

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.

Education Department

EMERGENCY RULE MAKING

Elementary and Secondary Education Act (ESEA) Flexibility and School and School District Accountability

I.D. No. EDU-17-15-00003-E

Filing No. 620

Filing Date: 2015-07-13

Effective Date: 2015-07-13

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

Action taken: Amendment of section 100.18 of Title 8 NYCRR.

Statutory authority: Education Law, sections 101(not subdivided), 207(not subdivided), 208(not subdivided), 210(not subdivided), 215(not subdivided), 305(1), (2), (20), 308(not subdivided), 309(not subdivided), 3204(3), 3713(1) and (2)

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

Specific reasons underlying the finding of necessity: The purpose of the proposed rule making is to implement New York State's submitted Elementary and Secondary Education Act (ESEA) Flexibility Waiver Renewal Request.

At the February 2014 meeting, the Board of Regents directed the State Education Department (SED or "the Department") to submit a request to the United States Department of Education (USDE) to amend the provisions of the approved ESEA Flexibility Waiver Request related to making adequate yearly progress (AYP). The proposed rule-making conforms subdivision 100.18(f) of the Commissioner's Regulations with the submitted ESEA Flexibility Waiver Renewal Request, and addresses the Regents

Reform Agenda and New York State's updated accountability system and also clarifies the process by which schools are identified as Local Assistance Plan Schools pursuant to subdivision 100.18(g) of the Commissioner's Regulations. Adoption of the proposed amendment is necessary to ensure a seamless transition to the revised school and school district accountability plan under the Waiver.

The proposed amendment was adopted as an emergency action at the April 13-14, 2015 Regents meeting, effective April 14, 2015. A Notice of Emergency Adoption and Proposed Rule Making was published in the State Register on April 29, 2015. Because the Board of Regents meets at scheduled intervals, the earliest the proposed amendment could be presented for regular (non-emergency) adoption, after publication in the State Register and expiration of the 45-day public comment period provided for in State Administrative Procedure Act (SAPA) section 202(1) and (5), is the July 20-21, 2015 Regents meeting. Furthermore, pursuant to SAPA section 203(1), the earliest effective date of the proposed amendment, if adopted at the March meeting, would be August 5, 2015, the date a Notice of Adoption would be published in the State Register. However, the April emergency rule will expire on July 12, 2015, 90 days from its filing with the Department of State on April 14, 2015. A lapse in the rule's effective date could disrupt implementation of school and school district accountability pursuant to New York State's approved ESEA Flexibility Waiver renewal and the Regents Reform Agenda and New York State's updated accountability system.

Emergency action is therefore necessary for the preservation of the general welfare to ensure that the proposed rule adopted by emergency action at the April 2015 Regents meeting remains continuously in effect until the effective date of its permanent adoption.

It is anticipated that the proposed amendment will be presented to the Board of Regents for permanent adoption at its July 20-21, 2015 meeting, which is the first scheduled meeting after expiration of the 45-day public comment period mandated by the State Administrative Procedure Act.

Subject: Elementary and Secondary Education Act (ESEA) Flexibility and school and school district accountability.

Purpose: To conform the Commissioner's Regulations to New York State's ESEA Flexibility Waiver Renewal application with respect to the methodology for determining Adequate Yearly Progress (AYP) and identification of Local Assistance Plan (LAP) schools.

Text of emergency rule: Subdivisions (f) and (g) of section 100.18 of the Regulations of the Commissioner are amended, effective July 13, 2015, as follows:

(f) Adequate yearly progress.

(1) . . .

(2) . . .

(3) . . .

(4) . . .

(5) . . .

(6) . . .

(7) . . .

(8) . . .

(9) *Effective with 2013-14 school year results and continuing with the results for each school year thereafter, the "all students" accountability group for a public school, charter school or school district shall be deemed to have made adequate yearly progress on a performance criterion specified in paragraph (1) and (2) of subdivision (j) of this section if all the accountability groups, except the "all students" group, for which a public school, charter school or school district is accountable on that performance criterion made adequate yearly progress.*

(g) Differentiated accountability for schools and districts.

Prior to the commencement of the 2012-2013 school year, the commissioner, based on the 2010-2011 school year results, shall designate focus districts, priority schools and focus charter schools. Prior to the commencement of the 2013-2014 school year, based on the 2011-2012 school year results, and each year thereafter based on the subsequent school year

results, the commissioner shall designate public schools requiring a local assistance plan.

- (1) . . .
- (2) . . .
- (3) . . .
- (4) . . .
- (5) . . .

(6) School requiring a local assistance plan.

(i) Beginning with the [2011-2012] 2013-14 school year results and annually thereafter, a school that has not been designated as a priority or focus school shall be designated as a local assistance plan school if the school:

(a) failed to make adequate yearly progress (AYP) for an accountability group for three consecutive years on the same performance criterion in subdivision (j) of this section; *provided that such school shall not be designated as a local assistance plan school if the school has met other measures of progress as determined by the commissioner pursuant to subparagraph (ii) of this paragraph;* or

(b) has gaps in achievement on a performance criterion in subdivision (j) of this section and the school has not shown sufficient progress toward reducing or closing those gaps *or meeting other measures of progress as determined by the commissioner pursuant to subparagraph (ii) of this paragraph*, between students who are members and students who are not members of that accountability group; or

(c) the school is located in a district that is not designated as Focus and the school meets the criteria for identification as a focus school pursuant to subparagraph (5)(ii) of this subdivision, *and such other measures of progress as determined by the Commissioner pursuant to subparagraph (ii) of this paragraph.*

(ii) *Notwithstanding the provisions of clauses (a) through (c) of subparagraph (i) of this subdivision*, the commissioner may consider other measures of progress in determining whether to identify a school as a local assistance plan school, including but not limited to:

(a) *whether a subgroup has made two consecutive years of AYP;*

(b) *the subgroup's Student Growth Percentile (SGP) is above state average;*

(c) *the percentile rank of the Performance Index (PI)/graduation rate of a subgroup on an accountability measure as compared to the percentile rank of the PI/graduation rate of the subgroup in other schools in the state;*

(d) *whether the graduation rate of the subgroup is above state average; and/or*

(e) *if the subgroup's performance on an accountability measure has changed from year to year.*

[(ii)] (iii) For transfer high schools for which a district has submitted alternative high school cohort data, the commissioner shall review such data to determine whether the school shall be designated as requiring a local assistance plan.

[(ii)] (iv) Districts will be informed of the preliminary status of its schools and will be provided the opportunity to appeal the identification of any preliminarily identified school.

- (7) . . .

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-17-15-00003-EP, Issue of April 29, 2015. The emergency rule will expire September 10, 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 section 101 continues the existence of the State Education Department, with Board of Regents as its head, and authorizes the Regents to appoint the Commissioner of Education as Department's Chief Administrative Officer, who is charged with general management and supervision of all public schools and educational work of State.

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

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

Education Law section 209 authorizes the Regents to establish secondary school examinations in studies furnishing a suitable standard of graduation and of admission to colleges; to confer certificates or diplomas on students who satisfactorily pass such examinations; and requires the

admission to these examinations of any person who shall conform to the rules and pay the fees prescribed by the Regents.

Education Law section 210 authorizes the Regents to register domestic and foreign institutions in terms of State standards, and fix the value of degrees, diplomas and certificates issued by institutions of other states or countries and presented for entrance to schools, colleges and professions in the State.

Education Law section 215 authorizes the Commissioner to require schools and school districts to submit reports containing such information as the Commissioner shall prescribe.

Education Law section 305(1) and (2) provide the Commissioner, as chief executive officer of the State's education system, with general supervision over all schools and institutions subject to the Education Law, or any statute relating to education, and responsibility for executing all educational policies of the Regents. Section 305(20) provides the Commissioner shall have such further powers and duties as charged by the Regents.

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

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

Education Law section 3204(3) provides for required courses of study in the public schools and authorizes SED to alter the subjects of required instruction.

Education Law section 3713(1) and (2) authorize State and school districts to accept federal law making appropriations for educational purposes and authorize Commissioner to cooperate with federal agencies to implement such law.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment is consistent with the above statutory authority and is necessary to implement Regents policy relating to public school and district accountability and federal requirements relating to New York State's approved Elementary and Secondary Education Act (ESEA) Flexibility Waiver.

3. NEEDS AND BENEFITS:

The proposed amendment is necessary to conform the Commissioner's Regulations to New York State's approved ESEA Flexibility Waiver Renewal Request relating to the methodology for determining Adequate Yearly Progress (AYP) and the identification of Local Assistant Plan (LAP) schools, for school district/school accountability purposes.

In September 2011, President Obama announced an ESEA regulatory flexibility initiative, based upon the Secretary of Education's authority to issue waivers. In October 2011, the Board of Regents directed the Commissioner to submit an ESEA Flexibility Request to the United States Department of Education (USDE). On May 29, 2012, the USDE approved New York State's ESEA Flexibility Waiver Request. In September 2013, the USDE offered states with approved ESEA Flexibility Waivers the opportunity to renew those waivers for the 2014-15 school year.

At its February 2014 meeting, the Board of Regents directed the State Education Department to submit a request to the United States Department of Education (USDE) to amend the provisions of the approved ESEA Flexibility Waiver Request related to determinations of AYP. These changes were approved by the USDE on July 31, 2014. A subsequent review of Commissioner's Regulations has determined that a technical amendment is necessary to conform regulatory language to the approved ESEA Flexibility Waiver Request.

In addition, Department staff convened a workgroup of districts that have or have had schools identified LAP and conducted an online survey of such districts. As a result of this feedback, Department staff is proposing technical changes to the regulations to clarify that the Commissioner will not identify any schools that meet progress criteria established by the Commissioner as LAP Schools.

The proposed amendment will amend subdivision 100.18(f) of Commissioner's Regulations to align it with New York's approved ESEA Flexibility Waiver Renewal Application and 100.18(g) to clarify the methodology for identification of LAP Schools. The proposed amendments will:

- Give schools and districts credit for making Adequate Yearly Progress (AYP) with the "all students group" when all other accountability groups for which a school or district is accountable make AYP on an English language arts or mathematics performance criterion, as specified in New York's approved ESEA waiver; and

- Clarify that the Commissioner may consider additional measures in determining whether to identify a school as a LAP, including, but not limited to the following: whether a subgroup has made AYP; the subgroup's Student Growth Percentile (SGP); the percentile rank of the Performance Index (PI)/graduation rate of a subgroup on an accountability measure as compared to the percentile rank of the PI/graduation rate of the

subgroup in other schools in the state; whether the graduation rate of the subgroup is above state average; and if the subgroup's performance on an accountability measure has changed from year to year.

4. COSTS:

Cost to the State:

None.

Costs to local government:

None.

Cost to private regulated parties:

None.

Cost to regulating agency for implementation and continued administration of this rule:

None.

The proposed amendment does not impose any direct costs on the State, local governments, private regulated parties or the State Education Department. It is anticipated that any indirect costs associated with the proposed amendment will be minimal and capable of being absorbed using existing staff and resources.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment relates to State and Federal standards for public school and school district accountability and will not impose any additional program, service, duty or responsibility upon local governments.

