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.

Battery Park City Authority

NOTICE OF ADOPTION

Amendment of the Rules and Regulations of Battery Park City Parks

I.D. No. BPA-11-15-00018-A
Filing No. 545
Filing Date: 2015-06-23
Effective Date: 2015-07-08

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

Action taken: Amendment of Part 9003 of Title 21 NYCRR.

Statutory authority: Public Authorities Law, sections 1970, 1971 and 1974-c(2)(d)

Subject: Amendment of the rules and regulations of Battery Park City parks.

Purpose: To remain consistent with the rules of other parks in New York City and to incorporate activities previously not addressed.

Text or summary was published in the March 18, 2015 issue of the Register, I.D. No. BPA-11-15-00018-P.

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

Text of rule and any required statements and analyses may be obtained from: Susie L. Kim, Associate General Counsel, Battery Park City Authority, 200 Liberty Street, 24th Floor, New York, NY 10281, (212) 417-4144, email: Susie.Kim@bpca.ny.gov

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

Assessment of Public Comment
The agency received no public comment.

Department of Economic Development

EMERGENCY RULE MAKING

Empire Zones Reform

I.D. No. EDV-27-15-00001-E
Filing No. 537
Filing Date: 2015-06-19
Effective Date: 2015-06-19

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

Action taken: Amendment of Parts 10 and 11; renumbering and amendment of Parts 12-14 to Parts 13, 15 and 16; and addition of new Parts 12-14 to Title 5 NYCRR.

Statutory authority: General Municipal Law, art. 18-B, section 959; L. 2000, ch. 63; L. 2005, ch. 63; L. 2009, ch. 57

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

Specific reasons underlying the finding of necessity: Regulatory action is needed immediately to implement the statutory changes contained in Chapter 57 of the Laws of 2009. The emergency rule also clarifies the administrative procedures of the program, improves efficiency and helps make it more cost-effective and accountable to the State's taxpayers, particularly in light of New York's current fiscal climate. It bears noting that General Municipal Law section 959(a), as amended by Chapter 57 of the Laws of 2009, expressly authorizes the Commissioner of Economic Development to adopt emergency regulations to govern the program.

Subject: Empire Zones reform.

Purpose: Allow Department to continue implementing Zones reforms and adopt changes that would enhance program's strategic focus.

Substance of emergency rule: The emergency rule is the result of changes to Article 18-B of the General Municipal Law pursuant to Chapter 63 of the Laws of 2000, Chapter 63 of the Laws of 2005, and Chapter 57 of the Laws of 2009. These laws, which authorize the empire zones program, were changed to make the program more effective and less costly through higher standards for entry into the program and for continued eligibility to remain in the program. Existing regulations fail to address these requirements and the existing regulations contain several outdated references. The emergency rule will correct these items.

The rule contained in 5 NYCRR Parts 10 through 14 (now Parts 10-16 as amended), which governs the empire zones program, is amended as follows:

1. The emergency rule, tracking the requirements of Chapter 63 of the Laws of 2005, requires placement of zone acreage into "distinct and separate contiguous areas."

2. The emergency rule updates several outdated references, including: the name change of the program from Economic Development Zones to Empire Zones, the replacement of Standard Industrial Codes with the North American Industrial Codes, the renaming of census-tract zones as investment zones, the renaming of county-created zones as development zones, and the replacement of the Job Training Partnership Act (and

private industry councils) with the Workforce Investment Act (and local workforce investment boards).

3. The emergency rule adds the statutory definition of "cost-benefit analysis" and provides for its use and applicability.

4. The emergency rule also adds several other definitions (such as applicant municipality, chief executive, concurring municipality, empire zone capital tax credits or zone capital tax credits, clean energy research and development enterprise, change of ownership, benefit-cost ratio, capital investments, single business enterprise and regionally significant project) and conforms several existing regulatory definitions to statutory definitions, including zone equivalent areas, women-owned business enterprise, minority-owned business enterprise, qualified investment project, zone development plans, and significant capital investment projects. The emergency rule also clarifies regionally significant project eligibility. Additionally, the emergency rule makes reference to the following tax credits and exemptions: the Qualified Empire Zone Enterprise ("QEZE") Real Property Tax Credit, QEZE Tax Reduction Credit, and the QEZE Sales and Use Tax Exemption. The emergency rule also reflects the eligibility of agricultural cooperatives for Empire Zone tax credits and the QEZE Real Property Tax Credit.

5. The emergency rule requires additional statements to be included in an application for empire zone designation, including (i) a statement from the applicant and local economic development entities pertaining to the integration and cooperation of resources and services for the purpose of providing support for the zone administrator, and (ii) a statement from the applicant that there is no viable alternative area available that has existing public sewer or water infrastructure other than the proposed zone.

6. The emergency rule amends the existing rule in a manner that allows for the designation of nearby lands in investment zones to exceed 320 acres, upon the determination by the Department of Economic Development that certain conditions have been satisfied.

7. The emergency rule provides a description of the elements to be included in a zone development plan and requires that the plan be resubmitted by the local zone administrative board as economic conditions change within the zone. Changes to the zone development plan must be approved by the Commissioner of Economic Development ("the Commissioner").

Also, the rule adds additional situations under which a business enterprise may be granted a shift resolution.

8. The emergency rule grants discretion to the Commissioner to determine the contents of an empire zone application form.

9. The emergency rule tracks the amended statute's deletion of the category of contributions to a qualified Empire Zone Capital Corporation from those businesses eligible for the Zone Capital Credit.

10. The emergency rule reflects statutory changes to the process to revise a zone's boundaries. The primary effect of this is to limit the number of boundary revisions to one per year.

11. The emergency rule describes the amended certification and decertification processes. The authority to certify and decertify now rests solely with the Commissioner with reduced roles for the Department of Labor and the local zone. Local zone boards must recommend projects to the State for approval. The labor commissioner must determine whether an applicant firm has been engaged in substantial violations, or pattern of violations of laws regulating unemployment insurance, workers' compensation, public work, child labor, employment of minorities and women, safety and health, or other laws for the protection of workers as determined by final judgment of a judicial or administrative proceeding. If such applicant firm has been found in a criminal proceeding to have committed any such violations, the Commissioner may not certify that firm.

12. The emergency rule describes new eligibility standards for certification. The new factors which may be considered by the Commissioner when deciding whether to certify a firm is (i) whether a non-manufacturing applicant firm projects a benefit-cost ratio of at least 20:1 for the first three years of certification, (ii) whether a manufacturing applicant firm projects a benefit-cost ratio of at least 10:1 for the first three years of certification, and (iii) whether the business enterprise conforms with the zone development plan.

13. The emergency rule adds the following new justifications for decertification of firms: (a) the business enterprise, that has submitted at least three years of business annual reports, has failed to provide economic returns to the State in the form of total remuneration to its employees (i.e. wages and benefits) and investments in its facility greater in value to the tax benefits the business enterprise used and had refunded to it; (b) the business enterprise, if first certified prior to August 1, 2002, caused individuals to transfer from existing employment with another business enterprise with similar ownership and located in New York state to similar employment with the certified business enterprise or if the enterprise acquired, purchased, leased, or had transferred to it real property previously owned by an entity with similar ownership, regardless of form of incorporation or organization; (c) change of ownership or moving out of the Zone, (d) failure to pay wages and benefits or make capital investments as represented on the firm's application, (e) the business enterprise makes a material misrepresentation of fact in any of its business annual reports, and (f) the business enterprise fails to invest in its facility substantially in accordance with the representations contained in its application. In addition, the regulations track the statute in permitting the decertification of a business enterprise if it failed to create new employment or prevent a loss of employment in the zone or zone equivalent area, and deletes the condition that such failure was not due to economic circumstances or conditions which such business could not anticipate or which were beyond its control. The emergency rule provides that the Commissioner shall revoke the certification of a firm if the firm fails the standard set forth in (a) above, or if the Commissioner makes the finding in (b) above, unless the Commissioner determines in his or her discretion, after consultation with the Director of the Budget, that other economic, social and environmental factors warrant continued certification of the firm. The emergency rule further provides for a process to appeal revocations of certifications based on (a) or (b) above to the Empire Zones Designation Board. The emergency rule also provides that the Commissioner may revoke the certification of a firm upon a finding of any one of the other criteria for revocation of certification set forth in the rule.

14. The emergency rule adds a new Part 12 implementing recordkeeping requirements. Any firm choosing to participate in the empire zones program must maintain and have available, for a period of six years, all information related to the application and business annual reports.

15. The emergency rule clarifies the statutory requirement from Chapter 63 of the Laws of 2005 that development zones (formerly county zones) create up to three areas within their reconfigured zones as investment (formerly census tract) zones. The rule would require that 75% of the acreage used to define these investment zones be included within an eligible or contiguous census tract. Furthermore, the rule would not require a development zone to place investment zone acreage within a municipality in that county if that particular municipality already contained an investment zone, and the only eligible census tracts were contained within that municipality.

16. The emergency rule tracks the statutory requirements that zones reconfigure their existing acreage in up to three (for investment zones) or six (for development zones) distinct and separate contiguous areas, and that zones can allocate up to their total allotted acreage at the time of designation. These reconfigured zones must be presented to the Empire Zones Designation Board for unanimous approval. The emergency rule makes clear that zones may not necessarily designate all of their acreage into three or six areas or use all of their allotted acreage; the rule removes the requirement that any subsequent additions after their official redesignation by the Designation Board will still require unanimous approval by that Board.

17. The emergency rule clarifies the statutory requirement that certain defined "regionally significant" projects can be located outside of the distinct and separate contiguous areas. There are four categories of projects: (i) a manufacturer projecting the creation of fifty or more net new jobs in the State of New York; (ii) an agri-business or high tech or biotech business making a capital investment of ten million dollars and creating twenty or more net new jobs in the State of New York, (iii) a financial or insurance services or distribution center creating three hundred or more net new jobs in the State of New York, and (iv) a clean energy research and development enterprise. Other projects may be considered by the empire zone designation board. Only one category of projects, manufacturers projecting the creation of 50 or more net new jobs, are allowed to progress before the identification of the distinct and separate contiguous areas and/or the approval of certain regulations by the Empire Zones Designation Board. Regionally significant projects that fall within the four categories listed above must be projects that are exporting 60% of their goods or services outside the region and export a substantial amount of goods or services beyond the State.

18. The emergency rule clarifies the status of community development projects as a result of the statutory reconfiguration of the zones.

19. The emergency rule clarifies the provisions under Chapter 63 of the Laws of 2005 that allow for zone-certified businesses which will be located outside of the distinct and separate contiguous areas to receive zone benefits until decertified. The area which will be "grandfathered" shall be limited to the expansion of the certified business within the parcel or portion thereof that was originally located in the zone before redesignation. Each zone must identify any such business by December 30, 2005.

20. The emergency rule elaborates on the "demonstration of need" requirement mentioned in Chapter 63 of the Laws of 2005 for the addition (for both investment and development zones) of an additional distinct and separate contiguous area. A zone can demonstrate the need for a fourth or, as the case may be, a seventh distinct and separate contiguous area if (1) there is insufficient existing or planned infrastructure within the three (or six) distinct and separate contiguous areas to (a) accommodate business

development and there are other areas of the applicant municipality that can be characterized as economically distressed and/or (b) accommodate development of strategic businesses as defined in the local development plan, or (2) placing all acreage in the other three or six distinct and separate contiguous areas would be inconsistent with open space and wetland protection, or (3) there are insufficient lands available for further business development within the other distinct and separate contiguous areas.

The full text of the emergency rule is available at www.empire.state.ny.us

This notice is intended to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires September 16, 2015.

Text of rule and any required statements and analyses may be obtained from: Thomas P Regan, NYS Department of Economic Development, 625 Broadway, Albany NY 12245, (518) 292-5123, email: tregan@esd.ny.gov

Regulatory Impact Statement

STATUTORY AUTHORITY:

Section 959(a) of the General Municipal Law authorizes the Commissioner of Economic Development to adopt on an emergency basis rules and regulations governing the criteria of eligibility for empire zone designation, the application process, the certification of a business enterprises as to eligibility of benefits under the program and the decertification of a business enterprise so as to revoke the certification of business enterprises for benefits under the program.

LEGISLATIVE OBJECTIVES:

The rulemaking accords with the public policy objectives the Legislature sought to advance because the majority of such revisions are in direct response to statutory amendments and the remaining revisions either conform the regulations to existing statute or clarify administrative procedures of the program. These amendments further the Legislative goals and objectives of the Empire Zones program, particularly as they relate to regionally significant projects, the cost-benefit analysis, and the process for certification and decertification of business enterprises. The proposed amendments to the rule will facilitate the administration of this program in a more efficient, effective, and accountable manner.

