or licensed by OMH. OMH is unable to estimate the portion of these providers that may be considered to be small businesses (under 100 employees).

However, the amendments have been reviewed by OMH in light of their impact on small businesses. The regulations make revisions to OMH's requirements for incident management which will necessitate some changes in compliance activities and may result in additional costs and savings to providers, including small business providers. However, OMH is unable to quantify the potential additional costs and savings to providers as a result of these amendments. In any event, these changes are required by statute and OMH considers that the improvements in protections for people served in the OMH system will help safeguard individuals from harm and abuse; thus, the benefits more than outweigh any potential negative impact on providers.

2. Compliance requirements: The regulations add several new requirements with which providers must comply. Amendments associated with the implementation of Chapter 501 include a requirement that providers report "reportable incidents" and deaths to the Justice Center. In addition, the regulations impose an obligation on providers to obtain an examination for physical injuries; however, OMH anticipates that providers are already obtaining examinations of physical injuries. While Chapter 501 also establishes an obligation to obtain a clinical assessment to substantiate a charge of psychological abuse, it is not immediately clear who will be responsible for obtaining, and paying for, that assessment.

Current OMH regulations require reporting and investigation of incidents, and that providers request criminal background checks. While the amendments incorporate some changes and reforms, the basic requirements are conceptually unchanged. OMH, therefore, expects that additional compliance activities (except as noted above) will be minimal. There is no associated cost with checking the Staff Exclusion List. The cost to check the Statewide Register of Child Abuse and Maltreatment is $25 per check; providers serving children are already incurring this cost. However, this would represent a new cost for providers who previously did not request such checks, though this cost could be passed by the provider to the applicant.

Providers subject to these regulations are already responsible for complying with incident management regulations. The regulations enhance some of these requirements, e.g., providers must comply with the new requirement to complete investigations within a 45-day timeframe. Providers must also comply with new requirements to enhance the independence of investigators and incident review committees. However, OMH expects that additional compliance activities associated with these enhanced requirements will be minimal.

3. Professional services: There may be additional professional services required for small business providers as a result of these amendments. The definition of psychological abuse references a need to determine specific impacts on an individual receiving services by means of a clinical assessment, but it is not immediately clear at what stage in the process that assessment must be maintained or who is responsible for obtaining and paying for it. The amendments will not add to the professional service needs of local governments.

4. Compliance costs: There may be modest costs for small business providers associated with these amendments. There may be nominal costs for providers to comply with the expanded notification requirements, but OMH is unable to determine the cost impact. Furthermore, providers may experience savings if the Justice Center or OMH assumes responsibility for investigations that were previously conducted by provider staff. In the long term, compliance activities associated with the implementation of these amendments are expected to reduce future incidents and abuse, resulting in savings for providers as well as benefits to the wellbeing of individuals receiving services.

5. Economic and technological feasibility: The amendments may impose the use of new technological processes on small business providers. Providers have already been reporting incidents and abuse in NIMRS, and that technology will continue to be used. However, statutory requirements to report reportable incidents to the Justice Center in the manner specified by the Justice Center may impose new technology requirements if that is the manner specified by the Justice Center. However, this is not a direct impact caused by the regulations.

6. Minimizing adverse impact: The amendments may result in an adverse economic impact for small business providers due to additional compliance activities and associated compliance costs. However, as stated earlier, OMH expects that compliance with these new regulations will result in savings in the long term and there may be some short term savings as a result of the conduct of investigations by the Justice Center.

OMH has reviewed the regulations to determine if there were any viable approaches for minimizing adverse economic impact as suggested in section 202-b(1) of the State Administrative Procedure Act; none were readily identified. However, OMH did not consider the exemption of small businesses from these amendments or the establishment of differing

compliance or reporting requirements since OMH considers compliance with the amendments to be crucial for the health, safety, and welfare of the individuals served by small business providers.

7. Small business participation: Chapter 501 of the Laws of 2012 was originally a Governor's Program Bill which received extensive media attention. Providers have had the opportunity to become familiar with its provisions since it was made available on various government websites last June. Furthermore, in accordance with statutory requirements, the rule was presented to the Mental Health Services Council for review and recommendations.

8. The amendments include a penalty for violating the regulations of a fine not to exceed $1,000 per day or $15,000 per violation in accordance with section 31.16 of the Mental Hygiene Law and/or may suspend, revoke, or limit an operating certificate or take any other appropriate action, in accordance with applicable law and regulations. However, due process is available to a provider via 14 NYCRR Part 503.

Rural Area Flexibility Analysis

1. Types and estimated number of rural areas: OMH services are provided in every county in New York State. Forty-three counties have a population of less than 200,000: Allegany, Cattaraugus, Cayuga, Chautauqua, Chemung, Chenango, Clinton, Columbia, Cortland, Delaware, Essex, Franklin, Fulton, Genesee, Greene, Hamilton, Herkimer, Jefferson, Lewis, Livingston, Madison, Montgomery, Ontario, Orleans, Oswego, Otsego, Putnam, Rensselaer, St. Lawrence, Schenectady, Schoharie, Schuyler, Seneca, Steuben, Sullivan, Tioga, Tompkins, Ulster, Warren, Washington, Wayne, Wyoming and Yates. Additionally, 10 counties with certain townships have a population density of 150 persons or less per square mile: Albany, Broome, Dutchess, Erie, Monroe, Niagara, Oneida, Onondaga, Orange, and Saratoga.

The amendments have been reviewed by OMH in light of their impact on rural areas. The regulations make revisions and in some cases enhance OMH's current requirements for incident management programs, which will necessitate some changes in compliance activities and result in additional costs and savings to providers, including those in rural areas. However, OMH is unable to quantify the potential additional costs and savings to providers as a result of these amendments. In any event, OMH considers that the improvements in protections for people served in the OMH system will help safeguard individuals from harm and abuse and that the benefits more than outweigh any potential negative impacts on all providers.

The geographic location of any given program (urban or rural) will not be a contributing factor to any additional costs to providers.

2. Compliance requirements: The regulations add some new requirements with which providers must comply. Amendments associated with the implementation of Chapter 501 include a requirement that providers report "reportable incidents" and deaths to the Justice Center. In addition, the regulations impose an obligation on providers to obtain an examination for physical injuries, and there is a requirement that, for a finding of psychological abuse to be substantiated, a clinical assessment is needed in order to demonstrate the impact of the conduct on the individual receiving services.

Current OMH regulations require reporting and investigation of incidents, and that providers request criminal background checks. While the amendments incorporate some changes, the basic requirements are conceptually unchanged. OMH therefore expects that additional compliance activities associated with these changes will be minimal. However, there will be additional compliance activities associated with checking the Staff Exclusion List.

Providers must comply with the new requirement to complete investigations within a 45-day timeframe. Providers must also comply with new requirements to enhance the independence of investigators and incident review committees. However, OMH expects that additional compliance activities will be minimal since providers are already required to comply with existing incident management program requirements; these revisions primarily enhance current requirements.

3. Professional services: There may be additional professional services required for rural providers as a result of these amendments. The amendments will not add to the professional service needs of rural providers.

4. Compliance costs: There may be modest costs for rural providers associated with the amendments. There also may be nominal costs for rural providers to comply with the expanded notification requirements. However, all providers may experience savings if the Justice Center or OMH assumes responsibility for investigations that were previously conducted by provider staff.

In the long term, compliance activities associated with the implementation of these amendments are expected to reduce future incidents and abuse, resulting in savings for both urban and rural area providers as well as benefits to the wellbeing of individuals receiving services.

5. Minimizing adverse impact: The amendments may result in an adverse economic impact for rural providers due to additional compliance activities and associated compliance costs. However, as stated earlier, OMH expects that compliance with these enhanced regulations will result in savings in the long term and there may be some short-term savings as a result of the conduct of investigations by the Justice Center.

OMH has reviewed the regulations to determine if there were any viable approaches for minimizing adverse economic impact as suggested in section 202-b(1) of the State Administrative Procedure Act; none were readily identified. However, OMH did not consider the exemption of rural area providers from the amendments or the establishment of differing compliance or reporting requirements, since OMH considers compliance with the amendments to be crucial for the health, safety, and welfare of the individuals served by rural area providers.

6. Participation of public and private interests in rural areas: Chapter 501 of the Laws of 2012 was originally a Governor's Program Bill which received extensive media attention. Providers have had the opportunity to become familiar with its provisions since it was made available on various government websites last June. Furthermore, in accordance with statutory requirements, the rule was presented to the Mental Health Services Council for review and recommendations.

Job Impact Statement

A Job Impact Statement for these amendments is not being submitted because OMH does not anticipate a substantial adverse impact on jobs and employment opportunities.

The amendments incorporate a number of reforms to improve the quality and consistency of incident management activities throughout the OMH system. However, it is not anticipated that these reforms will negatively impact jobs or employment opportunities. The amendments that impose new requirements on providers, such as additional reporting requirements and the timeframe for completion of investigations, will not result in an adverse impact on jobs. OMH anticipates that there will be no effect on jobs as agencies will utilize current staff to perform the required compliance activities.