6. PAPERWORK:

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

7. DUPLICATION:

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

8. ALTERNATIVES:

There were no significant alternatives and none were considered. The proposed amendment relates to public school and school district accountability and is necessary to conform the Commissioner's Regulations to New York State's approved ESEA Waiver Renewal Request relating to the methodology for determining AYP and the identification of LAP schools, for purposes of school district/school accountability. The State and LEAs are required to comply with the ESEA as a condition to their receipt of federal funds under Title I of the ESEA Act of 1965, as amended.

9. FEDERAL STANDARDS:

The proposed amendment is necessary to conform the Commissioner's Regulations to New York State's approved ESEA Waiver Renewal Request relating to the methodology for determining AYP and the identification of LAP schools, for purposes of school district/school accountability. The State and LEAs are required to comply with the ESEA as a condition to their receipt of federal funds under Title I of the ESEA Act of 1965, as amended.

10. COMPLIANCE SCHEDULE:

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

Regulatory Flexibility Analysis

Small Businesses:

The proposed amendment relates to public school and school district accountability and is necessary to conform the Commissioner's Regulations to New York State's approved Elementary and Secondary Education Act (ESEA) Waiver Renewal Request relating to the methodology for determining Adequate Yearly Progress (AYP) and the identification of Local Assistance Plan (LAP) schools, for purposes of school district/school accountability. The State and local educational agencies (LEAs) are required to comply with the ESEA as a condition to their receipt of federal funds under Title I of the ESEA Act of 1965, as amended.

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

Local Governments:

1. EFFECT OF RULE:

The proposed amendment applies to public schools, school districts and charter schools that receive funding as LEAs pursuant to the Elementary and Secondary Education Act of 1965, as amended.

2. COMPLIANCE REQUIREMENTS:

The proposed amendment is necessary to conform the Commissioner's Regulations to New York State's approved ESEA Flexibility Waiver Renewal Request relating to the methodology for determining Adequate Yearly Progress (AYP) and the identification of Local Assistant Plan (LAP) schools, for school district/school accountability purposes.

In September 2011, President Obama announced an ESEA regulatory flexibility initiative, based upon the Secretary of Education's authority to

issue waivers. In October 2011, the Board of Regents directed the Commissioner to submit an ESEA Flexibility Request to the United States Department of Education (USDE). On May 29, 2012, the USDE approved New York State's ESEA Flexibility Waiver Request. In September 2013, the USDE offered states with approved ESEA Flexibility Waivers the opportunity to renew those waivers for the 2014-15 school year.

At its February 2014 meeting, the Board of Regents directed the State Education Department to submit a request to the United States Department of Education (USDE) to amend the provisions of the approved ESEA Flexibility Waiver Request related to determinations of AYP. These changes were approved by the USDE on July 31, 2014. A subsequent review of the Commissioner's Regulations has determined that a technical amendment is necessary to conform regulatory language to the approved ESEA Flexibility Waiver Request.

In addition, Department staff convened a workgroup of districts that have or have had schools identified LAP and conducted an online survey of such districts. As a result of this feedback, Department staff is proposing technical changes to the regulations to clarify that the Commissioner will not identify any schools that meet progress criteria established by the Commissioner as LAP Schools.

The proposed amendment will amend subdivision 100.18(f) of Commissioner's Regulations to align it with New York's approved ESEA Flexibility Waiver Renewal Application and 100.18(g) to clarify the methodology for identification of LAP Schools. The proposed amendments will:

- Give schools and districts credit for making Adequate Yearly Progress (AYP) with the "all students group" when all other accountability groups for which a school or district is accountable make AYP on an English language arts or mathematics performance criterion, as specified in New York's approved ESEA waiver; and

- Clarify that the Commissioner may consider additional measures in determining whether to identify a school as a LAP, including, but not limited to the following: whether a subgroup has made AYP; the subgroup's Student Growth Percentile (SGP); the percentile rank of the Performance Index (PI)/graduation rate of a subgroup on an accountability measure as compared to the percentile rank of the PI/graduation rate of the subgroup in other schools in the state; whether the graduation rate of the subgroup is above state average; and if the subgroup's performance on an accountability measure has changed from year to year.

3. PROFESSIONAL SERVICES:

The proposed amendment imposes no additional professional services requirements.

4. COMPLIANCE COSTS:

The proposed amendment does not impose any direct costs on school districts or charter schools. It is anticipated that any indirect costs associated with the proposed amendment will be minimal and capable of being absorbed using existing staff and resources.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The rule imposes no technological requirements on school districts. Costs are discussed under the Compliance Costs section above.

6. MINIMIZING ADVERSE IMPACT:

The proposed amendment relates to public school and school district accountability and is necessary to conform the Commissioner's Regulations to New York State's approved Elementary and Secondary Education Act (ESEA) Waiver Renewal Request relating to the methodology for determining Adequate Yearly Progress (AYP) and the identification of Local Assistance Plan (LAP) schools, for purposes of school district/school accountability. The State and local educational agencies (LEAs) are required to comply with the ESEA as a condition to their receipt of federal funds under Title I of the ESEA Act of 1965, as amended. The proposed amendment has been carefully drafted to meet specific federal and State requirements, and does not impose any additional compliance requirements or costs beyond those inherent in such federal and State requirements.

7. SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION:

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

8. INITIAL REVIEW OF RULE:

Pursuant to State Administrative Procedure Act section 207(1)(b), the State Education Department proposes that the initial review of this rule shall occur in the fifth calendar year after the year in which the rule is adopted, instead of in the third calendar year. The justification for a five year review period is that the proposed amendment is necessary to conform the Commissioner's Regulations to New York State's approved ESEA Waiver Renewal Request relating to the methodology for determining Adequate Yearly Progress (AYP) and the identification of Local Assistance Plan (LAP) schools, for purposes of school district/school accountability.

Accordingly, there is no need for a shorter review period. The Department invites public comment on the proposed five year review period for this rule. Comments should be sent to the agency contact listed in item 16. of the Notice of Emergency Adoption and Proposed Rule Making published herewith, and must be received within 45 days of the State Register publication date of the Notice.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed amendment applies to public schools, school districts and charter schools that receive funding as LEAs pursuant to the Elementary and Secondary Education Act (ESEA) of 1965, as amended, including those located in the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square mile or less.

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

The proposed amendment is necessary to conform the Commissioner's Regulations to New York State's approved ESEA Flexibility Waiver Renewal Request relating to the methodology for determining Adequate Yearly Progress (AYP) and the identification of Local Assistance Plan (LAP) schools, for school district/school accountability purposes.

In September 2011, President Obama announced an ESEA regulatory flexibility initiative, based upon the Secretary of Education's authority to issue waivers. In October 2011, the Board of Regents directed the Commissioner to submit an ESEA Flexibility Request to the United States Department of Education (USDE). On May 29, 2012, the USDE approved New York State's ESEA Flexibility Waiver Request. In September 2013, the USDE offered states with approved ESEA Flexibility Waivers the opportunity to renew those waivers for the 2014-15 school year.

At its February 2014 meeting, the Board of Regents directed the State Education Department to submit a request to the United States Department of Education (USDE) to amend the provisions of the approved ESEA Flexibility Waiver Request related to determinations of AYP. These changes were approved by the USDE on July 31, 2014. A subsequent review of the Commissioner's Regulations has determined that a technical amendment is necessary to conform regulatory language to the approved ESEA Flexibility Waiver Request.

In addition, Department staff convened a workgroup of districts that have or have had schools identified LAP and conducted an online survey of such districts. As a result of this feedback, Department staff is proposing technical changes to the regulations to clarify that the Commissioner will not identify any schools that meet progress criteria established by the Commissioner as LAP Schools.

The proposed amendment will amend subdivision 100.18(f) of Commissioner's Regulations to align it with New York's approved ESEA Flexibility Waiver Renewal Application and 100.18(g) to clarify the methodology for identification of LAP Schools. The proposed amendments will:

- Give schools and districts credit for making Adequate Yearly Progress (AYP) with the "all students group" when all other accountability groups for which a school or district is accountable make AYP on an English language arts or mathematics performance criterion, as specified in New York's approved ESEA waiver; and

- Clarify that the Commissioner may consider additional measures in determining whether to identify a school as a LAP, including, but not limited to the following: whether a subgroup has made AYP; the subgroup's Student Growth Percentile (SGP); the percentile rank of the Performance Index (PI)/graduation rate of a subgroup on an accountability measure as compared to the percentile rank of the PI/graduation rate of the subgroup in other schools in the state; whether the graduation rate of the subgroup is above state average; and if the subgroup's performance on an accountability measure has changed from year to year.

The proposed amendment imposes no additional professional service requirements.

3. COSTS:

The proposed amendment does not impose any direct costs on school districts or charter schools in rural areas. It is anticipated that any indirect costs associated with the proposed amendment will be minimal and capable of being absorbed using existing staff and resources.

4. MINIMIZING ADVERSE IMPACT:

The proposed amendment relates to public school and school district accountability and is necessary to conform the Commissioner's Regulations to New York State's approved Elementary and Secondary Education Act (ESEA) Waiver Renewal Request relating to the methodology for determining Adequate Yearly Progress (AYP) and the identification of Local Assistance Plan (LAP) schools, for purposes of school district/school accountability. The State and local educational agencies (LEAs) are required to comply with the ESEA as a condition to their receipt of federal funds under Title I of the ESEA Act of 1965, as amended.

The proposed amendment has been carefully drafted to meet specific federal and State requirements and does not impose any additional compli-

ance requirements or costs beyond those inherent in such federal and State requirements. Since these requirements apply to all local educational agencies in the State that receive ESEA funds, it is not possible to adopt different standards for school districts and charter schools in rural areas.

5. RURAL AREA PARTICIPATION:

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

6. INITIAL REVIEW OF RULE:

Pursuant to State Administrative Procedure Act section 207(1)(b), the State Education Department proposes that the initial review of this rule shall occur in the fifth calendar year after the year in which the rule is adopted, instead of in the third calendar year. The justification for a five year review period is that the proposed amendment is necessary to conform the Commissioner's Regulations to New York State's approved ESEA Waiver Renewal Request relating to the methodology for determining Adequate Yearly Progress (AYP) and the identification of Local Assistance Plan (LAP) schools, for purposes of school district/school accountability. Accordingly, there is no need for a shorter review period. The Department invites public comment on the proposed five year review period for this rule. Comments should be sent to the agency contact listed in item 16. of the Notice of Emergency Adoption and Proposed Rule Making published herewith, and must be received within 45 days of the State Register publication date of the Notice.

Job Impact Statement

The proposed amendment relates to public school and school district accountability and is necessary to conform the Commissioner's Regulations to New York State's approved Elementary and Secondary Education Act (ESEA) Waiver Renewal Request relating to the methodology for determining Adequate Yearly Progress (AYP) and the identification of Local Assistance Plan (LAP) schools, for purposes of school district/school accountability. The State and local educational agencies (LEAs) are required to comply with the ESEA as a condition to their receipt of federal funds under Title I of the ESEA Act of 1965, as amended.

The proposed amendment applies to public schools, school districts and charter schools that receive funding as LEAs pursuant to the ESEA, and will not have an adverse impact on jobs or employment opportunities. Because it is evident from the nature of the proposed amendment that it will have 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.