NEEDS AND BENEFITS:

The emergency rule is required in order to implement the statutory changes contained in Chapter 57 of the Laws of 2009. The emergency rule also clarifies the administrative procedures of the program, improves efficiency and helps make it more cost-effective and accountable to the State's taxpayers, particularly in light of New York's current fiscal climate.

COSTS:

A. Costs to private regulated parties: None. There are no regulated parties in the Empire Zones program, only voluntary participants.

B. Costs to the agency, the state, and local governments: There will be additional costs to the Department of Economic Development associated with the emergency rule making. These costs pertain to the addition of personnel that may need to be hired to implement the Empire Zones program reforms. There may be savings for the Department of Labor associated with the streamlining of the State's administration and concentration of authority within the Department of Economic Development. There is no additional cost to local governments.

C. Costs to the State government: None. There will be no additional costs to New York State as a result of the emergency rule making.

LOCAL GOVERNMENT MANDATES:

None. Local governments are not mandated to participate in the Empire Zones program. If a local government chooses to participate, there is a cost associated with local administration that local government officials agreed to bear at the time of application for designation as an Empire Zone. One of the requirements for designation was a commitment to local administration and an identification of local resources that would be dedicated to local administration.

This emergency rule does not impose any additional costs to the local governments for administration of the Empire Zones program.

PAPERWORK:

The emergency rule imposes new record-keeping requirements on businesses choosing to participate in the Empire Zones program. The emergency rule requires all businesses that participate in the program to establish and maintain complete and accurate books relating to their participation in the Empire Zones program for a period of six years.

DUPLICATION:

The emergency rule conforms to provisions of Article 18-B of the General Municipal Law and does not otherwise duplicate any state or federal statutes or regulations.

ALTERNATIVES:

No alternatives were considered with regard to amending the regulations in response to statutory revisions.

FEDERAL STANDARDS:

There are no federal standards in regard to the Empire Zones program. Therefore, the emergency rule does not exceed any Federal standard.

COMPLIANCE SCHEDULE:

The period of time the state needs to assure compliance is negligible, and the Department of Economic Development expects to be compliant immediately.

Regulatory Flexibility Analysis

1. Effect of rule

The emergency rule imposes new record-keeping requirements on small businesses and large businesses choosing to participate in the Empire Zones program. The emergency rule requires all businesses that participate in the program to establish and maintain complete and accurate books relating to their participation in the Empire Zones program for a period of six years. Local governments are unaffected by this rule.

2. Compliance requirements

Each small business and large business choosing to participate in the Empire Zones program must establish and maintain complete and accurate books, records, documents, accounts, and other evidence relating to such business's application for entry into the Empire Zone program and relating to existing annual reporting requirements. Local governments are unaffected by this rule.

3. Professional services

No professional services are likely to be needed by small and large businesses in order to establish and maintain the required records. Local governments are unaffected by this rule.

4. Compliance costs

No initial capital costs are likely to be incurred by small and large businesses choosing to participate in the Empire Zones program. Annual compliance costs are estimated to be negligible for both small and large businesses. Local governments are unaffected by this rule.

5. Economic and technological feasibility

The Department of Economic Development ("DED") estimates that complying with this record-keeping is both economically and technologically feasible. Local governments are unaffected by this rule.

6. Minimizing adverse impact

DED finds no adverse economic impact on small or large businesses with respect to this rule. Local governments are unaffected by this rule.

7. Small business and local government participation

DED is in full compliance with SAPA Section 202-b(6), which ensures that small businesses and local governments have an opportunity to participate in the rule-making process. DED has conducted outreach within the small and large business communities and maintains continuous contact with small businesses and large businesses with regard to their participation in this program. Local governments are unaffected by this rule.

Rural Area Flexibility Analysis

The Empire Zones program is a statewide program. Although there are municipalities and businesses in rural areas of New York State that are eligible to participate in the program, participation by the municipalities and businesses is entirely at their discretion. The emergency rule imposes no additional reporting, recordkeeping or other compliance requirements on public or private entities in rural areas. Therefore, the emergency rule will not have a substantial adverse economic impact on rural areas or reporting, recordkeeping or other compliance requirements on public or private entities in such rural areas. Accordingly, a rural area flexibility analysis is not required and one has not been prepared.

Job Impact Statement

The emergency rule relates to the Empire Zones program. The Empire Zones program itself is a job creation incentive, and will not have a substantial adverse impact on jobs and employment opportunities. In fact, the emergency rule, which is being promulgated as a result of statutory reforms, will enable the program to continue to fulfill its mission of job creation and investment for economically distressed areas. Because it is evident from its nature that this emergency rule will have either no impact or a positive impact on job and employment opportunities, no further affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

Education Department

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Probationary Appointments and Tenured Teacher Hearings

I.D. No. EDU-27-15-00006-EP
Filing No. 540
Filing Date: 2015-06-23
Effective Date: 2015-06-23

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

Proposed Action: Amendment of section 30-1.3 and Subpart 82-1; addition of Subpart 82-3 to Title 8 NYCRR.

Statutory authority: Education Law, sections 207 (not subdivided), 215 (not subdivided), 305(1), (2), 2509(1), (2), 2573(1), (5), (6), 3001(2), 3004(1), 3009(1), 3012(1), (2), 3012-c(1-10), 3012-d(1-15), 3014(1), (2), 3020(3), (4), 3020-a(2) and 3020-b(1-6); L. 2015, ch. 56, part EE, subparts D and G

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

Specific reasons underlying the finding of necessity: The proposed rule is necessary to conform the Commissioner's Regulations to changes in the Education Law enacted in Subparts D and G of Part EE of Chapter 56 of the Laws of 2015, relating to probationary appointments and tenured teacher hearings.

Since the Board of Regents meets at fixed intervals, and does not meet during the month of August, the earliest the proposed rule can be presented for regular (non-emergency) adoption, after expiration of the required 45-day public comment period provided for in the State Administrative Procedure Act (SAPA) sections 201(1) and (5), would be the September 16-17, 2015 Regents meeting. Furthermore, pursuant to SAPA section 203(1), the earliest effective date of the proposed rule, if adopted at the September meeting, would be October 7, 2015, the date a Notice of Adoption would be published in the State Register. However, the provisions of Subparts D and E of Part EE of Chapter 56 of the Laws of 2015 become effective on July 1, 2015.

Therefore, emergency action is necessary at the June 15-16, 2015 Regents meeting for the preservation of the general welfare in order to immediately establish standards relating to probationary appointments and tenured teacher hearings consistent with Subparts D and E of Part EE of Chapter 56 of the Laws of 2015, and thus ensure the timely implementation of the statutory provisions on their effective date.

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

Subject: Probationary Appointments and Tenured Teacher Hearings.

Purpose: To Implement Subparts D and G of of Part EE Chapter 56 of the Laws of 2015.

Substance of emergency/proposed rule (Full text is posted at the following State website: http://www.regents.nysed.gov/meetings/2015/2015-06/higher-education): The Commissioner of Education proposes to amend section 30-1.3 and Subpart 82-1 and add a new Subpart 82-3 of the Commissioner's Regulations, relating to probationary appointments and tenure teacher hearings, to implement the requirements of Subparts D and G of Part EE of Chapter 56 of the Laws of 2015. The proposed rule has been adopted as an emergency action at the June 2015 Regents meeting, effective June 23, 2015. The following is a summary of the substance of the proposed rule.

Section 30-1.3 is amended to provide that for appointments of classroom teachers and building principals made on or after July 1, 2015, the board resolution must reflect that, except to the extent required by the applicable provisions of Education Law § § 2509, 2573, 3212 and 3014, in order to be granted tenure, the classroom teacher or building principal shall have received composite or overall annual professional performance review ratings pursuant to Education Law § 3012-c and/or 3012-d of either effective or highly effective in at least three (3) of the four (4) preceding years and if the classroom teacher or building principal receives an ineffective composite or overall rating in the final year of the probationary period he or she shall not be eligible for tenure at that time. For purposes of this subdivision, "classroom teacher" and "building principal" means a classroom teacher or building principal as such terms are defined in sections 30-2.2 and 30-3.2 of this Part.

The Title of Subpart 82-1 and section 82-1.1 are amended to provide that Subpart 82-1 applies to hearings on charges against tenured school employees pursuant to section 3020-a of the Education Law that are commenced by the filing of charges on or after August 25, 1994 and prior to July 1, 2015.

A new Subpart 82-3 is added, relating to hearings on charges against tenured school employees pursuant to section 3020-a of the Education Law that are commenced by the filing of charges on or after July 1, 2015.

Section 82-3.1, Application of this Subpart, provides that Subpart 80-3 applies to hearings on charges against tenured school employees pursuant to sections 3020-a and 3020-b of the Education Law that are commenced by the filing of charges on or after July 1, 2015.

Section 82-3.2, Definitions, provides definitions of terms used in Subpart 82-3, including "employee", "chief school administrator", "board", "clerk", "Commissioner", "association", "hearing officer", "communication", "Day", and "Party."

Section 82-3.3, Charges, establishes requirements and procedures for bringing charges.

Section 82-3.4, Request for a hearing, sets forth the requirements and procedures for requesting a hearing.

Section 82-3.5, Appointment of hearing officer in standard and expedited § 3020-a proceedings, sets forth requirements and procedures for appointment of a hearing officer from a list of qualified individuals, as specified in the regulation, who are selected by the American Arbitration Association to preside in standard and expedited § 3020-a proceedings.

Section 82-3.6, Appointment of hearing officer in expedited § 3020-b proceeding, establishes different procedures for the appointment of hearing officers for standard § 3020-a hearings and the four categories of expedited hearings.

Section 82-3.7, Pre-Hearing Conference, sets forth requirements and procedures for conducting pre-hearing conferences.

Section 82-3.8, General hearing procedures, establishes general hearing requirements and procedures including time deadlines for hearings, powers of hearing officers, parties rights, record of proceedings, public access to hearings, submission of memoranda of law, and requirements for issuing decisions.

Section 82-3.9, Special Hearing Procedures for expedited hearings, establishes special requirements and procedures for expedited § 3020-a proceedings (based on revocation of certification, or based on charges constituting physical or sexual abuse of a student), and for expedited § 3020-b hearings (relating to a removal proceeding for charges of incompetence based two consecutive ineffective composite or overall APPR ratings, or relating to a removal proceeding for charges of incompetence based three consecutive ineffective composite or overall APPR ratings).

Section 82-3.10, Probable Cause Hearing for Certain Suspensions without pay, provides for conduct of a probable cause hearing in instances where an employee is suspended without pay pending a determination in an expedited hearing based on charges of misconduct constituting physical or sexual abuse of a student. By statute, the hearing officers in such probable cause hearings must be appointed from a rotational list in a manner similar to the rotational selection process contained in Education Law § 4404, and the proposed amendment clarifies that this will be a rotational list of hearing officers who have agreed to serve under the terms and conditions set forth in Education Law § 3020-a(2)(c).

Section 82-3.11, Monitoring and enforcement of timelines, provides for the monitoring and investigation by the State Education Department of a hearing officer's compliance with the timelines prescribed in Education Law § § 3020-a and 3020-b, and provides for the removal of hearing officers from the qualified list on grounds of a record of continued failure to commence and complete hearings within the time periods prescribed, and provides for reinstatement to the list, at the Commissioner's discretion and upon application made after one year.

Section 82-3.12, Reimbursable hearing expenses, sets forth requirements for compensation and reimbursement by the Commissioner of necessary travel expenses and other reasonable expenses of a hearing officer.

This notice is intended: to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire September 20, 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

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

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

Education Law sections 207(not subdivided), 215(not subdivided), 305(1) and (2), 2509(1) and (2), 2573(1), (5) and (6), 3001(2), 3004(1), 3009(1), 3012(1) and (2), 3012-c(1-10), 3012-d(1-15), 3014(1) and (2), 3020(3) and (4), 3020-a(2) and 3020-b(1-6), and Subparts D and G of Part EE of Chapter 56 of the Laws of 2015.

2. LEGISLATIVE OBJECTIVES:

The proposed rule is consistent with the above statutory authority and is necessary to implement, and otherwise conform the Commissioner's Regulations to, Subparts D and G of Part EE of Chapter 56 of the Laws of 2015, relating to probationary appointments and tenured teacher hearings.

3. NEEDS AND BENEFITS:

The rule is necessary to implement, and otherwise conform the Commissioner's Regulations to, Subparts D and G of Part EE of Chapter 56 of the Laws of 2015.

Section 80-1.3(d) is amended to provide that for appointments of classroom teachers and building principals made on or after July 1, 2015, the board resolution must reflect that, except to the extent required by the applicable provisions of Education Law § § 2509, 2573, 3212 and 3014, in order to be granted tenure, the classroom teacher or building principal shall have received composite or overall annual professional performance review ratings pursuant to Education Law § 3012-c and/or 3012-d of either effective or highly effective in at least three (3) of the four (4) preceding years and if the classroom teacher or building principal receives an ineffective composite or overall rating in the final year of the probationary period he or she shall not be eligible for tenure at that time. For purposes of this subdivision, "classroom teacher" and "building principal" means a classroom teacher or building principal as such terms are defined in sections 30-2.2 and 30-3.2 of this Part.