Chapter 501 of the Laws of 2012 and these implementing regulations will also mean that some functions that are currently performed by OMH staff will instead be performed by the staff of the Justice Center. OMH expects that the volume of incidents and occurrences investigated will be roughly similar. To the extent that the Justice Center performs investigations, oversees the management of reportable incidents, and manages requests for criminal history record checks, the result is expected to be neutral in that positions lost by OMH will be gained by the Justice Center.

It is therefore apparent from the nature and purpose of the rule that it will not have a substantial adverse impact on jobs and employment opportunities.

Public Service Commission

NOTICE OF ADOPTION

Allowing the Use of the Quadlogic S-10T Residential Smart Meter in Residential Submetering Applications

I.D. No. PSC-13-15-00025-A

Filing Date: 2015-06-24

Effective Date: 2015-06-24

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

Action taken: On 6/17/15, the PSC adopted an order allowing Quadlogic Controls Corporation to use the Quadlogic S-10T Residential Smart Meter in New York State to monitor electric flow in residential submetering applications.

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

Subject: Allowing the use of the Quadlogic S-10T Residential Smart Meter in residential submetering applications.

Purpose: To allow the use of the Quadlogic S-10T Residentail Smart Meter in residential submetering applications.

Substance of final rule: The Commission, on June 17, 2015, adopted an order approving the petition of Quadlogic Controls Corporation allowing the use of the Quadlogic S-10T Residential Smart Meter in New York State to monitor electric flow in residential submetering applications, 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 Com-

mission, 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.

(15-E-0125SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Modification of a Commission Order in Case 14-W-0307

I.D. No. PSC-28-15-00005-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 whether to grant Forever Wild Water Company, Inc.'s request to modify the terms of the Order in Case 14-W-0307 and the terms of Escrow Account Statement No. 2 to P.S.C. No. 3—Water.

Statutory authority: Public Service Law, section 89-b and 89-c

Subject: Modification of a Commission Order in Case 14-W-0307.

Purpose: To grant or deny, in whole or in part, Forever Wild Water Company, Inc.'s request to modify the terms of a Commission Order.

Substance of proposed rule: The Commission is considering whether to approve, modify or reject, in whole or in part, the petition of Forever Wild Water Company, Inc. requesting that the Order in Case 14-W-0307 and the terms of the Escrow Account Statement No. 2 to P.S.C. No. 3 – Water attached to the Order be modified to remove the requirement that the escrow account be "interest-bearing" and to allow the escrow account funds to be used "to cover the cost of emergency and extraordinary repairs and/or plant replacements" as previously approved by Order in Case 08-W-0555. The Commission may consider other related issues.

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, 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-W-0307SP2)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Minor Electric Rate Filing of Mohawk Municipal Commission

I.D. No. PSC-28-15-00006-P

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

Proposed Action: The Public Service Commission is considering whether to approve, reject or modify, in whole or in part, a proposal by the Mohawk Municipal Commission increase its delivery revenues and to make other changes to its rates, charges, rules and regulations.

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

Subject: Minor electric rate filing of Mohawk Municipal Commission.

Purpose: Whether to increase Mohawk Municipal Commission's annual electric revenues by approximately $113,119 or 13.74%.

Substance of proposed rule: The Commission is considering whether to approve, modify or reject, in whole or in part, proposed tariff amendments filed by Mohawk Municipal Commission to P.S.C. No. 2 – Electricity by which it would increase its annual electric revenues by approximately $113,119 or 13.74%. Under the proposal, the monthly bill of a residential customer using 750 kilowatt-hours of electricity would increase from $34.22 to approximately $37.60 or 9.88%. The proposed amendments have an effective date of December 1, 2015. The Commission may also consider other related matters.

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

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

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

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

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

(15-E-0364SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Financing Proposed by Crestwood Pipeline East, LLC

I.D. No. PSC-28-15-00007-P

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

Proposed Action: The Commission is considering Crestwood Pipeline East, LLC petition to increase its authorized financing limit from $3 billion to $4.5 billion.

Statutory authority: Public Service Law, section 69

Subject: Financing proposed by Crestwood Pipeline East, LLC.

Purpose: To consider the financing proposed by Crestwood Pipeline East, LLC.

Substance of proposed rule: The Public Service Commission is considering a petition filed on June 12, 2015 by Crestwood Pipeline East, LLC requesting approval, pursuant to Public Service Law (PSL) Section 69, to increase its authorized financing limit from $3 billion to $4.5 billion. The Commission may adopt, reject or modify, in whole or in part, the relief proposed and may resolve related matters.

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

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

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

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

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

(15-G-0321SP1)

Department of State

EMERGENCY/PROPOSED RULE MAKING HEARING(S) SCHEDULED

Installation of Carbon Monoxide Detecting Devices in Commercial Buildings

I.D. No. DOS-28-15-00004-EP
Filing No. 556
Filing Date: 2015-06-26
Effective Date: 2015-06-27

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

Proposed Action: Addition of section 1228.4 to Title 19 NYCRR.

Statutory authority: Executive Law, sections 377(1), 378(5-d) and 376(5)

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

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

This rule amends the State Uniform Fire Prevention and Building Code (Uniform Code). The Uniform Code is a fire prevention and building code adopted by the State Fire Prevention and Building Code Council (Code Council) pursuant to Article 18 of the Executive Law. The Uniform Code is applicable in all parts of the State except New York City.

Executive Law § 378 sets forth standards which the Uniform Code shall address. Chapter 541 of the Laws of 2014 amended Executive Law § 378 by adding a new subdivision 5-d. New subdivision 5-d provides that the Uniform Code must include "[s]tandards for installation of carbon monoxide detecting devices requiring that the owner of every building that contains one or more restaurants and the owner of every commercial building in the state shall have installed in such building and shall maintain operable carbon monoxide detecting device or devices of such manufacture, design and installation standards as are established by the [Code Council]. Carbon monoxide detecting devices shall only be required if the restaurant or commercial building has appliances, devices or systems that may emit carbon monoxide or has an attached garage."

This rule amends 19 NYCRR Part 1228 (entitled "Additional Uniform Code Provisions") by adding a new section 1228.4 (entitled "Carbon Monoxide Detection in Commercial Buildings"). New section 1228.4 implements subdivision 5-d of Executive Law § 378. Specifically, section 1228.4 requires the installation of carbon monoxide detecting devices (carbon monoxide alarms or a carbon monoxide detection system) in every commercial building (including every building that contains one or more restaurants) if such building contains a carbon monoxide source, contains a garage or other motor-vehicle-related occupancy and/or is attached to a garage or other motor-vehicle-related occupancy. Section 1228.4 also establishes the manufacture, design, and installation standards for such carbon monoxide detecting devices.

Adoption of this rule on an emergency basis is necessary to protect public safety because the absence of carbon monoxide detection devices in nonresidential occupancies has contributed to instances of illness and death among patrons and employees. The Memorandum in Support of the bill enacting Executive Law § 378(5-d) states that while New York State one- and two-family homes and apartments are required to be equipped with carbon monoxide detectors, restaurants and other businesses are not. This failure to mandate carbon monoxide detectors in commercial buildings has contributed to cases of illness and death among patrons and employees. The Memorandum in Support of the companion bill, which amended the New York City administrative code to require carbon monoxide detection in restaurants and other commercial buildings in New York City, references the 2014 carbon monoxide leak that tragically killed a Long Island restaurant manager and sickened nearly 30 people. The carbon monoxide poisoning in this incident came from a malfunctioning water heater flue pipe in the basement of the establishment.

Carbon monoxide is an invisible, odorless gas that is generated by the incomplete combustion of carbonaceous fuels such as fuel oil, natural gas, kerosene and wood. In non fire situations, elevated carbon monoxide levels may be caused by improperly installed or maintained fuel fired appliances, motor vehicles operated in enclosed garages, or appliances intended for outdoor use being used indoors during power failures. As carbon monoxide is not detectable by the senses, its presence and concentration can only be determined by instruments such as carbon monoxide detection systems.

By requiring that restaurants and commercial buildings follow the same standards as residences, the Legislature demonstrates that its objectives are to reduce the number of deaths and injuries caused by carbon monoxide poisoning, and to provide safer environments for customers and employees.

At its meeting held on May 15, 2015, the Council determined 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 and general welfare because:

(1) Executive Law § 378 (5-d), as added by Chapter 541 of the Laws of 2014, provides that the Uniform Code must contain provisions requiring the installation of carbon monoxide detecting devices in every building that contains one or more restaurants and every commercial building;

(2) Executive Law § 378 (5-d) becomes effective on June 27, 2015;

(3) the May 15, 2015 meeting of the Code Council is the last meeting of the Code Council scheduled to be held prior to June 27, 2015; and

(4) adopting this rule on an emergency basis at the May 15, 2015 meeting of the Code Council, and making this rule effective immediately upon the filing of the Notice of Emergency Adoption and Proposed Rule Making (or on some other date between the date of such filing and June 27, 2015), are necessary to assure that the Uniform Code will include the provisions contemplated by subdivision 5-d of Executive Law § 378 by the effective date of that subdivision.