NOTICE OF EXPIRATION

The following notice has expired and cannot be reconsidered unless the Education Department publishes a new notice of proposed rule making in the *NYS Register*.

Elementary and Secondary Education Act (ESEA) Flexibility and School and School District Accountability

I.D. No.	Proposed	Expiration Date
EDU-27-14-00013-EP	July 9, 2014	July 9, 2015

Department of Environmental Conservation

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Qualifications for License Issuing Agents and Wildlife Rehabilitators

I.D. No. ENV-30-15-00004-P

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

Proposed Action: Amendment of Parts 183 and 184 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 11-0305, 11-0713, 11-0515 and 11-0919

Subject: Qualifications for License Issuing Agents and Wildlife Rehabilitators.

Purpose: To remove regulatory requirements that exclude individuals with felonies from obtaining certain licenses and authorizations.

Text of proposed rule: Title 6 of the Codes, Rules and Regulations of the State of New York, Part 184, Wildlife Rehabilitators, is amended as follows:

Paragraph 184.3(a)(1) is amended; paragraph 184.3(a)(2) is removed and paragraphs (3) and (4) of subdivision (a) are renumbered as paragraphs (2) and (3) and a new paragraph (4) is added. Subdivision (a) of section 184.4 is amended. Paragraphs 184.6(a)(4), (5), (7) and (8) are amended; subdivision 184.6(b) is amended.

§ 184.3 Qualifications for appointment

(a) The Class I Wildlife Rehabilitator and Class II Wildlife Rehabilitator must:

(1) be over the age of 16 years[,] and a resident of New York State[, of good character and reputation in the community as judged by two character references written by persons not related to the applicant or to each other;

(2) not have been convicted of or pleaded guilty to a violation or misdemeanor under the Environmental Conservation Law or settled and compromised a civil liability therefor, nor have been convicted of any misdemeanor or felony within the previous three years[;]

[(3)](2) receive a grade of 80 percent or higher on a written examination administered by the department and designed to test knowledge in the field of wildlife rehabilitation[; and]

[(4)](3) be interviewed, by a regional department employee responsible for the wildlife rehabilitation program, to assess the applicant's proficiency in wildlife rehabilitation[.]; and

(4) if convicted of one or more criminal offenses, be found eligible after a balancing of the factors set out in Article 23-A of Correction Law. In accordance with that Article, no license shall be denied by reason of the applicant having been previously convicted of one or more criminal offenses unless (i) there is a direct relationship between one or more of the previous criminal offenses and the duties required of the license or (ii) licensing the applicant would involve an unreasonable risk to property or the safety or welfare of a specific individual or the general public. In determining these questions, the agency will look at all factors listed under New York State Correction Law Section 753.

§ 184.4 Additional criteria for appointments

(a) The Class II Wildlife Rehabilitator may be assisted by and provide training to one or more assistant wildlife rehabilitators upon approval by the department of an outline of training methods and procedures to assure control over the activities of appointed assistant wildlife rehabilitators, [but]and the Class II Wildlife Rehabilitator [must]shall be responsible for the proper performance of duties of all assistant wildlife rehabilitators under their supervision[whom he or she nominated, trained, and employs].

§ 184.6 Duties

(a) The wildlife rehabilitator must:

(4) comply with applicable provisions of the Environmental Conservation Law and rules and regulations adopted pursuant thereto and with the department's instructions concerning methods of wildlife rehabilitation, reporting requirements and any conditions contained in [his/her]their license;

(5) display in a prominent place the license provided by the department. A wildlife rehabilitator identification card must be carried by the [permittee]licensee when in possession of wildlife afield;

(7) notify the department at least 90 days in advance of moving [his/her]their place of operation to a new location;

(8) allow authorized department employees to inspect [his/her]their wildlife rehabilitation operations and records at any reasonable time; and

(b) Additionally, the wildlife rehabilitator may distribute, if appropriate, to persons who submit wildlife to [him/her]them, any material supplied by the department relating to wildlife rehabilitation.

Text of proposed rule and any required statements and analyses may be obtained from: Joseph Therrien, New York State Department of Environmental Conservation, 625 Broadway, Albany, NY 12233-4752, (518) 402-8987, email: joseph.therrien@dec.ny.gov

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

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

Additional matter required by statute: A programmatic environmental impact statement is on file with the Department of Environmental Conservation.

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

Regulatory Impact Statement

1. Statutory Authority

Subdivision 2 of Section 11-0305 of the Environmental Conservation Law authorizes the department to issue licenses and designate agents to sell and promote the sale of licenses. Paragraph 1.a. of Section 11-0713 provides for the qualifications and regulatory compliance requirements of license issuing officers.

Subdivision 3 of Section 11-0515 of the Environmental Conservation Law directs the department to promulgate regulations pertaining to the rehabilitation of wildlife. Subdivision 2 of Section 11-0919 provides the criteria for a licensed wildlife rehabilitator to handle rabies vector species (skunks, raccoons and bats).

2. Legislative Objectives

The legislative objectives of the statutory provisions listed above are to establish, or authorize the department to establish, qualifications and duties of becoming a license issuing agent and of becoming a wildlife rehabilitator in New York State.

3. Needs and Benefits

The purpose of this rulemaking is to amend both 6 NYCRR Part 183 and 184 by ensuring that Correction Law Article 23-A balancing test will be used in evaluating applicants for these licenses who have criminal convictions.

4. Costs

There are no costs to the department or local governments. The proposed changes will not alter any existing programs and will not increase requirements or fees associated with these licenses.

5. Local Government Mandates

These amendments will not impose any programs, services, duties or responsibilities upon any county, city, town, village, school district or fire district.

6. Paperwork

The proposed rule will not impose any additional paperwork requirements. Individuals seeking license from the department will be required to complete and submit a license application. Applicants for a wildlife rehabilitation license are also required to pass a written minimum standards test administered by the Department.

7. Duplication

There are no other regulations similar to this proposal.

8. Alternatives

There are no additional alternatives.

9. Federal Standards

The federal rehabilitation standards appear in Title 50 of the Code of Federal Regulations Section 21.31. The proposed rule does not exceed any minimum standards of the federal government. There are no federal standards associated with license issuing agents.

10. Compliance Schedule

These regulations, if adopted, will become effective immediately. No additional steps will be required of current license holders.

Regulatory Flexibility Analysis

The proposed regulation would amend the Department of Environmental Conservation's (department) regulations governing the qualifications and appointment as a License Issuing Officer and Wildlife Rehabilitator found in Title 6 of the New York Codes Rules Regulations, Parts 183 and 184, by allowing individuals who have been convicted of or pled guilty to a misdemeanor or felony to apply for and become a license issuing officer or a wildlife rehabilitator.

The proposed rule will ensure that Correction Law Article 23-A balancing test will be used in evaluating applicants for these licenses who have criminal convictions. The rulemaking removes the restrictions which currently prohibit the acquisition of these licenses by any individual that has been convicted of or pled guilty to a misdemeanor or felony. The rulemaking will allow store proprietors or employees, who were previously prohibited from becoming License Issuing Officers, to offer this service at their stores. The proposed rulemaking may increase sales at these businesses as proprietors will be able to offer the additional service of sport license sales. In addition, the rulemaking will allow individuals, who were previously prohibited from becoming wildlife rehabilitators, to create their own rehabilitation center where they can develop their business and professional images. The proposed changes will not impose any new record keeping or compliance requirements.

Based on the proposed regulations having little to no impact on businesses and, the potential for enhanced business opportunities, the department has determined that the proposed rule will not impose an adverse economic impact or reporting, record keeping, or other compliance requirements on small business or local governments. There will be no impacts on local governments. The regulation removes previous restrictions to obtaining a license from the department.

Since the department's proposed rule making will not impose an adverse impact on businesses or local governments, including little effect on current reporting, record-keeping or compliance requirements, the department has concluded that this proposed regulation does not require a Regulatory Flexibility Analysis.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:

The proposed rule will ensure that Correction Law Article 23-A balancing test will be used in evaluating applicants for these licenses who have

criminal convictions. The rule allows individuals in New York State who have a felony record to become a License Issuing Officer or Wildlife Rehabilitator. Consequently, the proposed regulation impacts rural areas throughout the state.

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

The proposed rule does not add any additional requirements for record keeping or requirements for obtaining a license.

3. Costs:

There are no application or license fees associated with the License Issuing Officer or Wildlife Rehabilitation licenses. There are no additional costs associated with obtaining these licenses. To qualify for a Wildlife Rehabilitation license an applicant must first pass a written exam administered by the department which tests the knowledge and skill of potential licensees. There is no fee for this examination and a free study guide is available on line to aide in preparation for the exam.

4. Minimizing adverse impact:

The proposed rulemaking will allow individuals who were previously prohibited from obtaining these licenses to now obtain them. The proposed changes will provide new opportunities to a percentage of the population that was previously excluded from these activities thereby having a positive effect on rural areas. The proposed rule may also have a beneficial impact on small businesses as some business owners may opt to provide the additional service of selling sport licenses.

5. Rural area participation:

The regulation removes previous restrictions to obtaining a license from the department.

Job Impact Statement

The purpose of this rulemaking is to amend both 6 NYCRR Part 183 and 184 by ensuring that Correction Law Article 23-A balancing test will be used in evaluating applicants for these licenses who have criminal convictions. The proposed rulemaking will provide opportunities to individuals who have been convicted of or pled guilty to a misdemeanor or felony by allowing them to obtain department issued licenses that will enable them to integrate back into the work force. The proposed rulemaking will provide regulatory relief by removing the requirement that individuals applying to be license issuing agents or wildlife rehabilitators must not have been found guilty or pled to a felony or misdemeanor charge within three years of application.

The proposed rulemaking will allow access to individuals who previously could not partake in these activities. The proposed rulemaking will not have a substantial adverse impact on jobs or employment opportunities. Moreover, this rule making is not expected to adversely affect the number of participants or frequency of participation in the regulated activities.

For these reasons, the department anticipates that the proposed regulatory changes will not have an adverse impact on jobs or employment opportunities in New York, and that a Job Impact Statement is not required.

Department of Health

NOTICE OF ADOPTION

Blood Banks

I.D. No. HLT-32-14-00001-A

Filing No. 622

Filing Date: 2015-07-14

Effective Date: 2015-09-27

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

Action taken: Amendment of Subpart 58-2 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 3121(5)

Subject: Blood Banks.

Purpose: Update practice standards, reflect changes and provide clarification of regulation provisions for blood banks and transfusion services.

Text or summary was published in the August 13, 2014 issue of the Register, I.D. No. HLT-32-14-00001-P.

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

Text of rule and any required statements and analyses may be obtained from: Katherine Ceroalo, DOH, Bureau of House Counsel, Reg. Affairs Unit, Room 2438, ESP Tower Building, Albany, NY 12237, (518) 473-7488, email: regsqa@health.ny.gov

Assessment of Public Comment

The public comment period for this regulation ended on September 29, 2014. The Department received six comments.

All six comments were from hospital emergency medical departments and were in support of the proposed changes.

Consequently, no changes were made to the proposed regulation.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Practice of Radiologic Technology

I.D. No. HLT-30-15-00005-P

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

Proposed Action: Amendment of Part 89 of Title 10 NYCRR.