There were several amendments made in Chapter 56 to Education Law § 3020-a that require conforming amendments to the provisions of Part 82 of the Regulations of the Commissioner relating to procedures in tenured teacher hearings. Notably, Subpart G of Part EE of Chapter 56 made the following changes to Education Law § 3020-a:

- Use of a three-member panel for incompetency cases was eliminated and all § 3020-a hearings must be held before a single hearing officer.
- Prior expedited hearing process applicable to a pattern of ineffective teaching based on two consecutive Ineffective APPR ratings was repealed, and replaced with new expedited hearing procedures in Education Law § 3020-b.
- New expedited hearing process established for cases involving charges of misconduct constituting physical or sexual abuse of a student.
- For employees charged on or after July 1, 2015 with misconduct constituting physical or sexual abuse of a student, the school board is authorized to suspend the employee without pay pending an expedited hearing, provided that a probable cause hearing must be held within 10 days in accordance with procedures prescribed in Commissioner's Regulations.
- Provision added requiring hearing officer at the pre-hearing conference to provide for full and fair disclosure of the witnesses and evidence to be offered by the employee. Previously, only the employing board was required to provide full and fair disclosure of the nature of the case and evidence against the employee.
- Provision added requiring hearing officer, in determining the penalty to be imposed on an employee, to give serious consideration to the penalty recommended by the employing board, and if he/she rejects the recommended penalty, rejection must be based on reasons based in the record and expressed in the written decision.
- Provision added authorizing child witness under the age of 14 to testify through the use of a live, two-way closed circuit television under certain specified conditions.

New Education Law § 3020-b, which takes effect July 1, 2015, establishes procedures for expedited hearings commenced by the filing of charges of incompetence against a classroom teacher or building principal based on receipt of either two or three consecutive Ineffective composite or overall APPR ratings under Education Law § 3012-c and/or 3012-d. Section 3020-b requires Commissioner to adopt regulations prescribing the necessary rules and procedures for the conduct of hearings. Procedures set forth in the statute for an expedited hearing based on two Ineffective APPR ratings are significantly different from those for an expedited hearing based on three Ineffective APPR ratings. The two processes are summarized below:

1. Expedited Proceedings Based on two Ineffective APPR Ratings:

- Where the charges are based on two Ineffective ratings pursuant to the annual professional performance reviews conducted pursuant to Education Law § § 3012-c or 3012-d, the school may bring charges of incompetence.
- The school must have developed and substantially implemented a Teacher Improvement Plan or Principal Improvement Plan in accordance with Education Law § § 3012-c or 3012-d for the educator following the first evaluation in which the educator was rated Ineffective, and the immediately preceding evaluation if the employee was rated Developing.
- Parties jointly select the hearing officer.
- Two consecutive Ineffective APPR ratings are prima facie evidence of incompetence overcome only by clear and convincing evidence that the employee is not incompetent in light of the surrounding circumstances.
- Final hearing date must be within 90 days of date of hearing request. Adjournments extending hearing beyond 90 days may be granted if hearing officer determines delay is attributable to a circumstance or occurrence beyond the control of requesting party and injustice would result if adjournment were not granted.
- Hearing officer must render a decision within 10 days of the last day of hearing.

2. Expedited Proceedings Based on Three Ineffective APPR Ratings:

- Where charges based on three Ineffective ratings pursuant to annual professional performance reviews conducted pursuant to Education Law § § 3012-c or 3012-d, school shall bring charges of incompetence.
- Commissioner selects hearing officer, instead of the parties.
- Three Ineffective ratings are prima facie evidence of incompetence which may be overcome only by clear and convincing evidence that the calculation of one or more of the underlying components on the APPR was fraudulent, which includes mistaken identity.
- Final hearing date must be within 30 days of the date of hearing request. Hearing must conclude within 30 days of date of hearing request. Adjournments extending hearing beyond 30 days may be granted if hearing officer determines delay is attributable to a circumstance or occurrence beyond the control of requesting party and injustice would result if the adjournment were not granted.
- Hearing officer must render a decision within 10 days of last day of hearing.

Education Law § 3020-b includes many, but not all, of procedural provisions included in Education Law § 3020-a. For example, § 3020-b does not include provision requiring charges to be brought between opening and closing of school, provision giving the parties 15 days to select hearing officer, or various other provisions prescribing the timelines for prehearing conferences and other steps in hearing process between request for the hearing and 30 or 90 day period within which the expedited hearing must be completed. In fact, Education Law § 3020-b specifically charges Commissioner with responsibility to establish timelines in regulations to ensure duration of hearing is no longer than 30 days or 90 days, as applicable.

The proposed rule also adds a new Subpart 82-3 to the Regents Rules to establish procedural requirements that will apply to tenured teacher hearings commenced by the filing of charges on or after July 1, 2015. The changes made by Chapter 56 have effectively established different procedures for standard § 3020-a proceedings and expedited hearings under § 3020-a and § 3020-b.

The categories of expedited hearings are as follows:

- expedited hearings upon revocation of a teaching certificate;
- expedited hearings on charges of misconduct constituting the physical or sexual abuse of students;
- expedited 3020-b hearings based on two consecutive Ineffective APPR ratings; and
- expedited 3020-b hearings based on three consecutive Ineffective APPR ratings.

In addition, the Commissioner is charged with adopting regulations prescribing procedures for probable cause hearings when a school board suspends an employee for misconduct constituting the physical or sexual abuse of students.

Like Subpart 82-1, the new Subpart 82-3 (which applies to § 3020-a hearings commenced prior to July 1, 2015) establishes procedures on charges, requests for hearings and general hearing procedures that apply across all § 3020-a and § 3020-b hearing proceedings.

Section 82-3.6 establishes different procedures for appointment of hearing officers for standard § 3020-a hearings and the four categories of expedited hearings.

Section 82-3.9 establishes special hearing procedures that apply to each of the four categories of expedited hearings.

Section 82-3.10 establishes procedures for probable cause hearings related to suspensions without pay of employees charged with misconduct constituting the physical or sexual abuse of a student. By statute, hearing officers in such probable cause hearings must be appointed from a rotational list in a manner similar to the rotational selection process contained in Education Law § 4404, and the proposed rule clarifies this will be a rotational list of hearing officers who have agreed to serve under terms and conditions set forth in Education Law § 3020-a(2)(c).

With very few exceptions, procedures set forth in Subpart 82-1, which apply to § 3020-a hearings commenced prior to July 1, 2015, are carried

forward without substantive change, except where they would conflict with Chapter 56 of the Laws of 2015 or other laws. One exception is that a provision is added relating to selection of hearing officers in § 3020-a proceedings to address what happens after the second time that hearing officer selected by the parties declines to serve. This situation is not addressed in § 3020-a, and to ensure the timeliness of the hearings the proposed rule specifies that the Commissioner would appoint a hearing officer from the list after two declinations. In addition, a technical amendment is made to the provisions related to reimbursement of hearing officers to clarify that reimbursement will be made for actual days of service, defined as 7 hours, and pro-rated to the nearest 1/10 hour.

4. COSTS:

(a) Costs to State government: none.

(b) Costs to local government: none.

(c) Costs to private, regulated parties: none.

(d) Costs to regulating agency for implementation and continued administration of this rule: none.

The rule is necessary to implement Subparts D and G of Part EE of Chapter 56 of the Laws of 2015, and does not impose any costs on the State, local government, private regulated parties or the State Education Department, beyond those costs imposed by, or inherent in, the statute.

5. LOCAL GOVERNMENT MANDATES:

The rule is necessary to conform the Commissioner's Regulations to Chapter 56 of the Laws of 2015, and does not impose any additional program, service, duty or responsibility upon local governments beyond those inherent in the statute.

6. PAPERWORK:

The proposed rule is necessary to conform the Commissioner's Regulations to Chapter 56 of the Laws of 2015, and does not impose any specific recordkeeping, reporting or other paperwork requirements beyond those imposed by, or inherent in, the statute.

7. DUPLICATION:

The proposed rule is necessary to conform the Commissioner's Regulations to Chapter 56 of the Laws of 2015, and does not duplicate existing State or federal requirements.

8. ALTERNATIVES:

The proposed rule is necessary to conform the Commissioner's Regulations to Chapter 56 of the Laws of 2015, and there were no significant alternatives and none were considered.

9. FEDERAL STANDARDS:

There are no applicable Federal standards.

10. COMPLIANCE SCHEDULE:

The proposed rule is necessary to conform the Commissioner's Regulations to, Chapter 56 of the Laws of 2015 and does not impose any additional costs or compliance requirements beyond those imposed by, or inherent in, the statute. It is anticipated that regulated parties will be able to achieve compliance with the proposed rule on its effective date.

Regulatory Flexibility Analysis

(a) Small businesses:

The proposed rule implements Subparts D and G of Part EE of Chapter 56 of the Laws of 2015, relating to probationary appointments and tenure teacher hearings, and does not impose any reporting, recordkeeping or other compliance requirements, and will not have an adverse economic impact, on small business. Because it is evident from the nature of the rule that it does not affect small businesses, no further steps were needed to ascertain that fact and one were taken. Accordingly, a regulatory flexibility analysis for small businesses is not required and one has not been prepared.

(b) Local governments:

1. EFFECT OF RULE:

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

2. COMPLIANCE REQUIREMENTS:

The rule conforms the regulations to the legislative provisions by making the following major changes in Subpart 30-1.3, 82-1 and 82-3 of the Regents Rules.

Section 80-1.3(d) is amended to provide that for appointments of classroom teachers and building principals made on or after July 1, 2015, the board resolution must reflect that, except to the extent required by the applicable provisions of Education Law § § 2509, 2573, 3212 and 3014, in order to be granted tenure, the classroom teacher or building principal shall have received composite or overall annual professional performance review ratings pursuant to Education Law § 3012-c and/or 3012-d of either effective or highly effective in at least three (3) of the four (4) preceding years and if the classroom teacher or building principal receives an ineffective composite or overall rating in the final year of the probationary period he or she shall not be eligible for tenure at that time. For purposes of this subdivision, "classroom teacher" and "building principal" means a classroom teacher or building principal as such terms are defined in sections 30-2.2 and 30-3.2 of this Part.

There were several amendments made in Chapter 56 to Education Law § 3020-a, that require conforming amendments to the Commissioner's Regulations relating to procedures in tenured teacher hearings. Subpart G of Part EE of Chapter 56 made the following changes to Education Law § 3020-a:

- Use of three-member panel for incompetency cases was eliminated and all § 3020-a hearings must be held before a single hearing officer.
- Prior expedited hearing process applicable to a pattern of ineffective teaching based on two consecutive Ineffective APPR ratings was repealed, and replaced with new expedited hearing procedures in Education Law § 3020-b.
- New expedited hearing process established for cases involving charges of misconduct constituting physical or sexual abuse of a student.
- For employees charged on or after July 1, 2015 with misconduct constituting physical or sexual abuse of a student, the school board is authorized to suspend employee without pay pending an expedited hearing, provided a probable cause hearing is held within 10 days in accordance with procedures prescribed in the Commissioner's Regulations.
- Provision added to require hearing officer at pre-hearing conference to provide for full and fair disclosure of witnesses and evidence to be offered by the employee. Previously, only employing board was required to provide full and fair disclosure of the nature of the case and evidence against the employee.
- Provision added to require hearing officer, in determining penalty to be imposed on an employee, to give serious consideration to penalty recommended by employing board, and if he/she rejects recommended penalty, rejection must be based on reasons based in the record and expressed in written decision.
- Provision added authorizing a child witness under the age of 14 to testify through use of live, two-way closed circuit television under certain specified conditions.

New Education Law § 3020-b, which takes effect July 1, 2015, establishes procedures for expedited hearings commenced by filing of charges of incompetence against a classroom teacher or building principal based on receipt of either two or three consecutive Ineffective composite or overall APPR ratings under Education Law § 3012-c and/or 3012-d. Section 3020-b requires Commissioner to adopt regulations prescribing necessary rules and procedures for conduct of hearings. Procedures set forth in the statute for an expedited hearing based on two Ineffective APPR ratings are significantly different from those for an expedited hearing based on three Ineffective APPR ratings. The two processes are summarized below:

1. Expedited Proceedings Based on two Ineffective APPR Ratings:

- Where charges based on two Ineffective ratings pursuant to annual professional performance reviews conducted pursuant to Education Law § § 3012-c or 3012-d, school may bring charges of incompetence.
- School must have developed and substantially implemented a Teacher Improvement Plan or Principal Improvement Plan in accordance with Education Law § § 3012-c or 3012-d for the educator following first evaluation in which educator was rated Ineffective, and immediately preceding evaluation if employee was rated Developing.
- Parties jointly select hearing officer.
- Two consecutive Ineffective APPR ratings are prima facie evidence of incompetence overcome only by clear and convincing evidence that employee is not incompetent in light of surrounding circumstances.
- Final hearing date must be within 90 days of date of hearing request. Adjournments extending hearing beyond 90 day period may be granted if hearing officer determines that delay is attributable to a circumstance or occurrence beyond control of requesting party and injustice would result if adjournment were not granted.
- Hearing officer must render a decision within 10 days of last day of hearing.