Subject: Installation of carbon monoxide detecting devices in commercial buildings.

Purpose: To amend the State Uniform Fire Prevention and Building Code (Uniform Code) by adding standards requiring the installation of carbon monoxide detecting devices in every commercial building.

Public hearing(s) will be held at: 10:00 a.m., Aug. 31, 2015 at Department of State, Room 505, 99 Washington Ave, 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 will add a new section 1228.4 to Part 1228 of 19 NYCRR. Section 1228.4 will be part of the State Uniform Fire Prevention and Building Code (the Uniform Code). The provisions of new section 1228.4 (to be entitled "Carbon Monoxide Detection in Commercial Buildings") are summarized as follows:

Subdivision (a) ("Introduction") introduces the new section, which will implement standards and requirements regarding carbon monoxide ("CO") detection in certain new and existing commercial.

Subdivision (b) ("Definitions") defines certain terms used in section 1228.4, including:

CARBON MONOXIDE SOURCE (defined as "any appliance, equipment, device or system that may emit carbon monoxide (including, but not limited to, fuel fired furnaces; fuel fired boilers; space heaters with pilot lights or open flames; kerosene heaters; wood stoves; fireplaces; and stoves, ovens, dryers, water heaters and refrigerators that use gas or liquid fuel), garages, and other motor vehicle related occupancies");

CARBON MONOXIDE-PRODUCING HVAC SYSTEM (defined as "a system that uses ducts to provide heat, ventilation and/or air-conditioning to all or any part of a commercial building, provided that (i) such ducts run from a carbon monoxide source to the classroom(s) and/or detection zone(s) served by such system and/or (ii) such system is supplied with recirculated or makeup air from a classroom or detection zone that contains a carbon monoxide source");

CLASSROOM (defined as "a room or area that (i) is located in a school, (ii) is a place where classes are taught, and (iii) is occupied or capable of being occupied by six or more persons (including students and teachers) at any one time. For the purposes of this definition, the term 'school' means any building used, in whole or in part, for educational purposes, including but not limited to a building classified, in whole or in part, as Educational Group E under Chapter 3 of the 2010 BCNYS. The term 'school' includes public schools and private schools, including but not limited to religious schools. However, the term 'school' does not include a school attended only by students above the 12th grade");

COMMERCIAL BUILDING (defined as "any new or existing building that is not a one-family dwelling, a two-family dwelling, or a building containing only townhouses");

DETECTION ZONE (defined as a story of a commercial building,

subject to the following exceptions: (i) if a story is arranged so that two or more separate carbon monoxide-producing HVAC systems are used to serve separate portions of the story, each such portion of the story shall be deemed to be a separate detection zone; (ii) if a story contains one or more classrooms, each classroom shall be deemed to be a separate detection zone and the portion, if any, of the story that is not a classroom shall be deemed to be a separate detection zone; (iii) if a portion of a story is used as a garage, the portion used as a garage shall not be deemed to be a detection zone and the portion not used as a garage shall be deemed to be a detection zone; and (iv) if an entire story is used as a garage, such story shall not be deemed to be a detection zone);

EXISTING COMMERCIAL BUILDING (defined as a commercial building that was constructed prior to December 31, 2015[1]); and

NEW COMMERCIAL BUILDING (defined as a commercial building that is not an existing commercial building).

Subdivision (c) ("Commercial buildings required to have carbon monoxide detection") provides that as a general rule, CO detection must be provided in every commercial building that (i) contains any CO source and/or (ii) is attached to a garage and/or (iii) is attached to any other motor-vehicle-related occupancy. These requirements shall apply without regard to whether such commercial building is an existing commercial building or a new commercial building and without regard to whether such commercial building shall or shall not have been offered for sale. However, CO detection shall not be required in a (1) commercial building that is classified, in its entirety, in Storage Group S or Utility and Miscellaneous Group U under Chapter 3 of the 2010 Building Code of New York State (the 2010 BCNYS) and occupied only occasionally and only for building or equipment maintenance, or (2) a commercial building that is a "canopy" (as that term is defined in the 2010 Fire Code of New York State).

Subdivision (d) ("Detection zones required to be provided with carbon monoxide detection") specifies the detection zones where carbon monoxide detection must be provided. In general, CO detection is required in each detection zone in which at least one "triggering condition" exists.

"Triggering Condition 1" is the presence of any CO source in the detection zone.

"Triggering Condition 2" is the presence in a detection zone of a duct opening or other outlet from a CO-producing HVAC system (provided, however, that the presence of such a duct opening or outlet in a detection zone is not a "triggering condition" for such detection zone if (a) CO detection is provided in the first room or area served by each main duct leaving the CO source in such CO-producing HVAC system and (b) the signals from the carbon monoxide detection equipment in the first room or area served by each such main duct are automatically transmitted to an approved location).

"Triggering Condition 3" is the presence of a garage or other motor-vehicle-related occupancy in location that is adjacent to a detection zone (subject to certain exceptions stated in the full Text of the rule).

If a detection zone (other than a classroom) that would otherwise require CO detection has ambient conditions that would, under normal conditions and with all required ventilation and exhaust systems installed and operating properly, activate CO detection devices, CO detection shall not be required in that detection zone provided that an alternative safety plan for the commercial building in which such detection zone is located shall have been approved by the authority having jurisdiction and implemented.

If a detection zone (other than a classroom) that would otherwise require CO detection is "open" (without sidewalls or drops) on 50 percent or more of its perimeter, and there is no occupiable area within such detection zone that is not open on 50 percent or more of its perimeter, CO detection shall not be required in that detection zone.

Subdivision (e) ("Placement of carbon monoxide detection") specifies that places within a detection zone where the CO detection devices must be located. In the case of a detection zone having an area less than 10,000 square feet, the CO detection must be placed in a central location within such detection zone. In the case of a detection zone having an area 10,000 square feet or larger, CO detection must be placed in a central location within such detection zone and at such additional locations within such detection zone as may be necessary to assure that no point in the detection zone is more than 100 feet from CO detection. In certain cases (more fully described in the full Text of the rule), the additional CO detection will not be required in a detection zone that is 10,000 square feet or larger.

Subdivision (f) ("Detection equipment") provides that CO detection shall be provided by CO alarms complying with subdivision (g) or a CO detection system complying with subdivision (h).

Subdivision (g) ("Carbon monoxide alarms") specifies specifications for CO alarms. In general, CO alarms must be hard-wired, with a battery backup. However, battery-powered CO alarms (powered by a 10-year battery) will be allowed in existing commercial building and in commercial buildings without commercial electric power. In either case, CO alarms must be listed in accordance with Underwriters Laboratory (UL) 2034. Combination CO / smoke alarms shall not be deemed to satisfy the requirements of this section 1228.4.

In new commercial buildings, where a CO alarm is installed in a normally unoccupied detection zone, such CO alarm must be interconnected with a CO alarm that is placed in an adjacent and normally occupied detection zone. A sign that identifies and describes the location of each normally unoccupied detection zone that contains any such interconnected CO alarm must be placed in the proximity of each CO alarm installed in a normally occupied detection zone.

CO alarms must be installed in the locations specified in subdivisions (d) and (e) of section 1228.4.

In general, CO alarms must be installed, operated, and maintained in accordance with the manufacturer's instructions. However, in the event of a conflict between the manufacturer's instructions and the provisions of section 1228.4, the provisions of this section 1228.4 shall control.

Subdivision (h), "Carbon monoxide detection systems," specifies requirements for CO detection systems. CO detection systems must comply with National Fire Protection Association (NFPA) 720. CO detectors shall be listed in accordance with UL 2075.

The CO detectors must be installed in the locations specified in subdivisions (d) and (e) of section 1228.4. In the event of a conflict between the CO detector location requirements specified in subdivisions (d) and (e) and the CO detector location requirements specified in NFPA 720, the location requirements specified in subdivisions (d) and (e) of section 1228.4 shall control.

Combination CO / smoke detectors will be permitted in CO detection systems, provided such combination detectors are listed in accordance with UL 2075 and UL 268.

Notification appliances in CO detection systems must comply with NFPA 720. Notification appliances shall be provided in the locations specified in NFPA 720 or, in the alternative, in the locations specified in subdivisions (d) and (e) and paragraph (4) of subdivision (g) of section 1228.4 as the required locations for CO detection.

The power source for CO detection systems must comply with NFPA 720.

Subdivision (i) ("Additional requirement in Group E occupancies") provides that in a new commercial building that (i) has an occupant load of 31 or more and (ii) is classified, in whole or in part, as Educational Group E under Chapter 3 of the 2010 BCNYS, CO alarm signals shall be automatically transmitted to an approved on-site location that is normally staffed by school personnel during normal school hours.