Statutory authority: Public Health Law, sections 3504, 3507(2), (7) and 3510(1)(g)

Subject: Practice of Radiologic Technology.

Purpose: To update regulations related to the practice of radiologic technology.

Text of proposed rule:

Paragraph (4) of subdivision (a) of section 89.1 is amended to read as follows:

(4) [Board means the department's Radiologic Technologist Advisory Board] *Reserved*

New paragraphs (5) and (10) are added, paragraph (5) is amended, and paragraphs (5) - (8) of subdivision (a) of section 89.2 are renumbered to read as follows:

(a) The practice of radiography includes, but is not limited to, the following activities performed under the supervision of a licensed practitioner:

- (1) measuring and positioning patients;
- (2) selecting and setting up exposure factors on x-ray equipment;
- (3) making x-ray exposures;
- (4) using fluoroscopy for localization purposes prior to taking a spot film of a mobile organ such as the gall bladder or the duodenal cap

(5) *using fluoroscopy under direct supervision of a physician to verify the placement of an intravascular line such as a peripherally inserted central catheter that was inserted by a licensed practitioner, physician's assistant or nurse practitioner.*

(5) (6) operating fluoroscopy equipment under the personal supervision of a physician, *except where direct supervision is required by this part;*

(6) (7) administering non-intravenous contrast media pursuant to a physician's order;

(7) (8) performing quality control tests; [and,]

(8) (9) for individuals certified under section 89.40 of this Part, the intravascular administration of contrast media under the direct supervision when such administration is an integral part of an x-ray or imaging procedure; *and*

(10) *performing air insufflation as a required component of an imaging procedure, under direct supervision of a physician.*

Paragraph (5) of subdivision (a) is amended, and paragraphs (b) and (c) of section 89.10 are re-lettered to read as follows:

(a) To qualify for a license to practice as a radiologic technologist, an applicant shall fulfill the following requirements in a manner acceptable to the department:

(1) file an application on a form prescribed by the department along with a nonrefundable license fee of one hundred twenty dollars;

(2) submit documentation that the applicant has successfully completed an education program in radiologic technology that is registered with the department, the State Department of Education, or an accrediting organization approved by the department;

(3) submit evidence that the applicant has passed an examination administered by an accrediting organization approved by the department with a passing grade, as determined by the department;

(4) be at least 18 years of age and;

(5) be of good moral character. *In accordance with Correction Law Article 23-A, a person previously convicted of one or more criminal offenses shall not be found to lack good moral character based upon these conviction(s) unless (i) there is a direct relationship between one or more of the previous criminal offenses and the duties required of the license or (ii) licensing the applicant would involve an unreasonable risk to property or the safety or welfare of a specific individual or the general public. In determining these questions, the department will look at all the factors listed under New York State Correction Law section 753. [Any person*

who has been convicted of one or more criminal offenses involving a threat or use of physical violence, sexual behavior, illegal possession or use of drugs, theft or fraud, shall be deemed to not be of good moral character unless the department determines that sufficient mitigating factors exist to warrant a finding of good moral character. In making such a determination, the department shall consider the following factors:

- (i) the number and seriousness of the underlying offenses of such conviction;
 - (ii) the time that has elapsed since such conviction;
 - (iii) the age of the applicant when the underlying offenses occurred; and
 - (iv) evidence of rehabilitation and good conduct since such convictions, including the issuance to the applicant of a certificate of relief from disability or a certificate of good conduct;
- (b) No person shall be licensed pursuant to this Part who has been convicted of a crime consistent with the provisions of Article twenty-three A of the Corrections Law.]

(b)[(c)] Nothing in this Part shall be construed to apply to the practice of nuclear medicine technology prior to January 1, 2009.

(c)[(d)] Notwithstanding any provision herein to the contrary, any individual practicing as a nuclear medicine technologist prior to July 26, 2007 may be licensed to practice nuclear medicine technology provided that he or she has completed an education program in nuclear medicine technology acceptable to the department and has five years of verifiable and satisfactory employment within the previous ten years as a nuclear medicine technologist, or possesses certification by the Nuclear Medicine Technology Certifying Board or registration with the American Registry of Radiologic Technology in nuclear medicine technology.

Subdivision (a) of section 89.11 is amended to read as follows:

(a) If the department determines that an applicant is ineligible for licensure pursuant to this Part, the department shall [proved] *provide* written notice to the applicant of the determination, the reasons therefor and information regarding his/her rights to petition.

Section 89.20 is amended to read as follows:

(a) Each person licensed pursuant to this Part must obtain a certificate of registration from the department prior to practicing radiology in this state. The department shall register each licensee who submits a completed registration application on a form supplied by the department, pays a fee of twenty dollars per year, and provides evidence of completion of any continuing education requirements required by this section. Every practicing radiologic technologist shall have available for review by the department or other interested parties at all places of employment a copy of his/her current certificate of registration.

(b) Each registration shall authorize a licensee to practice radiologic technology for a period of up to four years and terminate on the registrant's birth date. [on either the next ensuing odd-numbered or the next ensuing even-numbered year, depending upon whether the registrant was born in an odd-numbered or even-numbered year, respectively].

(c) Beginning January 1, 2010, each radiologic technologist, when applying to register pursuant to paragraph 89.20(a) of this section, must provide evidence of continuing education equivalent to *12 credit hours for each year of the registration cycle or 48 credit hours for a four year registration period. The 48 credits may be completed any time during the 48 months preceding the start of the renewal period.*

[12 credits hours per year according to the following schedule:

- (1) individuals registering in the year 2010 must have 12 credits within the previous 12 months;
- (2) individuals registering in the year 2011 must have 24 credits within the previous 24 months;
- (3) individuals registering in the year 2012 must have 36 credits within the previous 36 months; and
- (4) individuals registering in the year 2013 must have 48 credits within the previous 48 months.

(d) Thereafter to reregister, the radiologic technologist must provide evidence of the equivalent of 12 credit hours per year for every year since the previous registration period.]

[(e)](d) Notwithstanding any provision herein to the contrary, the department may waive the continuing education requirement of a licensee who has recently completed an education program in radiologic technology pursuant to paragraph 89.10(a)(2), and is applying for registration for the first time. Thereafter, to reregister the radiologic technologist must provide evidence of the [of the equivalent of 12 credit hours per year for each succeeding year] *continuing education credits in accordance with subdivision (c) of this section.*

[(f)](e) All continuing education credits must be approved by an accrediting organization approved by the department.

[(g)](f) A copy of a current certificate of registration from an accrediting organization approved by the department is acceptable evidence to meet the continuing education requirement.

(g) *The Department may issue a conditional registration to a registrant*

who does not meet the continuing education requirements of this section provided that such applicant agrees to correct the deficiency within the conditional registration period, in addition to their regular continuing education to be applied to the next registration cycle.

(1) *Conditional registrations shall be for no more than 180 days and shall not be renewable.*

(2) *Failure to complete the required continuing education credits may be considered unethical conduct by the Department.*

Paragraph (1) of subdivision (a) of section 89.30 is amended to read as follows:

(a) Dental assistants.

(1) A person acting as a dental assistant shall be exempt from licensure as a radiologic technologist when operating the following equipment under the supervision of a dentist for the sole purpose of routine oral radiography in which the x-ray beam is limited to the patient's head:

(i) conventional radiographic dental equipment in which the diameter of the x-ray beam at the patient's face is limited to not more than three inches; [and]

(ii) panoramic radiographic dental equipment: *and*

(iii) *conebeam computed tomography after demonstrating satisfactory completion of a training program approved by the department or one provided by the equipment manufacturer.*

Text of proposed rule and any required statements and analyses may be obtained from: Katherine Ceroalo, DOH, Bureau of House Counsel, Reg. Affairs Unit, Room 2438, ESP Tower Building, Albany, NY 12237, (518) 473-7488, email: regsqna@health.ny.gov

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

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

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

Regulatory Impact Statement

Statutory Authority:

Section 3504 of the Public Health Law (PHL) authorizes the Commissioner of Health to make rules and regulations, not inconsistent with the law, as may be necessary to carry out the provisions of Article 35 of the PHL that govern the practice of radiologic technology. PHL § 3510(1)(g) authorizes the Commissioner to define in regulations unethical conduct regarding the licensure of radiological technicians. PHL § 3507(2) requires the Commissioner to promulgate regulations necessary to effectuate the registration process of radiological technicians. PHL § 3507(7) provides that the Commissioner may create regulations regarding continuing education credits for radiological technicians.

Legislative Objectives:

Article 35 of the PHL expresses the legislative intent that only individuals with the appropriate education, training, and experience shall be allowed to expose human beings to ionizing radiation as part of the performance of diagnostic x-ray, nuclear medicine and therapy procedures. Nuclear medicine technology and the intravenous injection of contrast material by radiographers were added to Article 35 pursuant to Chapter 175 of the Laws of 2006.

Needs and Benefits:

The Department's proposal seeks to modify the regulations governing the practice of radiologic technology. These changes include using fluoroscopy under direct supervision of a physician to verify the placement of an intravascular line such as a peripherally inserted central catheter that was inserted by a licensed practitioner, physician's assistant or nurse practitioner and performing air insufflation as a required component of an imaging procedure, under direct supervision of a physician. These two procedures are part of the technologists training program and competency requirements and are performed by licensed technologists in many states that license this profession. By allowing the technologist to perform these functions the radiologist can devote more of their time to higher priority patient care functions. The amendment also clarifies the continuing education requirements for the practice of radiologic technology. The proposed regulation requires a technologist to complete 48 credit hours of continuing education over a 48 month period and allows the department to issue a conditional registration to technologists to allow additional time to meet the continuing education requirements. The proposal also ensures that the licensing process comports with article 23-A of the Correction Law related to licensure of individuals who have been previously convicted of one or more criminal offenses.

Costs:

Costs to State Government:

The proposed rule does not impose any new costs on state government.

Costs to Local Governments:

The proposed rule does not impose any new costs on local government.

Costs to Private Regulated Parties:

The proposed rule does not impose any new costs on private regulated parties.

Costs to the Regulatory Agency:

The proposed rule does not impose any new costs on any regulatory agency.

Local Government Mandates:

This regulation does not mandate any new programs, services, duties or responsibilities upon any county, city, town, village, school district, fire district or any other special district.

Paperwork:

This regulation does not increase the documentation or paperwork for any individual or organization.

Duplication:

This regulation does not duplicate any other State or Federal law or regulation.

Alternatives:

There are no other acceptable alternatives to this proposal.

Federal Standards:

This regulatory amendment does not exceed any minimum standards of the Federal government.

Compliance Schedule:

The proposed rule change will become effective upon publication of a Notice of Adoption in the State Register.

Regulatory Flexibility Analysis**Effect of Rule:**

The rule would be applicable to approximately 20,000 licensed radiologic technologists and the businesses that employ them. This rule clarifies several tasks of radiological technologists and continuing education requirements and should have no negative impact on small businesses.

Compliance Requirements:

Licenses and applicants will need to become familiar with the new requirements and modify their quality assurance policies and procedures accordingly.

Professional Services:

There should be no impact on professional services.

Compliance Costs:

There are no capital costs associated with this regulation.

Economic and Technological Feasibility:

It is economically and technologically feasible to comply with this amended rule.