2. Expedited Proceedings Based on Three Ineffective APPR Ratings:

- Where charges based on three Ineffective ratings pursuant to annual professional performance reviews conducted pursuant to Education Law § § 3012-c or 3012-d, school shall bring charges of incompetence.
- Commissioner selects hearing officer, instead of parties.
- Three Ineffective ratings are prima facie evidence of incompetence which may be overcome only by clear and convincing evidence that calculation of one or more of underlying components on the APPR was fraudulent, which includes mistaken identity.
- Final hearing date must be within 30 days of the date of hearing request. Hearing must conclude within 30 days of date of hearing request. Adjournments extending hearing beyond 30 day period may be granted if hearing officer determines delay attributable to a circumstance or occurrence beyond control of requesting party and injustice would result if adjournment not granted.
- Hearing officer must render a decision within 10 days of last day of hearing.

Education Law § 3020-b includes many, but not all, of procedural pro-

visions included in Education Law § 3020-a. For example, § 3020-b does not include provision requiring charges be brought between opening and closing of school, provision giving the parties 15 days to select hearing officer,or various other provisions prescribing timelines for pre-hearing conferences and other steps in hearing process between request for hearing and 30 or 90 days within which expedited hearing must be completed. In fact, Education Law § 3020-b specifically charges Commissioner with responsibility to establish timelines in regulations to ensure duration of hearing no longer than 30 days or 90 days, as applicable.

The rule also adds a new Subpart 82-3 to the Regents Rules to establish procedural requirements that will apply to tenured teacher hearings commenced by filing of charges on or after July 1, 2015. Changes made by Chapter 56 have effectively established different procedures for standard § 3020-a proceedings and expedited hearings under § 3020-a and § 3020-b.

The categories of expedited hearings are as follows:

- expedited hearings upon revocation of teaching certificate;
- expedited hearings on charges of misconduct constituting physical or sexual abuse of students;
- expedited 3020-b hearings based on two consecutive Ineffective APPR ratings; and
- expedited 3020-b hearings based on three consecutive Ineffective APPR ratings.

In addition, Commissioner is charged with adopting regulations prescribing procedures for probable cause hearings when a board of education suspends an employee for misconduct that constitutes the physical or sexual abuse of students.

Like the old Subpart 82-1,The new Subpart 82-3, which applies to § 3020-a hearings commenced prior to July 1, 2015, sets forth procedures on charges, requests for hearings and general hearing procedures that apply across all § 3020-a and § 3020-b hearing proceedings.

Section 82-3.6 establishes different procedures for appointment of hearing officers for standard § 3020-a hearings and the four categories of expedited hearings.

Section 82-3.9 sets forth special hearing procedures applicable to each of the four categories of expedited hearings.

Section 82-3.10 establishes procedures for probable cause hearings related to suspensions without pay of employees charged with misconduct constituting physical or sexual abuse of a student. By statute, hearing officers in such probable cause hearings must be appointed from a rotational list in a manner similar to rotational selection process contained in Education Law § 4404, and rule clarifies this will be a rotational list of hearing officers who have agreed to serve under terms and conditions set forth in Education Law § 3020-a(2)(c).

With very few exceptions, procedures set forth in Subpart 82-1, which apply to § 3020-a hearings commenced prior to July 1, 2015, are carried forward without substantive change except where they would conflict with Chapter 56 of the Laws of 2015 or other laws. One exception is that a provision is added relating to selection of hearing officers in § 3020-a proceedings to address what happens after the second time that hearing officer selected by the parties declines to serve. This situation is not addressed in § 3020-a, and in order to ensure the timeliness of the hearings, the rule specifies Commissioner would appoint a hearing officer from list after two declinations. In addition, a technical amendment is made to provisions related to reimbursement of hearing officers to clarify that reimbursement will be made for actual days of service, defined as 7 hours, and pro-rated to the nearest 1/10 hour.

3. PROFESSIONAL SERVICES:

The rule does not impose any additional professional services requirements on school districts or BOCES.

4. COMPLIANCE COSTS:

The rule does not impose any compliance costs on school districts and BOCES, beyond those imposed by the statutes.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The rule does not impose any additional technological requirements on school districts or BOCES. Economic feasibility is addressed above under Compliance Costs.

6. MINIMIZING ADVERSE IMPACT:

The rule is necessary to implement Chapter 56 of the Laws of 2015 relating to probationary appointments and tenure teacher hearings to implement requirements of Subparts D and G of Part EE of Chapter 56 of the Laws of 2015. Since these provisions of the Education Law apply equally to all school districts and BOCES throughout the State, it was not possible to establish different compliance and reporting requirements.

7. SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION:

During the public comment period, the Department will be seeking comments on the proposed amendment from representatives of teachers, principals, superintendents of schools, school boards, school districts and board of cooperative educational services officials, and other interested parties.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

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

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

The rule conforms the regulations to the legislative provisions by making the following major changes in Subpart 30-1.3, 82-1 and 82-3 of the Regents Rules.

Section 80-1.3(d) is amended to provide that for appointments of classroom teachers and building principals made on or after July 1, 2015, the board resolution must reflect that, except to the extent required by the applicable provisions of Education Law § § 2509, 2573, 3212 and 3014, in order to be granted tenure, the classroom teacher or building principal shall have received composite or overall annual professional performance review ratings pursuant to Education Law § 3012-c and/or 3012-d of either effective or highly effective in at least three (3) of the four (4) preceding years and if the classroom teacher or building principal receives an ineffective composite or overall rating in the final year of the probationary period he or she shall not be eligible for tenure at that time. For purposes of this subdivision, "classroom teacher" and "building principal" means a classroom teacher or building principal as such terms are defined in sections 30-2.2 and 30-3.2 of this Part.

There were several amendments made in Chapter 56 to Education Law § 3020-a, that require conforming amendments to the Commissioner's Regulations relating to procedures in tenured teacher hearings. Subpart G of Part EE of Chapter 56 made the following changes to Education Law § 3020-a:

- Use of three-member panel for incompetency cases was eliminated and all § 3020-a hearings must be held before a single hearing officer.
- Prior expedited hearing process applicable to a pattern of ineffective teaching based on two consecutive Ineffective APPR ratings was repealed, and replaced with new expedited hearing procedures in Education Law § 3020-b.
- New expedited hearing process established for cases involving charges of misconduct constituting physical or sexual abuse of a student.
- For employees charged on or after July 1, 2015 with misconduct constituting physical or sexual abuse of a student, the school board is authorized to suspend employee without pay pending an expedited hearing, provided a probable cause hearing is held within 10 days in accordance with procedures prescribed in the Commissioner's Regulations.
- Provision added to require hearing officer at pre-hearing conference to provide for full and fair disclosure of witnesses and evidence to be offered by the employee. Previously, only employing board was required to provide full and fair disclosure of the nature of the case and evidence against the employee.
- Provision added to require hearing officer, in determining penalty to be imposed on an employee, to give serious consideration to penalty recommended by employing board, and if he/she rejects recommended penalty, rejection must be based on reasons based in the record and expressed in written decision.
- Provision added authorizing a child witness under the age of 14 to testify through use of live, two-way closed circuit television under certain specified conditions.

New Education Law § 3020-b, which takes effect July 1, 2015, establishes procedures for expedited hearings commenced by filing of charges of incompetence against a classroom teacher or building principal based on receipt of either two or three consecutive Ineffective composite or overall APPR ratings under Education Law § 3012-c and/or 3012-d. Section 3020-b requires Commissioner to adopt regulations prescribing necessary rules and procedures for conduct of hearings. Procedures set forth in the statute for an expedited hearing based on two Ineffective APPR ratings are significantly different from those for an expedited hearing based on three Ineffective APPR ratings. The two processes are summarized below:

1. Expedited Proceedings Based on two Ineffective APPR Ratings:

- Where charges based on two Ineffective ratings pursuant to annual professional performance reviews conducted pursuant to Education Law § § 3012-c or 3012-d, school may bring charges of incompetence.
- School must have developed and substantially implemented a Teacher Improvement Plan or Principal Improvement Plan in accordance with Education Law § § 3012-c or 3012-d for the educator following first evaluation in which educator was rated Ineffective, and immediately preceding evaluation if employee was rated Developing.
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• Final hearing date must be within 90 days of date of hearing request. Adjournments extending hearing beyond 90 day period may be granted if hearing officer determines that delay is attributable to a circumstance or occurrence beyond control of requesting party and injustice would result if adjournment were not granted.

• Hearing officer must render a decision within 10 days of last day of hearing.

2. Expedited Proceedings Based on Three Ineffective APPR Ratings:

• Where charges based on three Ineffective ratings pursuant to annual professional performance reviews conducted pursuant to Education Law § § 3012-c or 3012-d, school shall bring charges of incompetence.

• Commissioner selects hearing officer, instead of parties.

• Three Ineffective ratings are prima facie evidence of incompetence which may be overcome only by clear and convincing evidence that calculation of one or more of underlying components on the APPR was fraudulent, which includes mistaken identity.

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Education Law § 3020-b includes many, but not all, of procedural provisions included in Education Law § 3020-a. For example, § 3020-b does not include provision requiring charges be brought between opening and closing of school, provision giving the parties 15 days to select hearing officer,or various other provisions prescribing timelines for pre-hearing conferences and other steps in hearing process between request for hearing and 30 or 90 days within which expedited hearing must be completed. In fact, Education Law § 3020-b specifically charges Commissioner with responsibility to establish timelines in regulations to ensure duration of hearing no longer than 30 days or 90 days, as applicable.

The rule also adds a new Subpart 82-3 to the Regents Rules to establish procedural requirements that will apply to tenured teacher hearings commenced by filing of charges on or after July 1, 2015. Changes made by Chapter 56 have effectively established different procedures for standard § 3020-a proceedings and expedited hearings under § 3020-a and § 3020-b.

The categories of expedited hearings are as follows:

• expedited hearings upon revocation of teaching certificate;

• expedited hearings on charges of misconduct constituting physical or sexual abuse of students;

• expedited 3020-b hearings based on two consecutive Ineffective APPR ratings; and

• expedited 3020-b hearings based on three consecutive Ineffective APPR ratings.

In addition, Commissioner is charged with adopting regulations prescribing procedures for probable cause hearings when a board of education suspends an employee for misconduct that constitutes the physical or sexual abuse of students.

Like the old Subpart 82-1,The new Subpart 82-3, which applies to § 3020-a hearings commenced prior to July 1, 2015, sets forth procedures on charges, requests for hearings and general hearing procedures that apply across all § 3020-a and § 3020-b hearing proceedings.

Section 82-3.6 establishes different procedures for appointment of hearing officers for standard § 3020-a hearings and the four categories of expedited hearings.

Section 82-3.9 sets forth special hearing procedures applicable to each of the four categories of expedited hearings.

Section 82-3.10 establishes procedures for probable cause hearings related to suspensions without pay of employees charged with misconduct constituting physical or sexual abuse of a student. By statute, hearing officers in such probable cause hearings must be appointed from a rotational list in a manner similar to rotational selection process contained in Education Law § 4404, and rule clarifies this will be a rotational list of hearing officers who have agreed to serve under terms and conditions set forth in Education Law § 3020-a(2)(c).

With very few exceptions, procedures set forth in Subpart 82-1, which apply to § 3020-a hearings commenced prior to July 1, 2015, are carried forward without substantive change except where they would conflict with Chapter 56 of the Laws of 2015 or other laws. One exception is that a provision is added relating to selection of hearing officers in § 3020-a proceedings to address what happens after the second time that hearing officer selected by the parties declines to serve. This situation is not addressed in § 3020-a, and in order to ensure the timeliness of the hearings, the rule specifies Commissioner would appoint a hearing officer from list after two declinations. In addition, a technical amendment is made to provisions related to reimbursement of hearing officers to clarify that reimbursement will be made for actual days of service, defined as 7 hours, and pro-rated to the nearest 1/10 hour. The rule does not impose any additional professional services requirements on entities in rural areas.

3. COSTS:

The rule does not impose any compliance costs on school districts and BOCES in rural areas, beyond those imposed by the statutes.