Subdivision (j) ("Maintenance") provides that CO alarms and CO detection systems must be maintained in accordance with NFPA 720, and that CO alarms and CO detectors that become inoperable or begin producing end-of-life signals must be replaced as soon as practicable.

Subdivision (k) ("Connection of carbon monoxide detection systems to control units and off-premises signal transmission") provides that CO detection systems shall be connected to control units and off-premises signal transmission. All CO detection systems installed in accordance with subdivision (h) of section 1228.4 shall have off-premises signal transmission in accordance with NFPA 720. All CO detection systems in new commercial buildings that are required by section 903 or section 907 of the 2010 Fire Code of New York State to have a fire alarm control panel installed shall have off-premises signal transmission in accordance with NFPA 720. CO detection systems shall not activate a fire signal to a fire alarm control panel. CO detection systems shall not activate any notification appliance that announces a fire alarm or any other alarm that is not distinctive from a fire notification as required by NFPA 72. Where notification of CO detection system is permitted to be transmitted to approved locations, at least one approved notification appliance shall be provided within every building that transmits a signal to an approved location.

Subdivision (l) ("Other Uniform Code provisions relating to carbon monoxide detection") provides that section 1228.4 does not repeal, override, modify or otherwise affect any other provision of the Uniform Code (including but not necessarily limited to section R313.4 of the 2010 RCNYS and section 610 of the 2010 FCNYS) that requires CO detection in any class of buildings, and that any building that is or becomes subject to any such other provision must comply with such other provision. Subdivision (l) further provides that in the case of a building that (1) is subject to section R313.4 of the 2010 RCNYS or section 610 of the 2010 FCNYS and (2) is also a "commercial building" that is subject to section 1228.4 (a "mixed use building") must comply with the requirements of section R313.4 of the 2010 RCNYS or section 610 of the 2010 FCNYS, as applicable, and, in addition, shall comply with the requirements of section 1228.4. However, duplicative CO detection shall not be required, and if an area in a mixed use building is provided CO detection in accordance with the requirements of section R313.4 of the 2010 RCNYS or section 610 of the 2010 FCNYS, as applicable, such area need not be provided with additional CO protection under this section 1228.4.

Subdivision (m) ("Interconnection in mixed used buildings") provides that in the case of a new "mixed use building," the CO detection required

by section 1228.4 must be interconnected with the CO detection required by section R313.4 of the 2010 RCNYS or section 610 of the 2010 FCNYS, as applicable.

Subdivision (n) ("Incorporation by reference") provides for the incorporation by reference of the 2010 BCNYS, the 2010 FCNYS, and NFPA 720 in section 1228.4.

Subdivision (o) ("Effective date") provides that section 1228.4 will take effect on June 27, 2015.

Subdivision (p) ("Transition period") establishes a transition period (June 27, 2015 to June 27, 2016); provides that owners of existing commercial buildings are encouraged to install carbon monoxide detection as quickly as practicable; provides that the owner of an existing commercial building shall not be deemed to be in violation of section 1228.4 if the owner provides the authority having jurisdiction with a written statement certifying that such owner is attempting in good faith to install carbon monoxide detection that complies with the requirements of this section 1228.4 in such owner's existing commercial building as quickly as practicable; and provides that carbon monoxide detection that satisfies the requirements of section 1228.4 must be installed and must be fully operational in all existing commercial buildings by the end of the transition period.

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[1] A commercial building shall be deemed to have been constructed prior to December 31, 2015 (and, therefore, to be an existing commercial building) if (i) the original construction of such commercial building was completed prior to December 31, 2015 or (ii) the complete application for the building permit for the original construction of such commercial building was filed prior to December 31, 2015.

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 September 23, 2015.

Text of rule and any required statements and analyses may be obtained from: Mark Blanke, NYS Department of State, 99 Washington Ave., Albany, NY 12231-0001, (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: 1. Executive Law § 378(15)(a)

On May 15, 2015, the State Fire Prevention and Building Code Council (Code Council) approved a rule amending the State Uniform Fire Prevention and Building Code (Uniform Code) by adding a new section 1228.4 to Part 1228 of Title 19 NYCRR. New section 1228.4 requires the installation of carbon monoxide detection in all commercial buildings and implements subdivision 5-d of Executive Law § 378, as added by Chapter 541 of the Laws of 2014. Subdivision 5-d becomes effective on June 27, 2015, and new section 1228.4 becomes effective on June 27, 2015.

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 [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 May 15, 2015, the Code Council found and determined that:

(1) adoption of this rule on an emergency basis, as authorized by section 202 of the State Administrative Procedure Act, is required to preserve public safety and general welfare because Executive Law § 378 (5-d), as added by Chapter 541 of the Laws of 2014, provides that the Uniform Code must contain provisions requiring the installation of carbon monoxide detecting devices in every commercial building and every building that contains one or more restaurants. Executive Law § 378 (5-d) becomes effective on June 27, 2015; the May 15, 2015 meeting of the Code Council is the last meeting of the Code Council scheduled to be held prior to June 27, 2015. Adopting this rule on an emergency basis at the May 15, 2015 meeting of the Code Council is necessary to assure that the Uniform Code will include the provisions contemplated by subdivision 5-d of Executive Law § 378 by the effective date of that subdivision; and

(2) making this rule effective immediately upon the filing of the Notice of Emergency Adoption and Proposed Rule Making, as authorized by Executive Law § 378 (15)(a), is required to protect health, safety and security because, in the absence of such a finding and determination, the amendment of the Uniform Code to be implemented by this rule would not become effective until 90 days after publication of the Notice of Emergency Adoption and Proposed Rule Making and, for the reasons stated above, this rule must become effective no later than June 27, 2015.

2. Executive Law § 377(1)

New section 1228.4 of Part 1228 of Title 19 NYCRR, as adopted by the Code Council, included subdivisions (a) to (o), inclusive. Executive Law § 377(1) provides that the Secretary of State (the Secretary) must review each amendment of the Uniform Code adopted by the Code Council to insure that it effectuates the purposes of Article 18 of the Executive Law, and that the Secretary must approve such amendment prior to its becoming effective.

The Legislature has declared that it shall be the public policy of the State of New York to encourage local governments to exercise their full powers to administer and enforce the Uniform Code. See Executive Law § 371(2)(d).

The Secretary has reviewed the amendment of the Uniform Code to be implemented by this rule and finds that the addition of provisions requiring owners of commercial buildings to install carbon monoxide detecting devices effectuates the purposes of Article 18 of the Executive Law. The Secretary finds that making such provisions effective on June 27, 2015 also effectuates the purposes of Article 18 of the Executive Law.

However, based on comments received from owners of public and private commercial buildings after the date on which the Code Council voted to approve the provisions to be added by this rule, the Secretary finds that it is not reasonable to expect the owners of all commercial buildings in this State to install carbon monoxide detection that complies with the requirements of new section 1228.4 in their buildings prior to the June 27, 2015 effective date of this rule. The Secretary also finds that approving this rule without the addition of a provision establishing a reasonable transition period would put local governments (and other governmental units and agencies) responsible for administration and enforcement of the Uniform Code in the untenable position of being directed and encouraged to enforce the Uniform Code, including the provisions to be added by this rule, despite the fact that owners of commercial buildings will be unable to comply with the provisions to be added by this rule because of circumstances beyond their reasonable control.

Based on the foregoing, the Secretary finds that, in order to insure that new section 1228.4 of the Uniform Code effectuates the purposes of Article 18 of the Executive Law and the public policy set forth in Executive Law § 371(2)(d), it is necessary to add provisions establishing a transition period to new section 1228.4.

The Code Council is not scheduled to meet again prior to the effective date of new section 1228.4. However, Executive Law § 376(5) authorizes and directs the Secretary to do all things necessary or desirable to further and effectuate the general purposes and specific objectives of Article 18 of the Executive Law.

Accordingly, pursuant to Executive Law § 376(5), the Secretary has adopted an amendment of the rule text as approved by the Code Council at its May 15, 2015 meeting. Such amendment adds a new subdivision (p), to read as follows:

(p) Transition period. In this section 1228.4, the term "transition period" means the period between the effective date of this section (June 27, 2015) and June 27, 2016.

(1) Owners of existing commercial buildings are encouraged to install carbon monoxide detection that complies with the requirements of this section 1228.4 in their buildings as quickly as practicable.

(2) The owner of an existing commercial building shall not be deemed to be in violation of this section 1228.4 during the transition period if such owner provides to the authority having jurisdiction a written statement certifying that such owner is attempting in good faith to install carbon monoxide detection that complies with the requirements of this section 1228.4 in such owner's existing commercial building as quickly as practicable.

(3) The owners of all existing commercial buildings shall be required to have carbon monoxide detection that complies with the requirements of this section 1228.4 fully installed and fully operational by the end of the transition period.

Pursuant to Executive Law § 377(1), the Secretary finds that the rule approved by the Code Council, as amended by the addition of the foregoing subdivision (p), effectuates the purposes of Article 18 of the Executive Law, and the Secretary approves the rule approved by the Code Council, as amended by the addition of the foregoing subdivision (p).