Minimizing Adverse Impact:

No adverse impact has been identified.

Small Business and Local Government Participation:

A copy of the draft proposed rule was sent via e-mail to several professional societies for input concerning the tasks of radiological technicians and registration process for licensed radiological technicians. These groups represented radiologists, physicists and technologists, but not specifically those employed in small or large practices. There are no costs associated with this rule change; therefore, it is not anticipated that small business will be impacted.

Rural Area Flexibility Analysis**Types and Estimated Numbers of Rural Areas:**

Affected facilities are located in 27 rural areas (18 counties with < 200,000 population and 9 counties with certain townships with a population density < 150 persons for square mile).

Reporting, Recordkeeping and Other Compliance Requirements; and Professional Services:

There are no new reporting requirements contained in the proposed regulations. No additional professional service costs are anticipated.

Costs:

There are no costs associated with this rule change.

Minimizing Adverse Impact:

Staff held multiple discussions with representatives from professional organizations. The Department determined that there are no adverse impacts associated with these proposed requirements.

Rural Area Participation:

A copy of the draft proposed rule was sent via e-mail to several professional societies. These groups represented radiologists, physicists and technologists in both urban and rural facilities.

Job Impact Statement**Nature of Impact:**

It is anticipated that no persons will be adversely affected. Facility staff will need to become familiar with the new requirements. The proposed rule does not change any training or experience requirements.

Categories and Numbers Affected:

This rule affects registered radiologic technologists.

Regions of Adverse Impact:

No rural areas will be adversely affected.

Minimizing Adverse Impact:

No adverse impact was identified; therefore, there are no alternatives to the proposed regulations.

**PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED****Medicaid Provider Enrollment**

I.D. No. HLT-30-15-00006-P

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

Proposed Action: This is a consensus rule making to amend section 504.5 of Title 18 NYCRR.

Statutory authority: Social Services Law, sections 363-a and 364

Subject: Medicaid Provider Enrollment.

Purpose: To make technical, conforming changes to regulations governing the enrollment of Medicaid providers of care, services and supplies.

Text of proposed rule: Paragraphs (8) and (10) of subdivision (a) of section 504.5 are amended to read as follows:

(8) [an] a *pending* indictment for, or prior conviction of, any crime relating to the furnishing of, or billing for, medical care, services or supplies or which is considered an offense involving theft or fraud or an offense against public administration or against public health and morals;

(10) a [current] *pending* indictment for, or prior conviction of, [a] any crime relating to the furnishing of or billing for medical care, services or supplies, or a determination of having engaged in an unacceptable practice in the medical assistance program;

Text of proposed rule and any required statements and analyses may be obtained from: Katherine Ceroalo, DOH, Bureau of House Counsel, Reg. Affairs Unit, Room 2438, ESP Tower Building, Albany, NY 12237, (518) 473-7488, email: regsqa@health.ny.gov

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

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

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

Consensus Rule Making Determination**Statutory Authority:**

The Commissioner of Health is authorized by section 363-a of the Social Services Law to make such regulations, not inconsistent with law, as may be necessary to implement the Medicaid program within New York State.

Basis:

Among the factors that the Commissioner must take into consideration in deciding whether to allow a provider to enroll in the Medicaid program is that the provider has an indictment for, or prior conviction of, any crime related to the furnishing of or billing for medical care, services, or supplies.

The proposed regulation would bring uniformity to the language of two provisions in section 504.5, and make clear that the regulation is referring to pending indictments. In addition, the proposed regulation would replace the term "current indictment" with "pending indictment", to conform to terminology used in the Criminal Procedure Law, thus reducing the possibility of any confusion caused by the use of inconsistent language.

Because these amendments make technical changes, it is expected that no person is likely to object to their adoption.

Job Impact Statement

No job impact statement is required pursuant to section 201-a (2)(a) of the State Administrative Procedures Act. It is apparent, from the nature of the proposed amendment, that it will not have a substantial adverse impact on jobs and employment opportunities.

**PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED****Reciprocal Emergency Medical Technician Certification Requirements**

I.D. No. HLT-30-15-00007-P

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

Proposed Action: Amendment of Part 800 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 3002

Subject: Reciprocal Emergency Medical Technician Certification Requirements.

Purpose: To replace the emergency medical technician-intermediate category with the advanced emergency medical technician category.

Text of proposed rule: Section 800.12 of Part 800 is amended to read as follows:

800.12 Reciprocal Certification Requirements

(a) To qualify for New York State certification based on out-of-state emergency medical responder, emergency medical technician[-basic], advanced emergency medical technician[intermediate], emergency medical technician-critical care, [or] emergency medical technician-paramedic, or emergency medical services instructor certification or training credentials, a person must be currently certified or licensed by another state, the United States Military, or the National Registry of Emergency Medical Technicians, based on an out-of-state training program. The out-of-state [other state's] training must be equivalent to, or more stringent than New York State training and examination requirements.

(b) The applicant must:

(1) demonstrate a need for certification, such as New York State residence or employment opportunity;

(2) have successfully completed a course that meets or exceeds a curriculum based on the current department EMS certification guidelines;

(3) have successfully completed

(i) an out-of-state recognized or National Registry of Emergency Medical Technicians practical skills and written examination within 18 months of the date the application is received by the department; or

(ii) if a member or veteran of the United States Military, an approved medical training program from the Army, Navy, Air Force, Marines or Coast Guard that meets or exceeds current national emergency medical services education guidelines within three (3) years of the date the application is received by the department;

[(2)] (4) submit [a written request for New York State certification, including a copy of the out-of-state credentials and complete an application for certification on a form to be provided by the department;] a complete application for reciprocal certification on forms provided by the department;

[(3)] (5) [pay in advance a] submit the filing fee of \$25 dollars for [certified first responder] emergency medical responder or emergency medical technician[-basic] certification or \$50 for [any other level] all other levels of certification;

[(4)] not have any convictions for any crime or crimes related to murder, manslaughter, assault, sexual abuse, theft, robbery, drug abuse, or sale of drugs or currently be under charges for such a crime unless the department finds that such conviction or charges do not demonstrate a present risk or danger to patients; and]

(6) if the applicant has been convicted of one or more criminal offenses, as defined in Section 800.3(ak), be found eligible after a balancing of the factors set out in Article 23-A of the Correction Law. In accordance with that Article, no application for a license shall be denied by reason of the applicant having been previously convicted of one or more criminal offenses unless (i) there is a direct relationship between one or more of the previous criminal offenses and duties required of this certificate or (ii) certifying the applicant would involve an unreasonable risk to property or the safety or welfare of a specific individual or the general public. In determining these questions, the department will look at all factors listed under New York State Correction Law Section 753;

(7) not have been found guilty or in violation, in any jurisdiction, of any other non-criminal offense or statutory and/or regulatory violation, as those terms are defined in Section 800.3 of this Part, relating to patient safety unless the department determines such applicant would not involve an unreasonable risk to property or the safety or welfare of a specific individual or the general public; and

[(5)] (8) be at least eighteen years of age.

Text of proposed rule and any required statements and analyses may be obtained from: Katherine Ceroalo, DOH, Bureau of House Counsel, Reg. Affairs Unit, Room 2438, ESP Tower Building, Albany, NY 12237, (518) 473-7488, email: regsqna@health.ny.gov

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

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

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

Regulatory Impact Statement

Statutory Authority:

The authority for the promulgation of this regulation is contained in Public Health Law (PHL) Article 30 (Emergency Medical Services), Section 3002. Section 3002 sets forth the provisions creating the New York State Emergency Medical Services Council and specifies that it shall have the power, by an affirmative vote of a majority of those present, subject to approval by the Commissioner, to enact, and from time to time, amend and repeal, rules and regulations establishing minimum standards for ambulance services, ambulance service certification, advanced life support first response services, the provision of prehospital emergency medi-

cal care, public education, the development of a statewide emergency medical services system, the provision of ambulance services outside of the primary territory specified in the ambulance services' certificate and the training, examination, and certification of certified first responders, emergency medical technicians, and advanced emergency medical technicians; provided, however that such minimum standards must be consistent with the staffing standards established by the ambulance services and advanced life support first response services provisions outlined in PHL Section 3005-a.

Legislative Objectives:

The purpose of PHL Article 30 is to promote the public health, safety and welfare by providing certification for pre-hospital care providers and all advanced life support first response and ambulance services.

Needs and Benefits:

Section 800.12 sets forth the requirements for out-of-state reciprocal certification. This revision considerably expands and improves how New York State recognizes EMS training, certification and licensure from other states, government departments and the United States Military. This revision specifically recognizes United States Military training and National Registry of Emergency Medical Technicians (NREMT) certification and training, as well as the expertise of out-of-state trained EMS instructors. By recognizing the extensive training and experience gained by such individuals, these revisions will improve job opportunities for returning military veterans with emergency medical training and help fill an ongoing need for highly trained staff in EMS agencies across the state. At present, NREMT is the primary certification used by forty-seven (47) states in the United States. All of those states accept the NREMT for direct reciprocal certification or licensure. Additionally, NREMT is the training, examination and certification program used for the U.S. Government for personnel working in the National Park Service, Department of Defense, Homeland Security, the Supreme Court as well as in American Islands and Territories. According to NREMT, approximately 3,784 (6%) of the 59,755 certified EMS providers in New York State hold NREMT certification in conjunction with the NYS EMT certification (2014).

Part 800.12 is also revised to ensure the Correction Law Article 23-A's balancing test will be used when reviewing applicants and existing providers who have criminal convictions, consistent with recent revisions to Part 800.6, 8, 9 and 16.

Costs for the Implementation of and Continuing Compliance with these Regulations to the Regulated Entity:

There will be no cost to the regulated parties (EMS agencies) for changes to Part 800.12 – Reciprocal Certification Requirements.

Cost to State and Local Government:

There will be no cost to the general public, state and local government. These regulations are directed at individuals seeking reciprocal EMS certification in New York State.

Cost to the Department of Health:

The Department will not incur any additional costs.

Local Government Mandates:

These provisions do not add any additional mandates to local governments.

Paperwork:

It is currently required that an application for reciprocity be submitted to the Department of Health. This requirement will continue under the amended regulations.

Duplication:

This measure does not duplicate, overlap or conflict with a State or federal statute or rule.

Alternatives:

There are no other viable alternative approaches. Current provisions are outdated and must be updated to reflect appropriate EMS standards and practice.

Federal Standards:

This regulatory amendment does not exceed any minimum standards of the federal government for the same or similar subject areas. This proposal is intended to update outdated Part 800 provisions with language appropriate and applicable to the modern EMS system.

Compliance Schedule:

This proposal will go into effect upon a Notice of Adoption in the New York State Register.

Regulatory Flexibility Analysis

A Regulatory Flexibility Analysis for Small Business and Local Governments is not included in accordance with Section 202-b of the State Administrative Procedure Act (SAPA). This regulation does not impose an adverse economic impact, nor reporting, recordkeeping or other compliance requirements on small businesses or local governments. This rule pertains only to individual persons who are certified by the Department to provide pre-hospital emergency care and treatment to sick or injured persons.

Cure Period

A cure period was not included in this rule. This proposal amends standards for reciprocal certification that would protect the public health, safety and well-being of the patients served. A cure period would not be appropriate.