4. MINIMIZING ADVERSE IMPACT:

The rule is necessary to implement Chapter 56 of the Laws of 2015 relating to probationary appointments and tenure teacher hearings to implement requirements of Subparts D and G of Part EE of Chapter 56 of the Laws of 2015. Since these provisions of the Education Law apply to all school districts and BOCES throughout the State, it was not possible to establish different compliance and reporting requirements for regulated parties in rural areas, or to exempt them from the rule's provisions.

5. RURAL AREA PARTICIPATION:

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

Job Impact Statement

The purpose of proposed rule is to implement the requirements of Subparts D and G of Part EE of Chapter 56 of the Laws of 2015, relating to probationary appointments and tenure teacher hearings. Because it is evident from the nature of the proposed rule that it will have no impact on the number of jobs or employment opportunities in New York State, no further steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Administration of Opioid Related Overdose Treatment and Hepatitis C Tests by Registered Professional Nurses (RNs)

I.D. No. EDU-27-15-00007-EP

Filing No. 541

Filing Date: 2015-06-23

Effective Date: 2015-08-11

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

Proposed Action: Amendment of section 64.7 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207 (not subdivided), 6504 (not subdivided), 6507(2)(a), 6527(6)(e), (f), 6902(1), 6909(4)(e) and (f); L. 2014, ch. 352; L. 2015, ch. 57, part V

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

Specific reasons underlying the finding of necessity: The proposed amendment is necessary to timely implement Part V of Chapter 57 of the Laws of 2015, on its effective date, August 11, 2015. The amendments to the Education Law made by Part V of Chapter 57 of the Laws of 2015 allow registered professional nurses to execute non-patient specific orders prescribed by a licensed physician or a certified nurse practitioner to administer urgent or emergency treatment of opioid related overdose or suspected opioid related overdose, in accordance with requirements established in the Regulations of the Commissioner of Education. These amendments to the Education Law are part of a statewide initiative to address a major public health challenge in New York State - reducing opiate overdose deaths.

Since the Board of Regents meets at fixed intervals, and does not meet during the month of August, the earliest the proposed amendment can be presented for adoption on a non-emergency basis, after expiration of the required 45-day public comment period provided for in the State Administrative Procedure Act (SAPA) sections 201(1) and (5), would be the September 16-17, 2015 Regents meeting. Furthermore, pursuant to SAPA section 203(1), the earliest effective date of the proposed rule, if adopted at the September meeting, would be October 7, 2015, the date a Notice of Adoption would be published in the State Register. However, the provisions of Part V of Chapter 57 will become effective August 11, 2015.

Therefore, emergency action is necessary at the June 2015 Regents meeting for preservation of the public health and general welfare in order to enable the State Education Department to timely implement, on its effective date, Part V of Chapter 57, so that registered professional nurses can provide potentially lifesaving procedures by administering opioid related overdose treatment pursuant to non-patient specific orders prescribed by a licensed physician or a certified nurse practitioner.

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

Subject: Administration of opioid related overdose treatment and hepatitis C tests by registered professional nurses (RNs).

Purpose: To implement part V of ch. 57 of 2015 and ch. 352 of 2014 regarding opioid related overdose treatment and hepatitis C tests.

Text of emergency/proposed rule: Section 64.7 of the Regulations of the Commissioner of Education is amended, effective August 11, 2015, as follows:

64.7 *Administration of* [I]immunizations, emergency treatment of anaphylaxis, purified protein derivative (PPD) mantoux tuberculin skin tests*,* [and] human immunodeficiency virus (HIV) tests*, opioid related overdose treatments and hepatitis C tests* pursuant to non-patient specific orders and protocols.

(a) . . .

(b) . . .

(c) . . .

(d) . . .

(e) Opioid related overdose treatment.

(1) As used in this subdivision, opioid related overdose treatment shall include the administration of naloxone or another drug approved by the federal Food and Drug Administration to treat opioid related overdose.

(2) A registered professional nurse may administer opioid related overdose treatment for the urgent or emergency treatment of opioid related overdose or suspected opioid related overdose pursuant to a written non-patient specific order and protocol prescribed or ordered by a licensed physician or a certified nurse practitioner, provided that the requirements of this subdivision are met.

(3) Order and protocol.

(i) The non-patient specific order shall include, at a minimum, the following:

(a) the name, license number and signature of the licensed physician or certified nurse practitioner who orders or prescribes the non-patient specific order and protocol;

(b) the name, dose and route of administration of the drug to be administered to treat opioid related overdose;

(c) a protocol for administering the ordered opioid related overdose treatment or a specific reference to a separate written protocol for administering the ordered opioid related overdose treatment, which shall meet the requirements of subparagraph (ii) of this paragraph;

(d) the period of time that the order is effective, including the beginning and ending dates;

(e) a description of the group(s) of persons to be treated; and

(f) the name and license number of the registered professional nurse(s) authorized to execute the non-patient specific order and protocol to administer the opioid related overdose treatment; or the name of the entity that employs or contracts with registered professional nurses to execute the non-patient specific order and protocol, provided that the registered professional nurses execute the non-patient specific order and protocol only in the course of such employment or pursuant to such contract and provided further that the entity is legally authorized to employ or contract with registered professional nurses to provide nursing services.

(ii) The written protocol, incorporated into the order prescribed in subparagraph (i) of this paragraph, shall, at a minimum, include instructions for administering the opioid related overdose treatment and require the registered professional nurse to ensure that:

(a) each potential recipient is assessed, pursuant to criteria in the protocol, for conditions that would qualify or preclude him or her from receiving the ordered opioid related overdose treatment;

(b) consent to administer treatment is obtained, pursuant to criteria in the protocol, if the potential recipient is capable of providing it;

(c) the opioid related overdose treatment is documented, pursuant to criteria in the protocol, and includes the name and dose of drug administered, the date, time and location of the treatment, the recipient's name and the administering registered professional nurse's name and this medical documentation relating to opioid related overdose treatment is maintained in accordance with paragraph 29.2(a)(3) of this Title; and

(d) when opioid related overdose treatment is administered outside of a general hospital, the recipient of the treatment is transferred to a hospital for follow-up care along with documentation describing the opioid related overdose treatment that was administered, in accordance with criteria in the protocol.

(f) Hepatitis C tests.

(1) As used in this subdivision, hepatitis C tests mean one or more laboratory or point of care tests approved by the federal Food and Drug Administration to detect the presence of antibodies or antigens to hepatitis C or the hepatitis C virus.

(2) A registered professional nurse may administer hepatitis C tests pursuant to a written non-patient specific order and protocol prescribed or ordered by a licensed physician or a certified nurse practitioner, provided that the requirements of this subdivision are met.

(3) Order and protocol.

(i) The non-patient specific order shall include, at a minimum, the following:

(a) the name, license number and signature of the licensed physician or certified nurse practitioner who orders or prescribes the non-patient specific order and protocol;

(b) the name of the specific hepatitis C tests to be administered;

(c) a protocol for administering the ordered hepatitis C tests or a specific reference to a separate written protocol for administering the ordered hepatitis C tests, which shall meet the requirements of subparagraph (ii) of this paragraph;

(d) the period of time that the order is effective, including the beginning and ending dates;

(e) a description of the group(s) of persons to be tested; and

(f) the name and license number of the registered professional nurse(s) authorized to execute the non-patient specific order and protocol to administer the hepatitis C tests; or the name of the entity that employs or contracts with registered professional nurses to execute the non-patient specific order and protocol, provided that the registered professional nurses execute the non-patient specific order and protocol only in the course of such employment or pursuant to such contract and provided further that the entity is legally authorized to employ or contract with registered professional nurses to provide nursing services.

(ii) The written protocol, incorporated into the order prescribed in subparagraph (i) of this paragraph, shall, at a minimum, require the registered professional nurse(s) to ensure that:

(a) each potential recipient is assessed, pursuant to criteria in the protocol, for conditions that would qualify or preclude him or her from receiving the ordered hepatitis C tests;

(b) informed consent for administering the ordered hepatitis C tests or disclosing the hepatitis C test results to a third party (if applicable) has been obtained pursuant to the criteria in the protocol from the recipient, or when the recipient lacks capacity to consent, a person authorized pursuant to law to consent to health care for the recipient;

(c) confirmatory, positive hepatitis C test results are not disclosed to the test recipient or the recipient's authorized representative by the registered professional nurse without a patient specific order from a licensed physician, licensed physician assistant or certified nurse practitioner; and

(d) the administration of the ordered hepatitis C test(s) is documented in the recipient's medical record in accordance with criteria in the protocol and that documentation relating to the hepatitis C testing is maintained in accordance with section 29.2(a)(3) of this Title.

This notice is intended: to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire September 20, 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

Data, views or arguments may be submitted to: Office of the Professions, Office of the Deputy Commissioner, State Education Department, State Education Building 2M, 89 Washington Ave., Albany, NY 12234, (518) 486-1765, email: opdepcom@nysed.gov

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

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

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

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

Paragraph (e) of subdivision (6) of 6527 of the Education Law, as added by Chapter 352 of the Laws of 2014, authorizes registered professional nurses to administer hepatitis C tests pursuant to a non-patient specific order and protocol prescribed by a licensed physician in accordance with regulations of the Commissioner of Education.

Paragraph (f) of subdivision (6) of 6527 of the Education Law, as added by Part V of Chapter 57 of the Laws of 2015, authorizes registered profes-

sional nurses to administer opioid related overdose treatment pursuant to a non-patient specific order and protocol prescribed by a licensed physician in accordance with regulations of the Commissioner of Education.

Subdivision (1) of section 6902 of the Education Law defines the practice of the profession of nursing for registered professional nurses.

Paragraph (e) of subdivision (4) of section 6909 of the Education Law, as added by Chapter 352 of the Laws of 2014, authorizes registered professional nurses to administer hepatitis C tests pursuant to a non-patient specific order and protocol prescribed by a certified nurse practitioner in accordance with regulations of the Commissioner of Education.

Paragraph (f) of subdivision (4) of 6909 of the Education Law, as added by Part V of Chapter 57 of the Laws of 2015, authorizes registered professional nurses to administer opioid related overdose treatment pursuant to a non-patient specific order and protocol prescribed by a certified nurse practitioner in accordance with regulations of the Commissioner of Education.

2. LEGISLATIVE OBJECTIVES:

Paragraph (e) of subdivision (6) of section 6527 and paragraph (e) of subdivision (4) of section 6909 of the Education Law were enacted to protect the public health in New York State by increasing access to hepatitis C testing and treatment. With the advent of new therapies that can stop the progression of hepatitis C or cure hepatitis C, New York State launched a campaign to identify persons with hepatitis C (through testing) and then refer such persons for hepatitis C treatment. Paragraph (e) of subdivision (6) of section 6527 of the Education Law authorizes registered professional nurses to administer hepatitis C tests pursuant to a non-patient specific order and protocol prescribed by a licensed physician in accordance with regulations of the Commissioner of Education. Paragraph (e) of subdivision (4) of section 6909 of the Education Law authorizes registered professional nurses to administer hepatitis C tests pursuant to a non-patient specific order and protocol prescribed by a certified nurse practitioner in accordance with regulations of the Commissioner of Education.

Paragraph (f) of subdivision (6) of section 6527 and paragraph (f) of subdivision (4) of section 6909 of the Education Law were enacted to protect the public health in New York State by increasing timely access to opioid related overdose treatment. These laws will increase the number of registered professional nurses who can provide lifesaving opioid related overdose treatment. This is particularly true for nurses who work in community settings such as schools, in home care or mental health clinics because they would be able to administer the opioid related overdose treatment when a prescriber or emergency services provider is not immediately available.

3. NEEDS AND BENEFITS:

The purpose of the proposed rule is to establish uniform requirements for registered professional nurses to meet when executing non-patient specific orders to administer hepatitis C tests and opioid related overdose treatment. Specifically, the proposed rule establishes the requirements for the types of information that should be included in these written non-patient specific orders and the requirements that should be included in the written protocols for a registered professional nurse to follow when administering hepatitis C tests and opioid related overdose treatment pursuant to a non-patient specific order prescribed by a licensed physician or a certified nurse practitioner. The proposed rule is needed to implement the requirements of paragraph (e) of subdivision (6) of section 6527 and paragraph (e) of subdivision (4) of section 6909 of the Education Law, as added by Chapter 352 of the Laws of 2014, and paragraph (f) of subdivision (6) of section 6527 and paragraph (f) of subdivision (4) of section 6909 of the Education Law, as added by Part V of Chapter 57 of the Laws of 2015.

4. COSTS:

(a) Costs to State government: None.

(b) Costs to local government: None.

(c) Cost to private regulated parties. No mandatory costs.

(d) Cost to the regulatory agency: None.

5. LOCAL GOVERNMENT MANDATES:

The proposed rule does not impose any program, service, duty, responsibility or other mandate upon local governments.