New section 1228.4, including the foregoing subdivision (p), shall become effective on June 27, 2015.

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

Summary of Regulatory Impact Statement

This rule amends the State Uniform Fire Prevention and Building Code (Uniform Code) by adding a new section 1228.4 to 19 NYCRR Part 1228 (Additional Uniform Code Provisions). New section 1228.4 (entitled "Carbon Monoxide Detection in Commercial Buildings") requires the installation of carbon monoxide detecting devices in every commercial building (including but not limited to every building containing one or more restaurants) if such building has an attached garage or contains any appliance, equipment, device or system that may emit carbon monoxide.

1. STATUTORY AUTHORITY.

This rule is authorized by Executive Law § 377(1), which authorizes the State Fire Prevention and Building Code Council (Code Council) to amend the Uniform Code from time to time, and by new subdivision (5-d) of Executive Law § 378, as added by Chapter 541 of the Laws of 2014. New subdivision (5-d) provides that the Uniform Code must include "standards for installation of carbon monoxide detecting devices requiring that the owner of every building that contains one or more restaurants and the owner of every commercial building in the state shall have installed in such building and shall maintain operable carbon monoxide detecting device or devices of such manufacture, design and installation standards as are established by the [Code Council]. Carbon monoxide detecting devices shall only be required if the restaurant or commercial building has appliances, devices or systems that may emit carbon monoxide or has an attached garage."

Subdivision (p) of new section 1228.4 added by this rule is authorized by Executive Law § 377(1), which provides that the Secretary of State (the Secretary) must review each amendment of the Uniform Code adopted by the Code Council to insure that it effectuates the purposes of Article 18 of the Executive Law, and that the Secretary must approve such amendment prior to its becoming effective; and by Executive Law § 376(5), which authorizes and directs the Secretary to do all things necessary or desirable to further and effectuate the general purposes and specific objectives of Article 18 of the Executive Law.

2. LEGISLATIVE OBJECTIVES.

Under current New York law, one and two family dwellings and apartments must be equipped with carbon monoxide detectors, but no such requirement exists for restaurants and commercial buildings. The absence of detection devices in nonresidential occupancies has contributed to instances of illness and death among patrons and employees. Chapter 541 of the Laws of 2014 amended Executive Law § 378 to require that the Uniform Code include standards for carbon monoxide detection in commercial buildings and every building that contains one or more restaurants. By requiring that restaurants and commercial buildings follow the same standards as residences, the Legislature demonstrates that its objectives are to reduce the number of deaths and injuries caused by carbon monoxide poisoning, and to provide safer environments for customers and employees.

3. NEEDS AND BENEFITS.

Carbon monoxide is an invisible, odorless gas that is generated by the incomplete combustion of carbonaceous fuels such as fuel oil, natural gas, kerosene and wood. In non fire situations, elevated carbon monoxide levels may be caused by improperly installed or maintained fuel fired appliances, motor vehicles operated in enclosed garages, or appliances intended for outdoor use being used indoors during power failures. As carbon monoxide is not detectable by the senses, its presence and concentration can only be determined by instruments such as carbon monoxide detection systems.

According to the United States Consumer Product Safety Commission, "on average, about 170 people in the United States die every year from CO produced by non-automotive consumer products.

According to the Center for Disease Control and Prevention, there were 68,316 non-fire-related CO exposures reported to poison centers between the years 2000 and 2009. (The Center for Disease Control and Prevention, Carbon Monoxide Exposures United States, 2000-2009, August 5, 2011, http://www.cdc.gov/mmwr/preview/ mmwrhtml/mm6030a2.htm.)

The Memorandum in Support of the bill enacting Executive Law § 378(5-d) states that the failure to mandate carbon monoxide detectors in commercial buildings has contributed to cases of illness and death among patrons and employees.

This rule implements Executive Law § 378(5-d) by requiring the installation of CO detecting devices in commercial buildings.

4. COSTS.

Cost to regulated parties.

Regulated parties (owners of new and existing commercial buildings that [1] contain one or more carbon monoxide sources and/or [2] contain a garage or other motor-vehicle related occupancy and/or [3] are attached to a garage or other motor-vehicle-related occupancy) will be required to install carbon monoxide detection (carbon monoxide alarms or carbon monoxide detection systems) in the places specified in this rule, to maintain those carbon monoxide alarms or carbon monoxide detection systems, and to replace those carbon monoxide alarms or carbon monoxide detection systems when they cease to operate as intended.

In each commercial building where carbon monoxide detection is required, such detection must be located in each "detection zone" that contains a carbon monoxide source, is served by an HVAC system that includes a carbon monoxide-producing component, or is adjacent to a garage or other motor-vehicle-related occupancy. In general, each story in a commercial building will be a "detection zone."

Costs to regulated parties for compliance with this rule will vary depending on the size of such building, the number of carbon monoxide sources within the buildings, the wiring within the building, and the type of carbon monoxide detection (carbon monoxide alarms or a carbon monoxide detection system) the owner chooses to provide. The Department estimates that battery-powered carbon monoxide alarms cost approximately $50 (including installation costs). When carbon monoxide alarms are installed in new commercial buildings, the alarms must be hard-wired units with battery backup. The Department estimates that the total cost purchasing and installing hard-wired carbon monoxide alarms with battery backup will be approximately $125 per unit. Lastly, this rule will permit installation of a carbon monoxide detection system in lieu of carbon monoxide alarms. The total cost of purchasing and installing one detector and one notification appliance (a necessary component of the carbon monoxide detection system) will be approximately $348. In addition, a carbon monoxide detection system requires a control unit. The Department estimates that the cost of purchasing and installing a carbon monoxide detection system control unit will be approximately $1,100.

This rule will provide that carbon monoxide alarms and carbon monoxide detection systems must be maintained in an operative condition at all times, shall be replaced or repaired where defective, and shall be replaced when they cease to operate as intended. The on-going costs of complying with this rule will include the cost of maintaining carbon monoxide alarms and carbon monoxide detection systems in operative condition.

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

The Department anticipates that neither the Department nor the State nor the local governments in the State will incur any significant costs for the implementation or continued administration of this rule, except as follows:

First, the Department will provide instruction and technical assistance regarding new section 1228.4 and its requirements to code enforcement officials and to regulated parties. The Department anticipates that it will be able to use its existing staff to perform these functions.

Second, cities, towns, villages, counties, and State agencies responsible for administration and enforcement of the Uniform Code will be required (1) to see that their code enforcement personnel receive training on new section 1228.4 and its requirements, and (2) to enforce these new provisions.

Third, the State, which owns commercial buildings, as well as any local government that owns one or more commercial buildings, will be subject to the new requirements to be imposed by new section 1228.4 and will be required to comply with those requirements. In this context, the State and any local government that owns commercial buildings will be regulated parties, and will incur compliance costs similar to those discussed above for other regulated parties.

5. PAPERWORK.

This rule will require carbon monoxide detection systems to comply with the Standard for the Installation of Carbon Monoxide (CO) Detection and Warning Equipment, published by the National Fire Protection Association (NFPA 720). If a regulated party elects to install a CO detection system in lieu of CO alarms, such system must comply with NFPA 720. A small business or local government that elects to install a CO detection system will be required to comply with the reporting and recordkeeping requirements specified in NFPA 720 Sections 4.5.1.2, 4.5.2.3, 8.3, 8.5, 8.9, and 8.9.2. NFPA 720 provides standardized forms to be used for this recordkeeping.

6. LOCAL GOVERNMENT MANDATES.

This rule will impose no new programs, services, duties and responsibilities upon Local Governments, except as follows:

First, any Local Government that owns any existing commercial building or constructs any new commercial building will be required to install carbon monoxide alarm(s) or a carbon monoxide detection system in such building.

Second, cities, towns, villages, and counties charged by Executive Law Section 381 with the responsibility of administering and enforcing the Uniform Code will be required to enforce the provisions of new section 1228.4. Such cities, towns, villages, and counties will be required to see that their code enforcement personnel receive training on new section 1228.4.

7. DUPLICATION.

This rule does not duplicate, overlap or conflict with any other legal requirement of the Federal or State government known to the Department.

8. ALTERNATIVES.

The rule does not permit the use of plug in units or battery-powered carbon monoxide alarms in new commercial buildings. The Department considered the alternative of allowing the use of battery-powered carbon monoxide alarms in new commercial buildings. This alternative was rejected because the Department determined that the additional cost associated with requiring hard-wired carbon monoxide alarms in new buildings was minimal (compared to the additional cost associated with requiring hard-wired alarms in existing buildings).

The rule permits a building owner to choose between installing carbon monoxide alarms or a carbon monoxide detection system. The Department considered the alternative of requiring the installation of a carbon monoxide detection system in all commercial buildings. This alternative was rejected because it would unnecessarily increase the cost of bringing commercial buildings, particularly existing commercial buildings, into compliance with the new statutory mandate.