Rural Area Flexibility Analysis

Pursuant to section 202-bb of the State Administrative Procedure Act (SAPA), a rural area flexibility analysis is not required. These provisions apply uniformly throughout New York State, including all rural areas.

The proposed rule will not impose an adverse economic impact on rural areas, nor will it impose any additional reporting, record keeping or other compliance requirements on public or private entities in rural areas.

Job Impact Statement

A Job Impact Statement is not included in accordance with Section 201-a (2) of the State Administrative Procedure Act (SAPA), because it will not have a substantial adverse effect on jobs and employment opportunities.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Controlled Substances for EMS Agency Agent and Requirements for an Advanced Life Support System

I.D. No. HLT-30-15-00008-P

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

Proposed Action: Amendment of sections 80.136 and 800.5 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 3002

Subject: Controlled Substances for EMS Agency Agent and Requirements for an Advanced Life Support System.

Purpose: To amend the regulations regarding the EMS Agency Agent and the Requirements for an Advanced Life Support System.

Text of proposed rule: Paragraph (2) of subdivision (e) of section 80.136 of Part 80 is amended to read as follows:

(2) The Department shall issue such registration unless the Department finds that the application should be denied by reason of false statements in the application, [conviction of a felony,] failure to provide adequate safeguards against diversion of the controlled substances, [any conviction related to controlled substances, or] other good and sufficient reason such as an administrative determination that article 30 or 33 of the Public Health Law [or any provision within Part 800 of this Title or any provision within this Part] was violated, *or that the applicant has been convicted of one or more criminal offenses, as defined in § 800.3(ak), unless the applicant is found eligible after a balancing of the factors set out in Article 23-A of the Correction Law. In accordance with that Article, no application for registration shall be denied by reason of the applicant having been previously convicted of one or more criminal offenses unless (i) there is a direct relationship between one or more of the previous criminal offenses and duties required of the registration or (ii) registering the applicant would involve an unreasonable risk to property or the safety or welfare of a specific individual or the general public. In determining these questions, the department will look at all factors listed under New York State Correction Law Section 753.*

Section 800.5 of Part 800 is amended to read as follows:

800.5 Requirements For An Advanced Life Support System

(a) An advanced life support system must meet the following requirements:

(1) designation of a qualified physician to provide medical supervision and direction;

(2) integration with a hospital emergency service, or intensive care, coronary care, or other appropriate hospital unit.

(b) An ambulance *or advanced life support first response service*, when providing advanced life support services, must meet the requirements of Sections 800.23 and 800.24 of this Part and utilize a treatment record provided by or approved by the department, including submission of such record for use in quality assurance programs.

(c) An advanced life support system providing prehospital [intermediate] *Advanced EMT* care must include the following:

(1) voice communications to receive medical direction;

(2) equipment and supplies to provide prehospital [intermediate] *advanced* care; and

(3) staffing by a certified *advanced* emergency medical technician [intermediate], emergency medical technician-critical care, or emergency medical technician-paramedic, as appropriate.

(d) An advanced life support system providing prehospital *EMT-* critical care and/or *EMT-paramedic* services must include the following:

(1) voice communications to receive medical direction;

(2) biomedical telemetry;

(3) equipment and supplies to provide pre-hospital critical care and/or EMT-paramedic services; [and]

(4) *hold a current license, in accordance with Article 33 of the Public Health Law and Title 10 NYCRR Part 80.136, unless exempt as an ALS agency owned and operated by a hospital, to obtain, possess and administer controlled substance medications to treat patients in accordance with applicable State-approved regional protocols; and*

[(4)] (5) staffing by a certified emergency medical technician-critical care or emergency medical technician-paramedic, as appropriate.

Text of proposed rule and any required statements and analyses may be obtained from: Katherine Ceroalo, DOH, Bureau of House Counsel, Reg. Affairs Unit, Room 2438, ESP Tower Building, Albany, NY 12237, (518) 473-7488, email: regsqna@health.ny.gov

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

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

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

Regulatory Impact Statement

Statutory Authority:

The authority for the promulgation of this regulation is contained in Public Health Law (PHL) Article 30 (Emergency Medical Services), Section 3002, as well as Article 33 (Controlled Substances), Sections 3308 and 3390. Section 3002 sets forth the provisions creating the New York State Emergency Medical Services Council (SEMSCO) and specifies that it shall have the power, by an affirmative vote of a majority of those present, subject to approval by the Commissioner, to enact, and from time to time, amend and repeal, rules and regulations establishing minimum standards for ambulance services, ambulance service certification, advanced life support first response services, the provision of prehospital emergency medical care, public education, the development of a statewide emergency medical services system, the provision of ambulance services outside of the primary territory specified in the ambulance services' certificate and the training, examination, and certification of certified first responders, emergency medical technicians, and advanced emergency medical technicians; provided, however that such minimum standards must be consistent with the staffing standards established by the ambulance services and advanced life support first response services provisions outlined in PHL Section 3005-a.

PHL 3308 authorizes the Commissioner to promulgate regulations which are necessary and proper to supplement the provisions of Article 33 to effectuate its purposes and intent.

Additionally, PHL 3390 authorizes the Commissioner to revoke a license or certificate issued under Article 33 in whole or in part upon a finding that the licensee or certificate holder has been convicted in any jurisdiction relating to a substance listed as a controlled substance in Article 33.

Legislative Objectives:

The purpose of PHL Article 30 is to promote the public health, safety and welfare by providing certification for pre-hospital care providers and all advanced life support first response and ambulance services. The purpose of PHL Article 33 is to prevent the illegal use of and trade in controlled substances and to provide for the legitimate use of controlled substances in health care.

Needs and Benefits:

The revisions to Section 800.5 add a requirement that Advanced Life Support (ALS) agencies providing Critical Care and/or Paramedic level service must be licensed, in accordance with PHL Article 33 and Title 10 NYCRR Part 80.136, to obtain, stock and administer controlled substance medications as per state approved regional protocols. The State Emergency Medical Advisory Committee (SEMAC), the advisory board to the Commissioner of Health, and the SEMSCO have recognized that the ability to provide a patient with controlled substance medications when indicated is the national standard for ALS prehospital emergency medical care. At present, there are 675 ALS EMS agencies in New York State. Of the 675 ALS EMS agencies, 522 already hold current controlled substances licenses under PHL Article 33. This revision will currently affect the remaining 153 agencies and any newly established advanced life support level EMS agency. Agencies that do not seek licensure to obtain stock and administer controlled substances in accordance with PHL Article 33 Section 800.5 would be authorized to apply for and provide care only at the Advanced EMT level, which would allow their patients the benefit of advanced airway management and some medication for emergency treatment for diabetics and allergies, but no advanced medication therapy.

An ALS EMS agency's ability to administer controlled substance medication to patients during prehospital emergency care is of significant benefit to the patient. Controlled substance medications may be used to

treat seizures, medical anxiety, profound agitation and excited delirium, as well as pain prior to arrival at a hospital.

For example, prehospital medical protocols to allow ALS providers to use benzodiazepines for seizure management have been a mainstay of EMS care in much of the State for many years. Indeed, when the National Association of EMS Physicians first examined prehospital care standards in 2008, they carefully considered the ability to provide timely treatment of seizures. (Evidence Based Performance Measures for EMS Systems, Prehospital Emergency Care, 2008;12:141-51.) Patients experiencing prolonged or continuous seizures -- seizures that do not stop rapidly on their own -- can develop subtle brain damage; brain damage that may have been prevented by administration of a benzodiazepine such as midazolam or diazepam. In addition, management of seizures in the field makes transportation safer for both the patient and the EMS providers.

Furthermore, on January 14, 2015, the SEMAC and SEMSCO authorized an update to the EMS protocols for the City of New York to recommend access to the benzodiazepine (midazolam) for the treatment of patients with excited delirium. Excited delirium is a condition that manifests as a combination of delirium, psychomotor agitation, anxiety, hallucinations, speech disturbances, disorientation, violent and bizarre behavior, insensitivity to pain, elevated body temperature, and superhuman strength. Excited delirium can result in sudden death (usually via cardiac or respiratory arrest) when the patient is subjected to physical control measures, including police restraint. ("White Paper Report on Excited Delirium Syndrome", ACEP Excited Delirium Task Force, American College of Emergency Physicians, September 10, 2009). Rapid chemical sedation of patients with excited delirium may prevent such outcomes and would allow EMS to assist law enforcement effectively in the care of people in crisis.

Pain management is the standard of care for patients suffering acute traumatic injury. (ATLS 9th Ed.) Early treatment of pain improves care in the emergency department and reduces the need for higher doses of medication. The Joint Commission: Accreditation, Healthcare, Certification (Joint Commission) has made early administration of pain medication a goal of its hospital surveys and prehospital pain management reduces the time to emergency department analgesia significantly. Also, for patients suffering heart attacks, early pain management reduces the oxygen demand on the heart and may reduce long-term damage and morbidity. (Circulation 12/13/05, vol 112, no 24, p IV-98 for reduction of oxygen demand.)

Critical care technicians and paramedics train to use complex medications as a part of the delivery of care. The agencies and the medical directors authorizing these providers to afford patient care must have access to controlled substances to provide necessary medical therapy to best protect the health of their patients.

The proposed regulation also amends section 80.136 of Part 80 related to the issuance of certifications to agents of advanced life support agencies. Section 80.136 is updated to incorporate Correction Law Article 23-A's balancing test when reviewing applications to register an agent to purchase, possess, and deliver controlled substances, and specifies that the factors set forth in Correction Law § 753 will be utilized when making a determination whether to grant the application to an applicant who has a criminal conviction.

Costs for the Implementation of and Continuing Compliance with these Regulations to the Regulated Entity:

There is a fee of \$100 for the original application and each renewal thereafter. Municipally owned EMS agencies are exempt from the application fee. Affected EMS agencies will be required to purchase the controlled substance medications and develop a method of securing them in the vehicles and the base of operations as required by Title 10 NYCRR Part 80.136. This cost will vary depending on the cost of the medications and the locking system chosen by the EMS agency.

Cost to State and Local Government:

There will be no costs to the general public, state and local government. These regulations are directed at the advanced life support level EMS agency. An EMS agency that is part of state or local municipal government is exempted by regulation from the application fee.

Cost to the Department of Health:

The Department of Health will not incur any additional costs.

Local Government Mandates:

These provisions do not add any additional mandates to local governments.

Paperwork:

Affected EMS agencies will need to apply for a Controlled Substance license through the Department of Health.

Duplication:

This measure does not duplicate, overlap or conflict with a State or federal statute or rule.

Alternatives:

There are no other viable alternative approaches. Current provisions must be updated to reflect appropriate EMS standards and practice.

Federal Standards:

This regulatory amendment does not exceed any minimum standards of the federal government for the same or similar subject areas. This proposal is intended to update Part 800 provisions with language appropriate and applicable to the modern EMS system.

Compliance Schedule:

This proposal will go into effect upon publication of the Notice of Adoption in the New York State Register.