6. PAPERWORK:

The proposed rule does not impose any paperwork mandates because it does not require any licensed physician or certified nurse practitioner to issue non-patient specific orders or protocols and does not specifically require registered professional nurses to administer opioid related overdose treatment or hepatitis C tests pursuant to a non-patient specific order and protocol. The proposed rule will not impose any reporting, recordkeeping or other requirements on licensed physicians and certified nurse practitioners; they choose to issue a non-patient specific order and protocol for registered professional nurses to administer opioid related overdose treatment or hepatitis C tests. If licensed physicians or certified nurse practitioners choose to issue such non-patient specific orders, the proposed rule requires them to, inter alia, issue these orders and related protocols in writing. The proposed rule also requires copies of the non-patient specific orders and protocols to be maintained in the patient's medical records. In addition, registered professional nurses must document that they administered the ordered hepatitis C tests or opioid related overdose treatments.

7. DUPLICATION:

There are no other state or federal requirements on the subject matter of this proposed rule. Therefore, the proposed rule does not duplicate other existing state or federal requirements, and is necessary to implement Part V of Chapter 57 of the Laws of 2015 and Chapter 352 of the Laws of 2014.

8. ALTERNATIVES:

The proposed rule is necessary to conform the Regulations of the Commissioner of Education to Part V of Chapter 57 of the Laws of 2015 and Chapter 352 of the Laws of 2014. There are no viable significant alternatives to the proposed rule and none were considered.

9. FEDERAL STANDARDS:

There are no relevant federal standards for authorizing registered professional nurses to execute non-patient specific orders to administer hepatitis C tests or opioid related overdose treatment as prescribed by a licensed physician or certified nurse practitioner. Since there are no applicable federal standards, the proposed rule does not exceed any minimum federal standards for the same or similar subject areas.

10. COMPLIANCE SCHEDULE:

The proposed rule is necessary to conform the Regulations of the Commissioner of Education to Part V of Chapter 57 of the Laws of 2015 and Chapter 352 of the Laws of 2014. The proposed rule will become effective on October 7, 2015. The proposed rule does not impose any compliance schedules on regulated parties or local governments.

Regulatory Flexibility Analysis

The purpose of the proposed rule is to implement Chapter 352 of the Laws of 2014 and Part V of Chapter 57 of the Laws of 2015, which authorize registered professional nurses to execute non-patient specific orders prescribed by a licensed physician or a certified nurse practitioner to administer hepatitis C tests and urgent or emergency treatment of opioid related overdose or suspected opioid related overdose, respectively. The proposed rule establishes the types of information that must be included in the written non-patient specific orders and the requirements that must be set forth in the written protocols, for the registered professional nurse to follow when administering hepatitis C tests or opioid related overdose treatment.

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

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed rule will apply to all New York State registered professional nurses who administer hepatitis C tests or opioid related overdose treatments pursuant to a non-patient specific order and protocol, including registered professional nurses 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 miles or less. Of the approximately 285,000 registered professional nurses who are registered to practice in New York State, approximately 30,200 reported that their permanent address of record is in a rural county of New York State.

The proposed rule will also apply to all New York State certified nurse practitioners who issue non-patient specific orders and protocols to authorize registered professional nurses to administer hepatitis C tests or opioid related overdose treatments, including nurse practitioners 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 miles or less. Of the approximately 20,000 certified nurse practitioners who are registered to practice in New York State, approximately 2,500 reported that their permanent address of record is in a rural county of New York State.

Additionally, the proposed rule will apply to all New York State licensed physicians who issue non-patient specific orders and protocols to authorize registered professional nurses to administer hepatitis C tests or opioid related overdose treatments, including licensed physicians 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 miles or less. Of the approximately 93,300 licensed physicians registered to practice in New York State, approximately 2,550 reported that their permanent address of record is in a rural county of New York State.

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

The proposed rule adds subdivisions (e) and (f) to section 64.7 of the Regulations of the Commissioner of Education, which implement Part V of Chapter 57 of the Laws of 2015 and Chapter 352 of the Laws of 2014, respectively. When Part V of Chapter 57 becomes effective on August 11, 2015 registered professional nurses will be authorized to administer opioid related overdose treatment pursuant to a non-patient specific order and protocol prescribed by a licensed physician or a certified nurse practitioner in accordance with regulations issued by the Commissioner of Education. Chapter 352 of the Laws of 2014, which became effective on December 15, 2014, authorizes registered professional nurses to administer hepatitis C tests pursuant to a non-patient specific order and protocol prescribed by a licensed physician or a certified nurse practitioner pursuant to regulations issued by the Commissioner of Education.

The proposed rule authorizes registered professional nurses to execute non-patient specific orders and protocols, ordered by a licensed physician or certified nurse practitioner, for administering hepatitis C tests and opioid related overdose treatment. It will not require any licensed physician or certified nurse practitioner to issue non-patient specific orders or protocols and does not specifically require registered professional nurses to administer opioid related overdose treatment or hepatitis C tests pursuant to a non-patient specific order and protocol. The proposed rule will not impose any reporting, recordkeeping or other compliance requirements, or professional services requirements, on health care providers in rural areas, unless a licensed physician or certified nurse practitioner issues a non-patient specific order and protocol for registered professional nurses to administer opioid related overdose treatment or hepatitis C tests. The proposed addition of subdivisions (e) and (f) to section 64.7 of the Regulations of the Commissioner of Education require licensed physicians and certified nurse practitioners to issue non-patient specific orders and protocols in writing. Copies of the non-patient specific orders and protocols must be maintained in the patient's medical records. In addition, registered professional nurses must document that they administered the ordered hepatitis C tests or opioid related overdose treatments.

3. COSTS:

The proposed rule will not impose any costs on any licensed physician, certified nurse practitioner, registered professional nurse, or other party. Neither subdivision (4) of section 6909 nor subdivision (6) of section 6527 of the Education Law impose any obligations on licensed physicians or certified nurse practitioners to issue non-patient specific orders and protocol for hepatitis C tests or opioid related overdose treatments.

4. MINIMIZING ADVERSE IMPACT:

The proposed rule is necessary to conform the Regulations of the Commissioner of Education to Part V of Chapter 57 of the Laws of 2015 and Chapter 352 of the Laws of 2014. The statutory requirements do not make exceptions for individuals who live or work in rural areas. Thus, the Department has determined that the proposed rule's requirements should apply to all licensed physicians, certified nurse practitioners and registered professional nurses in New York State. Because of the nature of the proposed rule, alternative approaches for rural areas were not considered.

5. RURAL AREA PARTICIPATION:

Comments on the proposed rule were solicited from statewide organizations representing all parties having an interest in the practice of certified nurse practitioners and registered professional nurses. These organizations included the State Board for Nursing and professional associations representing the nursing profession and nursing educators and the medical professions. These groups have members who live or work or provide nursing education 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 rule is necessary to implement Part V of Chapter 57 of the Laws of 2015 and Chapter 352 of the Laws of 2014, and therefore the substantive provisions of the proposed rule cannot be repealed or modified unless there is a further statutory change. Accordingly, there is no need for a shorter review period. The State Education 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 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 rule implements Chapter 352 of the Laws of 2014 and Part V of Chapter 57 of the Laws of 2015, which authorize registered professional nurses to execute non-patient specific orders prescribed by a licensed physician or a certified nurse practitioner to administer hepatitis C tests and urgent or emergency treatment of opioid related overdose or suspected opioid related overdose, respectively. The proposed rule establishes criteria for authorizing registered professional nurses to administer hepatitis C tests and opioid related overdose treatment pursuant to written non-patient specific orders and written protocols prescribed by a licensed physician or a certified nurse practitioner.

The proposed rule implements specific statutory requirements and directives. Therefore, any impact on jobs and employment opportunities created by establishing criteria for authorizing registered professional nurses to administer hepatitis C tests and opioid related overdose treatment pursuant to a non-patient specific written order and written protocol prescribed by a licensed physician or a certified nurse practitioner is attributable to the statutory requirement, not the proposed rule, which simply establishes standards that conform with the requirements of the statutes.

Because it is evident from the nature of the proposed rule, which implements specific statutory requirements and directives, that it will have no adverse impact on jobs or employment opportunities attributable to its adoption or only a positive impact, no affirmative steps were needed to ascertain these facts and none were taken. Accordingly, a job impact statement is not required and one was not prepared.

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

School Receivership

I.D. No. EDU-27-15-00008-EP
Filing No. 542
Filing Date: 2015-06-23
Effective Date: 2015-06-23

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

Proposed Action: Addition of section 100.19 to Title 8 NYCRR.

Statutory authority: Education Law, sections 207 (not subdivided), 211-f(15), 215 (not subdivided), 305(1), (2), (20), 308 (not subdivided) and 309 (not subdivided); L. 2015, ch. 56, part EE, subpart H

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

Specific reasons underlying the finding of necessity: The purpose of the proposed rulemaking is to implement section 211-f of Education Law, as added by Subpart H of Part EE of Chapter 56 of the Laws of 2015, pertaining to school receivership. Section 211-f designates current Priority Schools that have been in the most severe accountability status since the 2006-07 school year as "Persistently Failing Schools" and vests the superintendent of the district with the powers of an independent receiver. The superintendent is given an initial one-year period to use the enhanced authority of a receiver to make demonstrable improvement in student performance at the "Persistently Failing School" or the Commissioner will direct that the school board appoint an independent receiver and submit the appointment for approval by the Commissioner. Failing Schools, schools that have been Priority Schools since the 2012-13 school year, will be given two years under a "superintendent receiver" (.i.e., the superintendent of schools of the school district vested with the powers a receiver would have under section 211-f) to improve student performance. Should the school fail to make demonstrable progress in two years then the district will be required to appoint an independent receiver and submit the appointment for approval by the Commissioner. Independent Receivers are appointed for up to three school years and serve under contract with the Commissioner.

The proposed rulemaking adds a new section 100.19 to align the Commissioner's Regulations with Education Law 211-f, and addresses the Regents Reform Agenda and New York State's updated accountability system. Adoption of the proposed amendment is necessary to ensure seamless implementation of the provisions of Education Law § 211-f, and will provide school districts with additional powers to impact improvement in academic achievement for students in the lowest performing schools.

Because the Board of Regents meets at scheduled intervals, and does not meet during the month of August, the September 16-17, 2015 Regents meeting is the earliest the proposed rule could be presented for regular (non-emergency) adoption, after publication of a Notice of Proposed Rule Making in the State Register and expiration of the 45-day public comment

period required under State Administrative Procedure Act (SAPA) sections 201(1) and (5). Furthermore, pursuant to SAPA section 203(1), the earliest effective date of the proposed rule, if adopted at the September meeting, would be October 7, 2015, the date a Notice of Adoption would be published in the State Register. However, Chapter 56 of the Laws of 2015 was signed by the Governor on April 13, 2015, and the provisions of Part EE, Subpart H became effective immediately. Therefore, emergency adoption of these regulations is necessary now for the preservation of the general welfare to immediately conform the Commissioner's Regulations to timely implement the requirements of Education Law § 211-f, so that school districts may have the opportunity to meet, in a timely fashion, accountability and intervention requirements for the 2014-15 school year and beyond, consistent with Education Law § 211-f and the ESEA Flexibility Waiver Renewal Request submitted to the USDE and pursuant to statutory requirements.

It is anticipated that the proposed rule will be presented to the Board of Regents for permanent adoption at its September 16-17, 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: School receivership.

Purpose: To implement Education Law section 211-f, as added by Part EE, Subpart H of Ch. 56 of the Laws of 2015.

Substance of emergency/proposed rule (Full text is posted at the following State website: http://www.regents.nysed.gov/report/jun-2015/p-12-education): The Commissioner of Education proposes to add a new section 100.19 of the Commissioner's Regulations. The proposed rule has been adopted as an emergency action at the June 2015 Regents meeting, effective July 1, 2015. The following is a summary of the substantive provisions of the proposed rule.

Section 100.19(a), Definitions, provides the definitions used in the section, including the definitions of Failing School (Struggling School), Persistently Failing School (Persistently Struggling School), Priority School, School District in Good Standing, School District Superintendent Receiver, Independent Receiver, School District, Community School, Board of Education, Department-approved Intervention Model, School Intervention Plan, School Receiver, Diagnostic Tool for School and District Effectiveness, Consultation and Cooperation, Consultation, Consulting and Day.

§ 100.19(b), Designation of Schools as Failing and Persistently Failing, explains the process by which the Commissioner shall designate schools as Struggling or Persistently Struggling and clarifies that school districts will have the opportunity to present data and relevant information concerning extenuating or extraordinary circumstances faced by the school that should cause it not to be identified as a Struggling or a Persistently Struggling School.

§ 100.19(c), Public Notice and Hearing and Community Engagement, details the process and timeline for notifying parents and the community regarding the Struggling or Persistently Struggling designation, the establishment of a Community Engagement Team, and the role of the Community Engagement Team in the development of recommendations for the identified school. The regulations would require at least one public meeting or hearing annually regarding the status of the school and annual notification to parents of the school's designation and its implications. The regulations also detail the process by which the hearing shall be conducted and notifications made. Additionally, the subdivision specifies that the district superintendent receiver is required to develop a community engagement plan for approval by the Commissioner.