The rule requires carbon monoxide detection in each detection zone where at least one of the "triggering conditions" exists. The rule also requires carbon monoxide detection in more than one location in larger (over 10,000 square feet) detection zones. The Department considered alternatives such as requiring carbon monoxide detection only in the vicinity of each carbon monoxide source, allowing plug-in units in new and existing buildings, and allowing alternative listing entities. These alternatives were rejected because the Department determined that such reduced coverage would not have provided the increased level of safety contemplated by the Legislature when it added a new subdivision (5-d) to section 378 of the Executive Law.

9. FEDERAL STANDARDS.

This rule parallels similar federal standards for carbon monoxide exposure. The federal standards apply to buildings consisting of employees who are employed in a business that affects commerce (CFR Title 29, Part 1910, Subpart Z, § 1910.1000: Air contaminants). However, although these standards are similar, they measure carbon monoxide exposures differently from section 1228.4, therefore making it difficult to conclude whether they exceed these standards. For example, CFR Title 29, Part 1910, Subpart Z, § 1910.1000 limits an employee's exposure to 50 ppm over an 8-hour weighted average, comparable to a typical workday. By contrast, carbon monoxide alarms required by section 1228.4 sound an alarm after detecting higher concentrations - 100 ppm or 400 ppm -over a much shorter period of time.

10. COMPLIANCE SCHEDULE.

Regulated parties that own existing commercial buildings will be able to comply with this rule by purchasing and installing battery-operated carbon monoxide alarms of the type currently on the market. The Department anticipates that regulated parties that own existing commercial buildings should be able to comply with this rule by the end of the "transition period" (June 27, 2015 through June 27, 2016) established by this rule.

Regulated parties constructing new commercial buildings will be able to comply with this rule by installing hard-wired carbon monoxide alarms or carbon monoxide detection systems as part of the construction process.

Summary of Regulatory Flexibility Analysis

1. EFFECT OF RULE

This rule will implement the provisions of new subdivision (5-d) of Executive Law § 378, as added by Chapter 541 of the Laws of 2014. Specifically, this rule will amend the State Uniform Fire Prevention and Building Code (Uniform Code) by adding a new section 1228.4 (entitled "Carbon Monoxide Detection in Commercial Buildings") to 19 NYCRR Part 1228. New section 1228.4 will require the installation of carbon monoxide (CO) detecting devices in all new and existing commercial buildings.

Types and Estimated Number of Small Businesses and Local Governments Affected

This rule will affect any small business or local government that owns an existing commercial building or constructs a new commercial building. In addition, since landlords typically recover building-related costs by increasing rents, this rule will indirectly affect any small business or local government that rents space in a commercial building. The Department of State (the Department) is not able to estimate the number of small businesses and local governments that will be directly or indirectly affected by this rule; however, the Department anticipates that most small businesses and local governments will be directly or indirectly affected by this rule.

In addition, since this rule adds provisions to the Uniform Code, the activities of each local government that is responsible for administering and enforcing the Uniform Code will be affected by this rule. The Department estimates that approximately 1,604 local governments (mostly cities, towns and villages, as well as several counties) are responsible for administering and enforcing the Uniform Code.

2. REPORTING, RECORDKEEPING AND OTHER COMPLIANCE REQUIREMENTS

Reporting and Recordkeeping Requirements

If a regulated party elects to install a CO detection system in lieu of CO alarms, such system must comply with the Standard for the Installation of Carbon Monoxide (CO) Detection and Warning Equipment, published by the National Fire Protection Association (NFPA 720). A small business or local government that elects to install a CO detection system will be required to comply with the reporting and recordkeeping requirements specified in NFPA 720 Sections 4.5.1.2, 4.5.2.3, 8.3, 8.5, 8.9, and 8.9.2. NFPA 720 provides standardized forms to be used for this recordkeeping.

Other Compliance Requirements

Small businesses and local governments that own a new or existing commercial building that contains a CO source, contains a garage or other motor-vehicle-related occupancy, or is attached to a garage or other motor-vehicle-related occupancy will be required to install CO detection (CO alarms or a CO detection system) in the places specified in this rule, to maintain those CO alarms or CO detection systems, and to replace those CO alarms or CO detection systems when they cease to operate as intended.

In each commercial building where CO detection is required, such detection must be located in each "detection zone" that contains a CO source, is served by an HVAC system that includes a CO-producing component, or is adjacent to a garage or other motor-vehicle-related occupancy.

In general, each story of a commercial building will be a "detection zone." However, if different portions of a story are served by separate HVAC systems, each such portion of the story will be a separate detection zone. In addition, each classroom in a K-12 educational building will be deemed to be a separate detection zone.

As a general rule, when CO detection must be provided in a detection zone, the CO detection must be placed in a central location within the detection zone. However, if the detection zone is larger than 10,000 square feet, additional CO detection must be placed in such additional locations as may be necessary to assure that no point in the detection zone is more than 100 feet from CO detection.

In an existing commercial building (or in a new or existing commercial building without commercial electric power), CO alarms powered by 10-year batteries are permitted.[1] When CO alarms are installed in new commercial buildings, the alarms must be hard-wired units with battery backup.

This rule also permits installation of a CO detection system in lieu of CO alarms. A CO detection system (1) must comply with NFPA 720, (2) must have a detector at each location where a CO alarm otherwise would have been required, and (3) must have a notification appliance at each location specified in NFPA 720 or, in the alternative, at each location where a CO alarm otherwise would have been required.

There are several additional compliance requirements. For example:

(1) When a CO alarm is installed in a normally unoccupied detection zone in a new commercial building, that alarm must be interconnected with a CO alarm that is placed in an adjacent and normally occupied detection zone; and

(2) In the case of a new commercial building that (i) has an occupant load of 31 or more and (ii) is classified, in whole or in part, as Educational Group E under Chapter 3 of the 2010 Building Code of New York State (BCNYS), this rule will provide that CO alarm signals must be automatically transmitted to an approved on-site location that is normally staffed by school personnel during normal school hours.

(3) CO detection systems shall be connected to control units and off-premises signal transmission in accordance with the requirements of the BCNYS.

3. PROFESSIONAL SERVICES

If a small business or local government elects to install a CO detection system (in lieu of CO alarms), the small business or local government must hire service personnel with the qualifications and experience listed in NFPA 720 Section 8.3 in order to install and maintain the CO detection system.

In addition, in certain situations a small business or local government that elects to install a CO detection system may be required to hire a person holding an appropriate license under General Business Law Article 6-D to install, service or maintain such CO detection system.

4. COMPLIANCE COSTS

Initial Costs of Compliance

The initial capital costs of complying with the rule will include the cost of purchasing and installing the CO alarms or CO detection systems. Costs to regulated parties for compliance with this rule will vary depending on the size of such building, the number of CO sources within the buildings, the wiring within the building, and the type of CO detection (CO alarms or a CO detection system) the owner chooses to provide.[2]

In an existing commercial building (or in a new or existing commercial building without commercial electric power), CO alarms powered by 10-year batteries are permitted. The Department estimates that the cost of purchasing and installing such battery-powered CO alarms is approximately $50.

When CO alarms are installed in new commercial buildings, the alarms must be hard-wired units with battery backup. The Department estimates that total cost purchasing and installing hard-wired CO alarms with battery backup will be approximately $125 per unit.

This rule will permit installation of a CO detection system in lieu of CO alarms. A CO detection system (1) must comply with NFPA 720, (2) must have a detector at each location where a CO alarm otherwise would have been required, and (3) must have a notification appliance at each location specified in NFPA 720 or, in the alternative, at each location where a CO

alarm otherwise would have been required. The Department estimates that (1) the cost of each detector in a CO detection system will be approximately $55, (2) the cost of each notification appliance used in a CO detection system will be approximately $78, (3) the cost of installing one detector and one notification appliance will be approximately $215, and (4) the total cost of purchasing and installing one detector and one notification appliance will be approximately $348. In addition, a CO detection system requires a control unit. The Department estimates that the cost of purchasing and installing a CO detection system control unit will be approximately $1,100.[3] The estimated installation costs specified in this paragraph include the cost of installing the components and the cost of interconnecting the components.

In certain situations, a CO alarm installed in a new commercial building must be a "multiple station" alarm (i.e., must be interconnected with at least one other CO alarm in the building). The Department estimates that (1) the median price of multiple station CO alarms that are hard-wired and have battery backup to be approximately $38 per unit, (2) the cost of installing such alarms will be approximately $90 per unit, and (3) the cost of providing interconnection between an alarm in a normally unoccupied detection zone and an alarm in an adjacent, normally occupied detection zone will be approximately $150.

In the case of a new commercial building classified, in whole or in part, as Educational Group E under Chapter 3 of the 2010 BCNYS, CO alarm signals must be automatically transmitted to an approved on-site location that is normally staffed by school personnel during normal school hours. The Department estimates that the median price of multiple station CO alarms that are hard-wired and have battery backup will be approximately $38 per unit; (2) the cost of installing such alarms will be approximately $90 per unit; and (3) the cost of providing interconnection between the detection zone (classroom) to an on-site location up to 100 feet away will be approximately $250.