Regulatory Flexibility Analysis

A Regulatory Flexibility Analysis for Small Business and Local Governments is not included in accordance with Section 202-b of the State Administrative Procedure Act (SAPA). This regulation does not impose an adverse economic impact, nor reporting, recordkeeping or other compliance requirements on small businesses or local governments. This rule pertains only to individual persons who are certified by the Department to provide pre-hospital emergency care and treatment to sick or injured persons. Small businesses and local governments cannot violate this rule, and therefore cannot be subject to penalties associated with a violation of this rule.

Cure Period

A cure period was not included in this rule. This proposal would provide standards for EMS providers. Violations of such standards would pose a threat to public health, safety and well-being of the patients served. A cure period would not be appropriate under these circumstances.

Rural Area Flexibility Analysis

Pursuant to section 202-bb of the State Administrative Procedure Act (SAPA), a rural area flexibility analysis is not required. These provisions apply uniformly throughout New York State, including all rural areas.

The proposed rule will not impose an adverse economic impact on rural areas, nor will it impose any additional reporting, record keeping or other compliance requirements on public or private entities in rural areas.

Job Impact Statement

A Job Impact Statement is not included in accordance with Section 201-a (2) of the State Administrative Procedure Act (SAPA), because it will not have a substantial adverse effect on jobs and employment opportunities.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Requirements for Manufacturers and Distributors Regarding Controlled Substances

I.D. No. HLT-30-15-00009-P

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

Proposed Action: Amendment of section 80.11 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 3008(2)

Subject: Requirements for Manufacturers and Distributors Regarding Controlled Substances.

Purpose: To clarify and use language consistent with current terminology used by the State Board of Pharmacy.

Text of proposed rule: Pursuant to the authority vested in the Commissioner by Public Health Law Section 3308(2), section 80.11 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York, is amended to read as follows, effective upon publication of a Notice of Adoption in the New York State Register:

80.11 Additional requirements for manufacturers and distributors. In addition to the requirements set forth in article 33 of the Public Health Law, holders of licenses shall comply with the following requirements:

(a) [Except as hereinafter provided, no person shall obtain a class 1 or 2 license for controlled substances unless he or she employs a full-time pharmacist and, except as hereinafter provided, no licensed activity shall be conducted by a holder of a class 1 or 2 license unless such activity is under the personal supervision of a chemist or pharmacist.] *A class 1 manufacturer who produces a final product that by its composition or combination with other ingredients is intended for human or animal consumption and presents a potential for abuse, must employ a full-time pharmacist and the licensed controlled substance activity must be under the personal supervision of a pharmacist or a chemist. The supervisor shall not be at the same time a supervisor of any other class 1 or class 2 establishment licensed by the New York State Department of Health. A chemist is a person who meets the following requirements:*

(1) *possess a bachelor of science or a bachelor of arts degree in chemistry, pharmacology or equivalent specialization and have had not less than four years of experience in the manufacture of drug products;*

(2) *be a citizen of the United States or an alien lawfully admitted for permanent residence in the United States;*

(3) be of the age of 21 years or older;

(4) be of good moral character and if the person has been convicted of one or more criminal offenses, he or she must be found eligible after a balancing of the factors set out in Article 23-A of Correction Law. In accordance with that Article, no license shall be denied to a manufacturer by reason of the applicable employee having been previously convicted of one or more criminal offenses unless (i) there is a direct relationship between one or more of the previous criminal offenses and the duties required of the license or (ii) licensing the manufacturer would involve an unreasonable risk to property or the safety or welfare of a specific individual or the general public. In determining these questions, the department will look at all factors listed under New York State Correction Law Section 753; and

(5) not be, and not have been, a habitual user of narcotics or any other habit-forming drugs.

(b) [A manufacturer who produces a final product that by its composition or combination with other ingredients is not intended for human or animal consumption and does not present a potential for abuse, may employ either a full-time pharmacist or a person who meets the following requirements:

(1) possess a bachelor of science or a bachelor of arts degree in chemistry, pharmacology or equivalent specialization and have had not less than four years of experience in the manufacture of drug products;

(2) be a citizen of the United States or an alien lawfully admitted for permanent residence in the United States;

(3) be of the age of 21 years or over;

(4) be of good moral character as attested to by affidavits signed by either the sheriff of the county of residence, local police officials, or other such persons acceptable to the department;

(5) not have been convicted of a misdemeanor or felony by any court of the State of New York, or by any court of the United States or of any other state; and

(6) not be, and not have been, a habitual user of narcotics or any other habit-forming drugs.]

A class 1 manufacturer who produces a final product that by its composition or combination with other ingredients is not intended for human or animal consumption and does not present a potential for abuse, must employ either a full-time pharmacist or a full-time chemist and the licensed activity in which he is engaged must be under the supervision of either a pharmacist, or a chemist, as defined in subdivision (a) of this section. The supervisor shall not be at the same time a supervisor of any other class 1 or class 2 establishment licensed by the New York State Department of Health.

(c) [A distributor who does not bottle or rebottle, pack or repack, label or relabel, controlled substances may obtain a class 2 license, provided that the licensed activity in which he is engaged is conducted under the supervision of a pharmacist or person approved by the department. A person not a pharmacist shall meet the following requirements:] *An applicant for licensure who is a registered outsourcing facility pursuant to Title 8 of the Education Law and who compounds controlled substances not pursuant to a patient specific prescription shall be deemed as conducting manufacturing activities of controlled substances. Manufacturing activities shall be conducted under the personal supervision of a licensed pharmacist. An applicant for licensure who is a registered wholesaler pursuant to Title 8 of the Education Law who bottles or rebottles, packs or repacks, labels or relabels, controlled substances shall be deemed as conducting class 1 manufacturing activities of controlled substances and subject to the requirements of subdivision (a) of this section. An applicant for licensure who is a registered wholesaler pursuant to Title 8 of the Education Law who does not bottle or rebottle, pack or repack, label or relabel, controlled substances may obtain a class 2 distributor license, provided that the licensed activity in which he is engaged is conducted under the personal supervision of a pharmacist or a person approved by the department. The supervisor shall not be at the same time a supervisor of any other establishment registered by the New York State Board of Pharmacy. A person not a pharmacist shall meet the following requirements:*

(1) possess a high school diploma, or the equivalent thereof;

(2) be a citizen of the United States or an alien lawfully admitted for permanent residence in the United States;

(3) be of the age of 21 years or over;

(4) [be of good moral character as attested to by affidavits signed by either the sheriff of the county of residence, local police officials, or other such persons acceptable to the department;

(5) not have been convicted of a misdemeanor or felony by any court of the State of New York, or by any court of the United States or of any other state] *be of good moral character and if the person has been convicted of one or more criminal offenses, he or she must be found eligible after a balancing of the factors set out in Article 23-A of Correction Law. In accordance with that Article, no distributor license shall be*

denied by reason of the applicable employee having been previously convicted of one or more criminal offenses unless (i) there is a direct relationship between one or more of the previous criminal offenses and the duties required of the license or (ii) licensing the applicant would involve an unreasonable risk to property or the safety or welfare of a specific individual or the general public. In determining these questions, the agency will look at all factors listed under New York State Correction Law Section 753;

[(6)] (5) not be, and not have been, an habitual user of narcotics or other habit-forming drugs; and

[(7)] (6) have had not less than eight years of experience in the wholesaling of controlled substances, or such other experience determined by the department to be the equivalent thereof.

(d) Persons conducting manufacturing activities of controlled substances within the State of New York shall obtain a class 1 license from the department.

(e) Persons conducting manufacturing activities of controlled substances outside of the State of New York and doing business within the State of New York shall obtain a class 1a license from the department. *A class 1a license applicant shall meet the following requirements:*

(1) *the out-of-state manufacturer possesses a valid New York State Board of Pharmacy registration or exemption; and*

(2) *the out-of-state manufacturer possesses a valid U.S. Drug Enforcement Administration registration; and*

(3) *based on the application, the commissioner is satisfied that the out-of-state manufacturer will be able to maintain effective control against diversion of controlled substances.*

(f) Persons conducting distributing activities of controlled substances within the State of New York shall obtain a class 2 license from the department, except that:

(1) Except in an adult care facility subject to provisions of Title 18 NYCRR Parts 487, 488 and 490, a pharmacy may distribute a controlled substance to a practitioner in a Class 3a institutional dispenser limited solely for stocking in sealed emergency medication kits. Such distribution shall be pursuant only to a written request by the Class 3a facility indicating the name and address of the facility, the name and address of the pharmacy, the date of the request, the type and quantity of the drug requested and the signature of the authorized person making the request. With each distribution, the pharmacy shall provide the Class 3a facility with an itemized list indicating the name and address of the pharmacy, the name and address of the Class 3a facility, the date of the distribution, the type and quantity of the drug distributed, and the signature of the pharmacist.

(g) Out-of-State persons conducting distributing activities of controlled substance to persons within the State of New York shall obtain a class 2a license from the department. *A class 2a license applicant shall meet the following requirements:*

(1) *the out-of-state distributor possesses a valid New York State Board of Pharmacy registration or exemption; and*

(2) *the out-of-state distributor possesses a valid U.S. Drug Enforcement Administration registration; and*

(3) *based on the application, the commissioner is satisfied that the out-of-state distributor will be able to maintain effective control against diversion of controlled substances.*

(h) All persons authorized to manufacture or distribute controlled substances shall accept returns of such controlled substances manufactured or distributed by them, and either destroy them or provide for the return, disposition, and disposal of such controlled substances in a manner approved by the Department pursuant to section 80.51(c)(2).

(i) *An individual who is designated as the supervisor of controlled substance activity pursuant to subdivisions (a), (b) or (c) of this section shall be responsible for the following non-delegable tasks:*

(1) *maintaining all required records relating to the purchase and distribution of all controlled substances manufactured or repacked at that facility;*

(2) *providing for the proper storage of controlled substances in order to prevent loss or theft;*

(3) *assuring security and limiting access to all areas holding controlled substances;*

(4) *insuring against all unauthorized sales or distribution of controlled substances to establishments or professionals not authorized to receive such items;*

(5) *issuing verbal and written notice to each of his or her subordinates concerning the applicable state and federal laws, regulations and rules to ensure full compliance;*

(6) *for manufacturers, assuring that all Good Manufacturing Procedures as outlined by the FDA are followed; and*

(7) *for manufacturers engaged in compounding of controlled substances, assuring that all controlled substances are compounded under the personal supervision of a licensed pharmacist.*

Text of proposed rule and any required statements and analyses may be obtained from: Katherine Ceroalo, DOH, Bureau of House Counsel, Reg. Affairs Unit, Room 2438, ESP Tower Building, Albany, NY 12237, (518) 473-7488, email: regsqna@health.ny.gov

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

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

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

Regulatory Impact Statement

Statutory Authority:

PHL 3308 authorizes the Commissioner to promulgate regulations which are necessary and proper to supplement the provisions of Article 33 to effectuate its purposes and intent. Additionally, PHL 3390 authorizes the Commissioner to revoke a license or certificate issued under Article 33 in whole or in part upon a finding that the licensee or certificate holder has been convicted in any jurisdiction relating to a substance listed as a controlled substance in Article 33. PHL 3312 contains the licensure requirements for manufacturers and distributors of controlled substances. It requires applicants to demonstrate that they are of good moral character and to report whether they have any convictions relating to or arising out of the manufacture or distribution of drugs.