§ 100.19(d), School District Receivership, specifies that the superintendent shall be vested with the powers of the receiver for Persistently Struggling Schools for the 2015-16 school year and with the powers of the receiver for Struggling Schools for the 2015-16 and 2016-17 school years, provided that there is a Department approved intervention model or comprehensive education plan in place for these school years that includes rigorous performance metrics. The school district superintendent receiver shall provide quarterly written reports regarding implementation of the department-approved intervention model or school comprehensive education plan, and such reports, together with a plain-language summary thereof, shall be made publicly available. At the end of the 2015-16 school year, the Commissioner will review (in consultation and collaboration with the district) the performance of the Persistently Struggling School to determine whether the school can continue under the superintendent receivership or whether the district must appoint an independent receiver for the school. Similarly, the Department will review the performance of Struggling Schools after two years to determine whether the schools can continue under the superintendent receivership or whether the district must appoint an independent receiver for the school.

§ 100.19(e), Appointment of an Independent Receiver, details the timeline and process for appointment of an independent receiver for Persistently Struggling and Struggling Schools and the process by which the Commissioner approves and contracts with the independent receiver. The section also details the power of the Commissioner to appoint an independent receiver if the district fails within sixty days to appoint an independent receiver that meets the Commissioner's approval. The subdivision clarifies that districts may appoint independent receivers from a department approved list or provide evidence of qualifications of a receiver not on the approved list. Additionally, the subdivision specifies what happens when the Commissioner must appoint an interim receiver.

§ 100.19(f), School Intervention Plan, describes the timeline and process by which the independent receiver will submit to the Commissioner for approval a school intervention plan and the specific components of that plan, including the metrics that will be used to evaluate plan implementation. Each approved school intervention plan must be submitted within six months of the independent receiver's appointment and this approval is authorized for a period of no more than three years. Each approved school intervention plan must be based on input from stakeholders delineated in the subdivision and a stakeholder engagement plan must be provided to the Commissioner within ten days of the independent receiver entering into a contract with the Commissioner. The school intervention plan must also be based upon recent diagnostic reviews and student achievement data. The independent receiver must provide quarterly reports, and plain-language summaries thereof, regarding the progress of implementing the school intervention plan to the local board of education, the Board of Regents, and the Commissioner. In order to provide additional direction to school districts, the regulations further delineate that in converting a school to a community school, the receiver must follow a particular process and meet minimum program requirements. The subdivision further clarifies that if the independent receiver cannot create an approvable plan, the Commissioner may appoint a new independent receiver.

§ 100.19(g), Powers and Duties of a Receiver, delineates the powers and duties of a school receiver, and the powers and duties that an independent receiver has in developing and implementing a school intervention plan. The independent receiver is required to convert the school to a community school and to submit an approvable school intervention plan to the Commissioner. The receiver (both the superintendent receiver and the independent receiver) have powers that may be exercised in the areas of school program and curriculum development; staffing, including replacement of teachers and administrators; school budget; expansion of the school day or year; professional development for staff; conversion of the school to a charter school; and requesting changes to the collective bargaining agreement at the identified school in areas that impact implementation of the school intervention plan. This section also describes the power of the receiver (both the superintendent and the independent receiver) to supersede decisions, policies, or local school district regulations that the receiver, in his/her sole judgment, believes impedes implementation of the school intervention plan.

Under the provisions of this subdivision, the receiver must notify the board of education, superintendent, and principal when the receiver is superseding their authority. The receiver must provide a reason for the supersession and an opportunity for the supersession to be appealed, all within a timeline prescribed in the regulations. This subdivision also delineates a similar process by which the receiver reviews and makes changes to the school budget and supersedes employment decisions regarding staff employed in schools operating under receivership.

§ 100.19(h), Annual Evaluation of Schools with an Appointed Independent Receiver, describes how the Commissioner, in collaboration and consultation with the district, will conduct an annual evaluation of each school to determine whether the school is meeting the performance goals and progressing in implementation of the school intervention plan. As a result of this evaluation, the Commissioner may allow the receiver to continue with the approved plan or require the receiver to modify the school intervention plan.

§ 100.19(i), Expiration of School Intervention Plan, describes the process by which the Commissioner evaluates the progress of the school under the receiver's school intervention plan after a three year period. Based on the results of the evaluation, the Commissioner may renew the plan with the independent receiver for not more than three years; terminate the independent receiver and appoint a new receiver; or determine that the school has improved sufficiently to be removed from Failing or Persistently Failing status.

§ 100.19(j), Phase-out and Closure of Failing and Persistently Failing School, states that nothing in these regulations shall prohibit the Commissioner from directing a school district to phase out or close a school, the Board of Regents from revoking the registration of a school, or a district from closing or phasing out a school with the approval of the Commissioner.

§ 100.19(k), regarding the Commissioner's evaluation of a school receivership program, requires the school receiver to provide any reports or other information requested by the Commissioner, in such form and format and according to such timeline as may be prescribed by the Com-

missioner, in order for the Commissioner to conduct an evaluation of the school receivership program.

This notice is intended: to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire September 20, 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

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

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

Education Law § 207 empowers Regents/ Commissioner to adopt rules to carry out State education laws and functions/ duties conferred by law.

Education Law § 305(1) and (2) provide Commissioner, as chief executive officer, with general supervision over schools and institutions subject to Education Law or education-related statutes, and responsibility for executing all Regents educational policies. § 305(20) provides Commissioner has additional powers/duties as charged by Regents.

Education Law § 211-f, as added by Part EE, Subpart H of Ch. 56, L.2015, provides for appointment of receivers to assist low-performing schools to make demonstrable improvement in student performance.

Education Law § 215 authorizes Commissioner to require schools/ districts to submit reports containing information prescribed by Commissioner.

Education Law § 308 authorizes Commissioner to enforce/give effect to Education Law provisions or other general/special law pertaining to education.

Education Law § 309 charges Commissioner with general supervision of schoolboards.

2. LEGISLATIVE OBJECTIVES:

The rule is consistent with the above authority and is necessary to implement Education Law § 211-f, by establishing criteria for appointment of receivers to assist low-performing schools.

3. NEEDS AND BENEFITS:

Education Law § 211-f designates current Priority Schools that have been in most severe accountability status since 2006-07 school year as "Persistently Failing Schools" (identified in rule as "Persistently Struggling Schools"), vests school district superintendent with powers of an independent receiver; and gives superintendent initial one-year period to use enhanced authority of receiver to make demonstrable improvement in student performance at the "Persistently Struggling School" or Commissioner will direct that schoolboard appoint independent receiver and submit appointment for Commissioner's approval. Independent receivers are appointed for up to three school years and serve under contract with Commissioner. Additionally, school will be eligible for a portion of $75 million in State aid to support/implement its turnaround efforts over a two-year period. Failing Schools (identified in rule as "Struggling Schools"), schools that have been Priority Schools since 2012-13 school year, will be given an initial two-year period under a "superintendent receiver" (i.e., school district superintendent of schools vested with powers of receiver) to improve student performance. Should school fail to make demonstrable improvement in two years then district must appoint independent receiver and submit appointment for Commissioner's approval.

§ 211-f provides persons/entities vested with powers of receiver new authority to develop school intervention plan; convert schools to community schools providing wrap-around services; reallocate funds in school's budget; expand school day/school year; establish professional development plans; order conversion of school to charter school; remove staff and/or require staff to reapply for employment in collaboration with staffing committee; and negotiate collective bargaining agreements, with unresolved issues submitted to Commissioner for decision.

At end of one- or two-year period in which Persistently Struggling or Struggling school remains under district control, and annually thereafter, Commissioner must determine whether school should be removed from designation, allowed to continue to be operated by school district under superintendent receiver, or be placed under independent receiver appointed by schoolboard with sole responsibility to manage/operate school. Schools operating under independent receiver must be annually evaluated by Commissioner to determine whether school intervention plan should be continued/modified. At end of independent receivership period, Commissioner must decide whether to end receivership, continue it, or appoint new receiver. Additionally, Commissioner may order closure of Struggling school and Regents may revoke school's registration.

4. COSTS:

(a) Costs to State government: $75 million is appropriated for period July 1, 2015 to March 31, 2017 to support turnaround efforts in Persistently Struggling Schools.

(b) Costs to local government: The rule is necessary to implement Education Law § 211-f and, consequently, major mandates of rule are statutorily imposed. SED anticipates because $75 million has been appropriated to support turnaround efforts in Persistently Struggling Schools during the 2015-16 and 2016-17 school years, there will be no costs to local governments for implementing school receivership in these schools during these years.

There are currently 17 schools/districts that may potentially have one or more schools identified as Struggling or Persistently Struggling. Annual costs to implement school receivership will vary widely depending on number of factors, including but not limited to: size of school enrollment, demographics of school population and grade configuration of the school; whether independent receiver is assigned to a school and district required to convert school to community school; and degree to which school receiver chooses to use receiver's authority to take actions such as extending school day/school year; expanding/modifying curriculum/program offerings; replacing teachers/administrators; increasing salaries of teachers/ administrators; improving hiring, induction, teacher evaluation, professional development, teacher advancement, school culture, organizational structure; adding kindergarten or pre-kindergarten programs; and/or re-staffing school. SED estimates on average it will cost district approximately $50,000 per school to meet rule's requirements regarding providing written annual notifications to parents of students attending Struggling or Persistently Struggling school; conducting at least one public meeting/hearing annually to discuss school's performance and the construct of receivership; establishing and implementing community engagement team; providing quarterly written reports to schoolboard, Commissioner and the Regents; amending comprehensive school improvement plans or Department-approved intervention plans to meet rule's requirements; and submitting information necessary to allow Commissioner to determine whether school is making demonstrable improvement. SED estimates in event that large high school (2,000 plus students) is placed in independent receivership, is implementing community school program, and independent receiver chooses to utilize all of receiver's authority, annual costs of implementation of receivership could be in range of $4 million to $5.5 million dollars.

(c) Costs to private regulated parties: None.

(d) Costs to regulating agency for implementation and continued administration of this rule: SED has received no additional funding to administrate this program. However, SED estimates it will cost annually between $65,000 and $800,000 per year to conduct additional visits to receivership schools to provide information in support of determinations on whether schools have made demonstrable improvement, depending on size and composition of review teams, length of visits, and type of reports written. SED further anticipates it will need to devote approximately $500,000 per year in staff time to coordinate receivership program, including providing technical assistance/support, evaluating performance, selecting independent receivers, and developing/overseeing their contracts. To extent SED does not receive additional funding, SED will be required to reallocate existing resources and diminish support for other program initiatives.

5. LOCAL GOVERNMENT MANDATES:

The rule is necessary to implement Education Law § 211-f by establishing criteria for appointment of receivers to assist low-performing schools to make demonstrable improvement in student performance. Consequently, major mandates of rule are statutorily imposed.

Upon Commissioner's designation of a school as Struggling or Persistently Struggling, the schoolboard shall conduct at least one public meeting/ hearing annually to discuss the performance of designated school and receivership, and provide translators and provide reasonable notice to public of meeting/hearing.

No later than twenty days following designation, district shall establish community engagement team, comprised of community stakeholders with direct ties to the school, to develop recommendations for improvement of the school and solicit input through public engagement.

The superintendent receiver shall develop community engagement plan in such form. format and according to such timeline as prescribed by Commissioner and shall submit such plan for Commissioner's approval.

The district shall continue to operate a Persistently Struggling school for an additional school year and a Struggling school for an additional two school years, provided there is a Department-approved intervention model or comprehensive education plan in place that includes rigorous performance metrics and goals, and a community engagement plan. The superintendent shall be vested with the powers of independent receiver but shall not be required to prepare school intervention plan or convert school to community school.

In the event SED revokes provisional approval or approval of an intervention model or comprehensive education plan, Commissioner shall require district to appoint and submit for Commissioner's approval an independent receiver to manage and operate the school.

The district shall consult with community engagement team, in accordance with approved community engagement plan, with respect to modifications to district's approved intervention model or comprehensive education plan.

Within 60 days of Commissioner's determination to place a school into receivership, district shall appoint an independent receiver and submit appointment for Commissioner's approval. If district fails to appoint independent receiver that meets the Commissioner's approval, Commissioner shall appoint independent receiver.

The district shall fully cooperate with independent receiver and willful failure to cooperate with or interference with functions of such receiver shall constitute willful neglect of duty under Education Law § 306.