This rule will provide that CO detection systems must be "monitored" (i.e., connected to control units and off-premises signal transmission). If a CO detection system is installed in a building that does not have a fire alarm system, the Department estimates that the cost of purchasing and installing the control unit required to provide "monitoring" of the CO detection system will be approximately $1,100.

On-going Costs of Compliance

This rule will provide that CO alarms and CO detection systems must be maintained in an operative condition at all times, shall be replaced or repaired where defective, and shall be replaced when they cease to operate as intended.

In the case of a battery-powered CO alarm, such maintenance would include vacuuming the alarm cover to remove accumulated dust (typically one a month) and replacing the alarm at the conclusion of its 10-year lifespan.

In the case of a hard-wired CO alarm with battery backup, the required maintenance would include vacuuming the alarm cover to remove accumulated dust (typically one a month) and replacing the backup battery as required (although it is anticipated that backup batteries in such alarms should not need to be replaced during the anticipated life of the alarm).

In addition, most manufacturers recommend that their CO alarms (whether battery-powered or hard-wired) be checked using the alarm's "test" button on a periodic basis (typically once a week) and replaced on a periodic basis (typically once every five years).

Regulated parties constructing new commercial buildings will be able to comply with this rule by installing hard-wired CO alarms or CO detection systems as part of the construction process. This rule will require CO detection systems to comply with NFPA 720.

Variations in Costs

Any variation in compliance costs for small businesses or local governments is likely to depend more on the number and size of commercial buildings owned by the small business or local government, not on the type or size of the small business or local government.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY

It is economically and technologically feasible for small businesses and local governments to comply with new section 1228.4.

Regulated parties that own existing commercial buildings will be able to comply with this rule by purchasing and installing battery-operated CO alarms of the type currently on the market. The Department anticipates that regulated parties that own existing commercial building should be able to comply with this rule by the end of the "transition period" (June 27, 2015 through June 27, 2016) established by this rule.

Regulated parties constructing new commercial buildings will be able to comply with this rule by installing hard-wired CO alarms or CO detection systems as part of the construction process

No new technology need be developed for compliance.

6. MINIMIZING ADVERSE IMPACT

The rule minimizes potential adverse economic impacts on regulated parties by providing several alternative means of compliance, including the option of installing battery powered carbon monoxide alarms in existing commercial buildings and in commercial buildings with no commercial electric power; providing exemptions for commercial buildings classified as Storage Group S or Utility and Miscellaneous Group U and occupied only occasionally for building or equipment maintenance and for commercial buildings that are "canopies" (as defined in the 2010 Fire Code of New York State); providing a number of exceptions for certain detection zones that would otherwise require CO detection; and establishing a "transition period" to provide owners of existing commercial buildings with additional time to achieve full compliance.

Providing exemptions from coverage by the rule, or any part thereof, for commercial buildings owned by small businesses or local governments would not be consistent with legislative objectives and would endanger public health, safety, and general welfare.

7. SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION

The Department 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.

8. VIOLATIONS AND PENALTIES ASSOCIATED WITH VIOLATIONS

The rule includes a subdivision that provides, in effect, a "cure period or other opportunity for ameliorative action, the successful completion of which will prevent the imposition of penalties on the party or parties subject to enforcement" in this rule. Subdivision (p) of new section 1228.4 provides that during the "transition period" (June 27, 2015 to June 27, 2016), the owner of an existing commercial building shall not be deemed to be in violation of section 1228.4 if the owner provides the authority having jurisdiction with a written statement certifying that such owner is attempting in good faith to install carbon monoxide detection that complies with the requirements of new section 1228.4 in such owner's existing commercial building as quickly as practicable.

All owners of existing commercial buildings will be required to have such carbon monoxide detection fully installed and operational by the end of the transition period.

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[1] An "existing commercial building" is defined in this rule as a commercial building constructed before December 31, 2015 (meaning either that the original construction of the building was completed on or before December 31, 2015, or that the application for the building permit for the original construction of the building was filed on or before December 31, 2015). A "new commercial building" is defined in this rule as any commercial building that is not an existing commercial building.

[2] Cost estimates set forth in this section are based on prices quoted on the websites of several manufacturers of carbon monoxide alarms and carbon monoxide detection systems. See, for example, http://www.homedepot.com/p/Kidde-120-Volt-Hardware-Inter-Connectable-Carbon-Monoxide-Alarm-with-Battery-Backup-KN-COB-IC-202281774?N=5yclvZbmgkZ1z0uzse. Estimated installation costs are based on the time estimated to perform an installation multiplied by an assumed hourly rate of $70.

[3] In many situations, a single control panel can control both a carbon monoxide detection system and a fire alarm system. Therefore, in a building where a fire alarm system is required by other provisions of the Uniform Code, there should be little or no additional cost associated with providing a control panel for the carbon monoxide detection system.

Summary of Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBERS OF RURAL AREAS

This rule will implement the provisions of new subdivision (5-d) of Executive Law § 378, as added by Chapter 541 of the Laws of 2014. Specifically, this rule will amend the State Uniform Fire Prevention and Building Code (Uniform Code) by adding a new section 1228.4 (entitled "Carbon Monoxide Detection in Commercial Buildings") to 19 NYCRR Part 1228. New section 1228.4 will require the installation of carbon monoxide (CO) detecting devices in all new and existing commercial buildings. Since the Uniform Code applies in all areas of the State (other than New York City), this rule will apply in all rural areas of the State.

2. REPORTING, RECORDKEEPING AND OTHER COMPLIANCE REQUIREMENTS

Reporting and Recordkeeping Requirements

If a regulated party elects to install a CO detection system in lieu of CO alarms, such system must comply with the Standard for the Installation of Carbon Monoxide (CO) Detection and Warning Equipment, published by the National Fire Protection Association (NFPA 720). A small business or local government that elects to install a CO detection system will be required to comply with the reporting and recordkeeping requirements

specified in NFPA 720 Sections 4.5.1.2, 4.5.2.3, 8.3, 8.5, 8.9, and 8.9.2. NFPA 720 provides standardized forms to be used for this recordkeeping.

Other Compliance Requirements

The owner of a new or existing commercial building that contains a CO source, contains a garage or other motor-vehicle-related occupancy, or is attached to a garage or other motor-vehicle-related occupancy will be required to install CO detection (CO alarms or a CO detection system) in the places specified in this rule, to maintain those CO alarms or CO detection systems, and to replace those CO alarms or CO detection systems when they cease to operate as intended.

In each commercial building where CO detection is required, such detection must be located in each "detection zone" that contains a CO source, is served by an HVAC system that includes a CO-producing component, or is adjacent to a garage or other motor-vehicle-related occupancy.

In general, each story of a commercial building will be a "detection zone." However, if different portions of a story are served by separate HVAC systems, each such portion of the story will be a separate detection zone. In addition, each classroom in a K-12 educational building will be deemed to be a separate detection zone.

As a general rule, when CO detection must be provided in a detection zone, the CO detection must be placed in a central location within the detection zone. However, if the detection zone is larger than 10,000 square feet, additional CO detection must be placed in such additional locations as may be necessary to assure that no point in the detection zone is more than 100 feet from CO detection.

In an existing commercial building (or in a new or existing commercial building without commercial electric power), CO alarms powered by 10-year batteries are permitted.[1] When CO alarms are installed in new commercial buildings, the alarms must be hard-wired units with battery backup.

This rule also permits installation of a CO detection system in lieu of CO alarms. A CO detection system (1) must comply with NFPA 720, (2) must have a detector at each location where a CO alarm otherwise would have been required, and (3) must have a notification appliance at each location specified in NFPA 720 or, in the alternative, at each location where a CO alarm otherwise would have been required.

There are several additional compliance requirements. For example:

(1) When a CO alarm is installed in a normally unoccupied detection zone in a new commercial building, that alarm must be interconnected with a CO alarm that is placed in an adjacent and normally occupied detection zone; and

(2) In the case of a new commercial building that (i) has an occupant load of 31 or more and (ii) is classified, in whole or in part, as Educational Group E under Chapter 3 of the 2010 Building Code of New York State (BCNYS), this rule will provide that CO alarm signals must be automatically transmitted to an approved on-site location that is normally staffed by school personnel during normal school hours.

(3) CO detection systems shall be connected to control units and off-premises signal transmission in accordance with the requirements of the BCNYS.

3. PROFESSIONAL SERVICES

If the owner of a commercial building elects to install a CO detection system (in lieu of CO alarms), the building owner must hire service personnel with the qualifications and experience listed in NFPA 720 Section 8.3 in order to install and maintain the CO detection system.

In addition, in certain situations an owner of a commercial building who elects to install a CO detection system may be required to hire a person holding an appropriate license under General Business Law Article 6-D to install, service or maintain such CO detection system.