Legislative Objectives:

The purpose of PHL Article 33 is to prevent the illegal use of and trade in controlled substances and to provide for the legitimate use of controlled substances in health care.

Needs and Benefits:

The current section 80.11 is amended to ensure consistency with Correction Law Article 23-A's balancing test that is used when reviewing application forms applicants and existing providers who have criminal convictions.

The proposed regulations also clarify when a chemist and/or pharmacist is required to be employed, on-site, or in a supervisory position. Language is also updated to provide consistency with the State Education Department's State Board of Pharmacy.

Costs for the Implementation of and Continuing Compliance with these Regulations to the Regulated Entity:

The proposed rule does not impose any new costs on the regulated parties.

Cost to State and Local Government:

There will be no costs to the general public, state and local government.

Cost to the Department of Health:

The Department of Health will not incur any additional costs.

Local Government Mandates:

These provisions do not add any additional mandates to local governments.

Paperwork:

The regulation proposes no new reporting or filing requirements.

Duplication:

This measure does not duplicate, overlap or conflict with a State or federal statute or rule.

Alternatives:

There are no other viable alternative approaches.

Federal Standards:

This regulatory amendment does not exceed any minimum standards of the federal government for the same or similar subject areas.

Compliance Schedule:

This proposal will go into effect upon publication of a Notice of Adoption in the New York State Register.

Regulatory Flexibility Analysis

No regulatory flexibility analysis is required pursuant to section 202-(b)(3)(a) of the State Administrative Procedure Act. The proposed amendment does not impose an adverse economic impact on small businesses or local governments, and it does not impose reporting, record keeping or other compliance requirements on small businesses or local governments.

Cure Period:

Chapter 524 of the Laws of 2011 requires agencies to include a "cure period" or other opportunity for ameliorative action to prevent the imposition of penalties on the party or parties subject to enforcement when developing a regulation or explain in the Regulatory Flexibility Analysis why one was not included. This regulation creates no new penalty or sanction. Hence, a cure period is not necessary.

Rural Area Flexibility Analysis

No rural area flexibility analysis is required pursuant to section 202-bb(4)(a) of the State Administrative Procedure Act. The proposed amendment does not impose an adverse impact on facilities in rural areas, and it does not impose reporting, record keeping or other compliance requirements on facilities in rural areas.

Job Impact Statement

No Job Impact Statement is required pursuant to section 201-a(2)(a) of the State Administrative Procedure Act. It is apparent, from the nature of the proposed amendment, that it will not have an adverse impact on jobs and employment opportunities.

Higher Education Services Corporation

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Adjustments to Income

I.D. No. ESC-30-15-00001-P

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

Proposed Action: Amendment of section 2202.3(d) of Title 8 NYCRR.

Statutory authority: Education Law, sections 653, 655, 661 and 663

Subject: Adjustments to income.

Purpose: To clarify that adjustments to income apply to other family members attending post-secondary institutions outside New York State.

Text of proposed rule: Subdivision (d) of section 2202.3 is amended to read as follows:

(d) For the purposes of subdivisions (a) and (b) of this section, eligible attendance shall be full-time matriculated attendance in a program of post-secondary study which is approved for receipt of Federal student loans or Federal basic educational opportunity grant program awards, except for institutions, such as military academies, where no student charges for tuition, or room and board are made. *Full-time matriculated attendance in an aforementioned program of post-secondary study shall constitute an approved program for purposes of subdivision 5 of section 663 of the Education Law and the calculation of awards.*

Text of proposed 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

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

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

Regulatory Impact Statement

1. Statutory authority:

The New York State Higher Education Services Corporation's ("HESC") statutory authority to make Tuition Assistance Program ("TAP") awards is codified within section 667 of the Education Law. 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 the Corporation; 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 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.

2. Legislative objectives:

For the purpose of calculating a TAP award, Education Law § 663(5) provides for an adjustment to be made to an applicant's income if other family members will be in full-time attendance in an approved program during the academic year in which the applicant will receive an award thereby potentially resulting in a higher TAP award.

3. Needs and benefits:

Education Law § 663(5) provides for adjustments to be made to a TAP applicant's income if other family members will be in full-time attendance in an approved program during the academic year in which the applicant will receive an award. The term "approved program" is defined in section 601(4) of the Education Law for the purpose of determining an applicant's eligibility for awards in articles 13 and 14, subject to modification by specific sections of such articles, as programs of study approved by the Commissioner of Education. The provisions of section 2202.3 of Title 8 of the New York Codes, Rules and Regulations (NYCRR) establish the criteria to be used for making adjustments to an applicant's income. Subdivision (d) specifies that eligible attendance shall be full-time attendance in a program of post-secondary study which is approved for receipt of Federal student loans, which includes institutions outside of New York State as well as within the State. This rule clarifies that full-time matriculated attendance in such programs constitutes an "approved program" for the purpose of determining an applicant's income used in calculating the amount of the applicant's TAP award. This rule is necessary since the term has an alternate meaning for purposes of determining an applicant's eligibility for an award.

4. Costs:

There is no cost to TAP applicants, HESC, other State agencies, local governments, or the State in connection with this rule.

5. Paperwork:

This rule will not result in any additional paperwork on TAP applicants or HESC.

6. 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.

7. Duplication:

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

8. Alternatives:

This rule clarifies the term "approved program" for the purpose of determining an applicant's income used in calculating the amount of the applicant's TAP award. Since the term has an alternate meaning for purposes of determining an applicant's eligibility for an award, the 'no action' alternative was not an option for consideration.

9. Federal standards:

This proposal does not exceed any minimum standards of the Federal government.

10. Compliance schedule:

The provisions of this regulation will take effect permanently upon adoption in the State Register. HESC and TAP applicants will be able to comply with this rule 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") Notice of Proposed Rulemaking seeking to amend section 2202.3(d) 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 the clarification of the statutory provision regarding adjustments to income in the calculation of Tuition Assistance Program ("TAP") awards ensures students are aware that such consideration is used in determining the amount of their financial assistance in order to encourage and enable them to attend college in New York State, 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 ("HESC") Notice of Proposed Rulemaking seeking to amend section 2202.3(d) 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 the clarification of the statutory provision regarding adjustments to income in the calculation of Tuition Assistance Program ("TAP") awards ensures students are aware that such consideration is used in determining the amount of their financial assistance in order to encourage and enable them to attend college in New York State, which benefits 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 ("HESC") Notice of Proposed Rulemaking seeking to amend section 2202.3(d) 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 the clarification of the statutory provision regarding adjustments to income in the calculation of Tuition Assistance Program ("TAP") awards ensures students are aware that such consideration is used in determining the amount of their financial assistance in order to encourage and enable them to attend college in New York State, which benefits the State.

HESC has determined that this rule will have no adverse impact on any private or public sector jobs or employment opportunities and therefore a full Job Impact Statement is not necessary.

Department of Motor Vehicles

NOTICE OF ADOPTION**Insurance ID Cards**

I.D. No. MTV-21-15-00002-A

Filing No. 621

Filing Date: 2015-07-14

Effective Date: 2015-07-29

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

Action taken: Amendment of sections 32.5 and 32.10 of Title 15 NYCRR.

Statutory authority: Vehicle and Traffic Law, sections 215(a), 311(10), 312(1), (4), (5), 319(3) and 370(1)

Subject: Insurance ID cards.

Purpose: To accept insurance ID cards for up to 180 days from effective date for part of the vehicle registration process.

Text or summary was published in the May 27, 2015 issue of the Register, I.D. No. MTV-21-15-00002-P.

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

Text of rule and any required statements and analyses may be obtained from: Heidi Bazicki, Department of Motor Vehicles, 6 Empire State Plaza, Rm. 522a, Albany, NY 12228, (518) 474-0871, email: heidi.bazicki@dmv.ny.gov

Assessment of Public Comment

Comment: The Independent Insurance Agents and Brokers of New York (IIABNY) wrote that the IIABNY "...supports the DMV's proposal to change the regulations dealing with vehicle registrations" because the regulation will benefit drivers by cutting down on unnecessary trips to the DMV and to their insurance agents for a new ID card.

Response: The Department appreciates the support of the IIABNY.

Public Service Commission

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Whether to Approve the Transfer of Street Lighting Facilities

I.D. No. PSC-30-15-00002-P

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

Proposed Action: The Public Service Commission is considering whether to approve, deny or modify, in whole or in part, a petition filed by Orange

and Rockland Utilities, Inc. for approval of the transfer of street lighting facilities to the town of Clarkstown.

Statutory authority: Public Service Law, sections 65, 66 and 70

Subject: Whether to approve the transfer of street lighting facilities.

Purpose: Approval of the transfer of street lighting facilities from Orange and Rockland Utilities, Inc. to the town of Clarkstown.

Substance of proposed rule: The Public Service Commission (Commission) is considering whether to grant, deny or modify, in whole or part, the petition filed by Orange and Rockland Utilities, Inc. (Company) on June 17, 2015. In that petition, the Company seeks the Commission's approval to transfer to the Town of Clarkstown (Town) the overhead street lighting facilities (Facilities) that are presently owned by the Company and attached to utility poles located within the geographical boundaries of the Town. The Facilities include luminaires, lamps, mast arms, their associated wiring, electrical connections and appurtenances, including In-Line Fused Disconnects. The purchase price for these Facilities is \$691,619, plus any accrued taxes as set forth in the agreement provided with the petition. The Company proposes to defer 100% of the net after-tax proceeds from the sale of the facilities, plus accrued interest at the Commission-approved Other Customer Provided Capital rate, for the future benefit of the Company's electric customers, upon closing of the transaction. The Company also seeks a waiver of any required newspaper publication pursuant to Section 66(12)(b) of the Public Service Law and 16 NYCRR § 720-8. 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-M-0330SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Petition to Transfer and Merge Systems, Franchises and Assets and Issue Debt

I.D. No. PSC-30-15-00003-P

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

Proposed Action: The Commission is considering whether to grant, deny, modify or condition, in whole or in part, the merger petition of Charter and Time Warner requesting approval to transfer telephone and cable systems, franchises and assets and the issuance of debt.

Statutory authority: Public Service Law, sections 99(2), 100(1), 101 and 222

Subject: Petition to transfer and merge systems, franchises and assets and issue debt.

Purpose: To consider the Charter and Time Warner Cable merger and transfer of systems, franchises and assets and issuance of debt.

Substance of proposed rule: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by Charter Communications Inc. (Charter) and Time Warner Cable Inc. (Time Warner Cable) seeking approval under Public Service Law (PSL) § § 99, 100, 101 and 222 to transfer certain Time Warner Cable telephone systems, cable systems, franchises and assets to Charter. Under the proposed transaction, Charter has entered into an agreement with Time Warner Cable whereby Charter, through a series of internal mergers and reorganizations will acquire 100 percent of Time Warner Cable's equity through a new entity, New Charter, in exchange for New Charter Class A shares. Charter also intends to issue debt as part of the proposed transaction. Under the proposed transaction Charter plans to retain all of Time Warner Cable's existing assets in New York State. The full text of the petition may be reviewed online at the Department of Public Service

web page: www.dps.ny.gov. The Commission may take such further action as deemed warranted.

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

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

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

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

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

(15-M-0388SP1)