4. COMPLIANCE COSTS

Initial Costs of Compliance

The initial capital costs of complying with the rule will include the cost of purchasing and installing the CO alarms or CO detection systems. Costs to regulated parties for compliance with this rule will vary depending on the size of such building, the number of CO sources within the building, the wiring within the building, and the type of CO detection (CO alarms or a CO detection system) the owner chooses to provide.[2]

In an existing commercial building (or in a new or existing commercial building without commercial electric power), CO alarms powered by 10-year batteries are permitted. The Department of State (DOS) estimates that the cost of purchasing and installing such battery-powered CO alarms is approximately $50.

When CO alarms are installed in new commercial buildings, the alarms must be hard-wired units with battery backup. DOS estimates that total cost purchasing and installing hard-wired CO alarms with battery backup will be approximately $125 per unit.

This rule will permit installation of a CO detection system in lieu of CO alarms. A CO detection system (1) must comply with NFPA 720, (2) must have a detector at each location where a CO alarm otherwise would have been required, and (3) must have a notification appliance at each location specified in NFPA 720 or, in the alternative, at each location where a CO alarm otherwise would have been required. DOS estimates that (1) the cost of each detector in a CO detection system will be approximately $55, (2) the cost of each notification appliance used in a CO detection system will be approximately $78, (3) the cost of installing one detector and one notification appliance will be approximately $215, and (4) the total cost of purchasing and installing one detector and one notification appliance will be approximately $348. In addition, a CO detection system requires a control unit. DOS estimates that the cost of purchasing and installing a CO detection system control unit will be approximately $1,100.[3] The estimated installation costs specified in this paragraph include the cost of installing the components and the cost of interconnecting the components.

In certain situations, a CO alarm installed in a new commercial building must be a "multiple station" alarm (i.e., must be interconnected with at least one other CO alarm in the building). DOS estimates that (1) the median price of multiple station CO alarms that are hard-wired and have battery backup to be approximately $38 per unit, (2) the cost of installing such alarms will be approximately $90 per unit, and (3) the cost of providing interconnection between an alarm in a normally unoccupied detection zone and an alarm in an adjacent, normally occupied detection zone will be approximately $150.

In the case of a new commercial building classified, in whole or in part, as Educational Group E under Chapter 3 of the 2010 BCNYS, CO alarm signals must be automatically transmitted to an approved on-site location that is normally staffed by school personnel during normal school hours. DOS estimates that the median price of multiple station CO alarms that are hard-wired and have battery backup will be approximately $38 per unit; (2) the cost of installing such alarms will be approximately $90 per unit; and (3) the cost of providing interconnection between the detection zone (classroom) to an on-site location up to 100 feet away will be approximately $250.

This rule will provide that CO detection systems must be "monitored" (i.e., connected to control units and off-premises signal transmission). If a CO detection system is installed in a building that does not have a fire alarm system, DOS estimates that the cost of purchasing and installing the control unit required to provide "monitoring" of the CO detection system will be approximately $1,100.

On-going Costs of Compliance

This rule will provide that CO alarms and CO detection systems must be maintained in an operative condition at all times, shall be replaced or repaired where defective, and shall be replaced when they cease to operate as intended.

In the case of a battery-powered CO alarm, such maintenance would include vacuuming the alarm cover to remove accumulated dust (typically one a month) and replacing the alarm at the conclusion of its 10-year lifespan.

In the case of a hard-wired CO alarm with battery backup, the required maintenance would include vacuuming the alarm cover to remove accumulated dust (typically one a month) and replacing the backup battery as required (although it is anticipated that backup batteries in such alarms should not need to be replaced during the anticipated life of the alarm).

In addition, most manufacturers recommend that their CO alarms (whether battery-powered or hard-wired) be checked using the alarm's "test" button on a periodic basis (typically once a week) and replaced on a periodic basis (typically once every five years).

Regulated parties constructing new commercial buildings will be able to comply with this rule by installing hard-wired CO alarms or CO detection systems as part of the construction process. This rule will require CO detection systems to comply with NFPA 720.

Variations in Costs

Any variation in compliance costs for public and private entities in rural areas is likely to depend on the number and size of commercial buildings owned by a public or private entity, and not on differences between types of public and private entities in rural areas.

5. MINIMIZING ADVERSE IMPACT

The rule minimizes potential adverse economic impacts on regulated parties by providing several alternative means of compliance (including the option of installing battery powered carbon monoxide alarms in existing commercial buildings and in commercial buildings with no commercial electric power); providing exemptions for commercial buildings classified as Storage Group S or Utility and Miscellaneous Group U and occupied only occasionally for building or equipment maintenance and for commercial buildings that are "canopies" (as defined in the 2010 FCNYS); providing a number of exceptions for certain detection zones that would otherwise require CO detection; and establishing a "transition period" to provide owners of existing commercial buildings with additional time to achieve full compliance.

Executive Law § 378(5-d) requires the owners of every commercial building and the owner of every building containing one or more restau-

rants to install operable CO detecting devices if such buildings contains any appliance, equipment, device or system that may emit CO or has an attached garage. Executive Law § 378(5-d) makes no distinction between commercial buildings located in rural areas and commercial buildings located in other areas of the State. Executive Law § 378(5-d) does not authorize the establishment of differing compliance requirements or timetables for commercial buildings located in rural areas. Providing exemptions from coverage by the rule, or any part thereof, for commercial buildings located in rural areas would not be consistent with legislative objectives and would endanger public health, safety, and general welfare.

6. RURAL AREA PARTICIPATION

DOS notified interested parties throughout the State, including interested parties in rural areas, of the proposed adoption of 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.

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[1] An "existing commercial building" is defined in this rule as a commercial building constructed before December 31, 2015 (meaning either that the original construction of the building was completed on or before December 31, 2015, or that the application for the building permit for the original construction of the building was filed on or before December 31, 2015). A "new commercial building" is defined in this rule as any commercial building that is not an existing commercial building.

[2] Cost estimates set forth in this section are based on prices quoted on the websites of several manufacturers of carbon monoxide alarms and carbon monoxide detection systems. See, for example, http://www.homedepot.com/p/Kidde-120-Volt-Hardware-Inter- Connectable-Carbon-Monoxide-Alarm-with-Battery-Backup-KN-COB-IC-202281774?N=5yclvZbmgkZ1z0uzse. Estimated installation costs are based on the time estimated to perform an installation multiplied by an assumed hourly rate of $70.

[3] In many situations, a single control panel can control both a carbon monoxide detection system and a fire alarm system. Therefore, in a building where a fire alarm system is required by other provisions of the Uniform Code, there should be little or no additional cost associated with providing a control panel for the carbon monoxide detection system.

Job Impact Statement

The Department of State has concluded after reviewing the nature and purpose of the rule that it will not have a "substantial adverse impact on jobs and employment opportunities" (as that term is defined in section 201-a of the State Administrative Procedures Act) in New York.

This rule amends the State Uniform Fire Prevention and Building Code (the Uniform Code) to require that the installation of carbon monoxide detecting devices (carbon monoxide alarms or carbon monoxide detection systems) in all commercial buildings that contain a carbon monoxide source, contain a garage or other motor-vehicle-related occupancy and/or are attached to a garage or other motor-vehicle-related occupancy. This amendment is required to satisfy the requirements of subdivision (5-d) of section 378 of the Executive Law, as added by Chapter 541 of the Laws of 2014.

This rule will require the installation of carbon monoxide detecting devices in "existing commercial buildings" (defined in this rule as a commercial building constructed prior to January 1, 2016). However, potential adverse economic impact on regulated parties is minimized by the provisions of the rule that allow the use of battery powered carbon monoxide alarms in existing commercial buildings. (The rule also permits the use of battery powered carbon monoxide alarms in new and existing commercial buildings without a commercial electric power.)

This rule will also require the installation of carbon monoxide detecting devices in new commercial buildings. However, potential adverse economic impact on regulated parties is minimized by the provisions of the rule that permit the installation of carbon monoxide alarms even in new commercial buildings (although carbon monoxide alarms installed in new commercial buildings must be hard-wired, with battery backup). Regulated parties will also be permitted to install carbon monoxide detection systems; in the case of a building that is required by other, already existing provisions of the Uniform Code to have a fire alarm system, the additional cost of adding a carbon monoxide detection system is expected to be modest. In any event, whether an owner chooses to install hard-wired carbon monoxide alarms with battery backup or a carbon monoxide detection system in a new commercial building, the costs of purchasing, installing and maintaining the carbon monoxide detecting devices required by this rule is expected to be insignificant in comparison to the total cost of construction. Therefore, this rule should have no substantial adverse impact on construction of new commercial buildings and, consequently, this rule should have no substantial adverse impact on jobs and employment opportunities related to the construction of new commercial buildings.

The Uniform Code has contained provisions requiring installation of carbon monoxide alarms in residential buildings since 2002. The current requirements relating to installation of alarms in residential buildings will not be changed by this rule. Therefore, this rule should have no substantial adverse impact on jobs and employment opportunities related to the construction of new residential buildings.