No later than 30 business days prior to presentation of a school budget at budget hearing, the schoolboard shall provide school receiver with a copy of proposed district budget including any school-based budget, that shall include a specific delineation of all funds and resources the school receiver shall have available to manage and operate the school and services and resources that the district shall provide to the school. Upon receipt of the school receiver's proposed budget modifications, the schoolboard shall incorporate the modifications into the proposed budget and present it to the public or return modifications for reconsideration for reasons specified in writing. The school receiver shall notify schoolboard in writing of receiver's decision and determination of the school receiver shall be incorporated into the budget. The school receiver and the schoolboard shall provide the Commissioner with an electronic copy of all correspondence related to modification of the school budget.

6. PAPERWORK:

Upon Commissioner's designation of a school as Struggling or Persistently Struggling, the schoolboard shall provide written notice of designation to parents/persons in parental relation no later than 30 days following designation, and by June 30th of each school year the school remains so identified.

The district shall provide written notice of public meeting/hearing held annually for purposes of discussing the performance of the designated school and receivership.

The superintendent receiver shall provide quarterly written reports regarding implementation of the Department-approved intervention model or school comprehensive education plan, and such reports, together with a plain-language summary thereof, shall be publicly available.

Quarterly reports of school receiver shall be publicly available in school district's offices and posted on school district's website, if one exists.

No later than ten business days after a schoolboard has acted upon an employment decision pertaining to staff assigned to a Struggling or Persistently Struggling school, or a school that the Commissioner has determined shall be placed into receivership, the schoolboard shall provide school receiver with a copy of the action taken, which shall not go into effect until it has been reviewed by the school receiver. Upon receipt of any proposed modifications to an employment decision, the schoolboard shall adopt the modifications at the next regularly scheduled board meeting or return the modification within 10 days for reconsideration with the reasons specified in writing. The board shall approve modifications required by receiver at its next regularly scheduled meeting. The receiver and schoolboard shall provide Commissioner with an electronic copy of all correspondence related to such employment decisions.

The school receiver shall provide Commissioner with any reports or other information requested, in such form and format and according to such timeline as may be prescribed, in order for Commissioner to conduct an evaluation of the receivership program.

7. DUPLICATION:

The rule is necessary to implement Education Law § 211-f and does not duplicate, overlap or conflict with State or federal legal requirements.

8. ALTERNATIVES:

The rule is necessary to implement Education Law § 211-f by establishing criteria for the appointment of receivers to assist low-performing schools to make demonstrable improvement in student performance. Consequently, the major provisions of the rule are statutorily imposed, and there are no significant alternatives and none were considered.

9. FEDERAL STANDARDS:

There are no applicable federal standards for the appointment of receivers pursuant to Education Law § 211-f.

10. COMPLIANCE SCHEDULE:

The rule is necessary to implement Education Law § 211-f by establishing criteria for the appointment of receivers for Persistently Struggling Schools and Struggling Schools. Consequently, the major provisions of the proposed rule are statutorily imposed. It is anticipated that regulated parties can achieve compliance with the proposed rule by its effective date.

Regulatory Flexibility Analysis

Small Businesses:

The proposed rule is necessary to implement Education Law § 211-f, as added by Subpart H of Part EE of Chapter 56 of the Laws of 2015, by establishing criteria for the appointment of receivers to assist low performing schools and does not impose any adverse economic impact, reporting, record keeping or any other compliance requirement on small businesses. Because it is evident from the nature of the rule that it does not affect small businesses, no further measures were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses is not required and one has not been prepared.

Local Government:

1. EFFECT OF RULE:

The proposed rule applies to those school districts that have:

(1) "Persistently Failing Schools" (identified in the regulation as a "Persistently Struggling Schools"), which are Priority Schools that have been in the most severe accountability status since the 2006-07 school year, and/or

(2) Failing Schools (identified in the regulation as "Struggling Schools"), which are schools that have been in Priority Schools status since the 2012-13 school year.

There are currently 17 school districts that have Persistently Struggling Schools and/or Struggling Schools.

2. COMPLIANCE REQUIREMENTS:

The rule is necessary to implement Education Law section 211-f by establishing criteria for the appointment of receivers to assist low-performing schools to make demonstrable improvement in student performance. Consequently, the major mandates of the proposed rule are statutorily imposed. Major mandates of the proposed rule include: the development of a community engagement plan in a form and format and according to a timeline as prescribed by the Commissioner, the creation of a community engagement team, full cooperation of the district with the independent receiver, and the completion of quarterly reports by the independent receiver. In April 2015, Subpart H of Part EE of Chapter 56 of the Laws of 2015 created a new Education Law § 211-f. The statute designates current Priority Schools that have been in the most severe accountability status since the 2006-07 school year as "Persistently Failing Schools" (identified in the proposed regulation as "Persistently Struggling Schools" and vests the superintendent of the district with the powers of an independent receiver. The superintendent is given an initial one-year period to use the enhanced authority of a receiver to make demonstrable improvement in student performance at the "Persistently Struggling School" or the Commissioner will direct that the school board appoint an independent receiver and submit the appointment for approval by the Commissioner. Additionally, the school will be eligible for a portion of $75 million in State aid to support and implement its turnaround efforts over a two-year period. Failing Schools (identified in the regulation as "Struggling Schools"), schools that have been Priority Schools since the 2012-13 school year, will be given two years under a "superintendent receiver" (i.e., the superintendent of schools of the school district vested with the powers a receiver would have under § 211-f) to improve student performance. Should the school fail to make demonstrable improvement in two years then the district will be required to appoint an independent receiver and submit the appointment for approval by the Commissioner. Independent receivers are appointed for up to three school years and serve under contract with the Commissioner.

Education Law § 211-f provides persons or entities vested with the powers of a receiver new authority to, among other things, develop a school intervention plan; convert schools to community schools providing wrap-around services; reallocate funds in the school's budget; expand the school day or school year; establish professional development plans; order the conversion of the school to a charter school consistent with applicable state laws; remove staff and/or require staff to reapply for their jobs in collaboration with a staffing committee; and negotiate collective bargaining agreements, with any unresolved issues submitted to the Commissioner for decision.

At the end of the one- or two-year period in which a school designated as Persistently Struggling or as Struggling remains under district control, and annually thereafter, the Commissioner must determine whether the school should be removed from such designation; allowed to continue to be operated by the school district with the superintendent receiver; or be placed under an independent receiver who shall be appointed by the school board and shall have the responsibility to manage and operate the school. Schools operating under an independent receiver must also be annually evaluated by the Commissioner to determine whether the school intervention plan should be continued or modified. At the end of the independent receivership period, the Commissioner must decide whether to end the receivership, continue it, or appoint a new receiver. Additionally, the Commissioner may order the closure of a Persistently Struggling or Struggling School and the Board of Regents may revoke the registration of a school.

Upon the Commissioner's designation of a school as Struggling or Persistently Struggling, the board of education shall conduct at least one public meeting or hearing annually for purposes of discussing the performance of the designated school and receivership. The district shall provide translators and provide reasonable notice to the public of the meeting/hearing.

The school district superintendent receiver shall provide quarterly written reports regarding implementation of the department-approved intervention model or school comprehensive education plan, and such reports, together with a plain-language summary thereof, shall be made publicly available.

No later than twenty days following designation, the school district shall establish a community engagement team, comprised of community stakeholders with direct ties to the school, to develop recommendations for improvement of the school and solicit input through public engagement.

The superintendent shall develop a community engagement plan in such form and format and according to such timeline as may be prescribed by the Commissioner and shall submit such plan to the Commissioner for approval.

The school district shall continue to operate a school identified as Persistently Struggling for one additional school year and a school identified as Struggling for two additional school years, provided there is a Department-approved intervention model or comprehensive education plan in place that includes rigorous performance metrics and goals, and a community engagement plan. The superintendent shall be vested with the powers of an independent receiver.

In the event the Department revokes the provisional approval or approval of an intervention model or comprehensive education plan, the Commissioner shall require the school district to appoint and submit for the Commissioner's approval an independent receiver to manage and operate the school.

The district shall consult with the community engagement team in accordance with the approved community engagement plan, with respect to modifications to the district's approved intervention model or comprehensive education plan.

Within 60 days of Commissioner's determination to place a school into receivership, the district shall appoint an independent receiver and submit the appointment to the Commissioner for approval. If the school district fails to appoint an independent receiver that meets the Commissioner's approval, the Commissioner shall appoint the independent receiver.

The school district shall fully cooperate with the independent receiver and willful failure to cooperate with or interfere with the functions of such receiver shall constitute willful neglect of duty under Education Law section 306.

No later than 30 business days prior to presentation of a school budget at the budget hearing, the school board shall provide the school receiver with a copy of the proposed district budget including any school-based budget, that shall include a specific delineation of all funds and resources the school receiver shall have available to manage and operate the school and the services and resources that the school district shall provide to the school. Upon receipt of the school receiver's proposed budget modifications, the school board shall incorporate the modifications into the proposed budget and present it to the public or return the modifications for reconsideration for reasons specified in writing. The school receiver shall notify the school board in writing of the decision and the determination shall be incorporated into the budget. The school receiver and the school board shall provide the Commissioner with an electronic copy of all correspondence related to modification of the school budget.

Upon the Commissioner's designation of a school as Struggling or Persistently Struggling, the board of education shall provide written notice of the designation to parents/persons in parental relation no later than 30 days following designation, and by June 30th of each school year the school remains so identified.

The school district shall provide written notice of the public meeting or hearing held annually for purposes of discussing the performance of the designated school and receivership.

The school district superintendent receiver shall provide quarterly written reports regarding implementation of the department-approved intervention model or school comprehensive education plan, and such reports, together with a plain-language summary thereof, shall be publicly available.

Quarterly reports of the independent receiver shall be publicly available in the school district's offices and posted on the school district's website, if one exists.

No later than ten business days after a school board has acted upon an employment decision pertaining to staff assigned to a Struggling or Persistently Struggling School, or a school that the Commissioner has determined shall be placed into receivership, the school board shall provide the school receiver with a copy of the action taken, which shall not go into effect until it has been reviewed by the school receiver. Upon receipt of any proposed modifications to an employment decision, the school board shall adopt the modifications at the next regularly scheduled board meeting or return the modification within 10 days for reconsideration with the reasons specified in writing. The board shall approve modifications required by the receiver at its next regularly scheduled meeting. The receiver and school board shall provide the Commissioner with an electronic copy of all correspondence related to such employment decisions.

The school receiver shall provide the Commissioner with any reports or other information requested, in such form and format and according to such timeline as may be prescribed, in order for the Commissioner to conduct an evaluation of the receivership program.

3. PROFESSIONAL SERVICES:

The rule is necessary to implement Education Law § 211-f by establishing criteria for the appointment of receivers to assist low performing schools. The proposed rule does not impose any additional professional services requirements beyond those inherent in the statute.

4. COMPLIANCE COSTS:

The proposed rule is necessary to implement Education Law § 211-f and, consequently, the major mandates of the proposed rule are statutorily imposed. The Department anticipates that because $75 million has been appropriated to support turnaround efforts in Persistently Struggling Schools during the 2015-16 and 2016-17 school years, there will be no costs to local governments for implementing school receivership in these schools during these years.

There are currently 17 schools districts that may potentially have one or more schools identified as Struggling or Persistently Struggling. Annual costs to implement school receivership will vary widely depending on a number of factors, including but not limited to: the size of school enrollment, the demographics of the school population and the grade configuration of the school; whether an independent receiver is assigned to a school and the district is required to convert the school to a community school; and the degree to which the school receiver chooses to use the receiver's authority to take actions such as extending the school day or school year; expanding or modifying curriculum and program offerings; replacing teachers and administrators; increasing salaries of teachers and administrators; improving hiring, induction, teacher evaluation, professional development, teacher advancement, school culture and/or organizational structure; adding kindergarten or pre-kindergarten programs; and/or restaffing the school. The Department estimates that on average it will cost a district approximately $50,000 per school to meet the requirements of the regulations regarding providing written annual notifications to parents of, or persons in parental relation to, students attending a struggling or a persistently struggling school; conducting at least one public meeting or hearing annually for purposes of discussing the performance of the designated school and the construct of receivership; establishing a community engagement team and implementing the provisions of the regulations regarding such teams; providing quarterly written reports to the board of education, the Commissioner and the Board of Regents; amending comprehensive school improvement plans or department approved intervention plans to meet the requirements of the regulations; and submitting information necessary to allow the Commissioner to determine whether a school is making demonstrable improvement. The Department estimates that in the event that a large high school (2,000 plus students) is placed in independent receivership, is implementing a community school program, and the independent receiver chooses to utilize all of the authority of the receiver as specified in subdivision 100.19(g), the annual costs of implementation of receivership could be in the range of $4 million to $5.5 million dollars.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The proposed rule requires school districts to provide notice to the public regarding public meetings or hearings by posting the notice on a school district website, if one exists. In addition, the School Intervention Plan must be publicly available by the independent receiver in the school district's offices and posted on the school district's website, if one exists. Quarterly reports must be publicly available in the school district's offices and posted on the school district's website, if one exists.

Economic feasibility is addressed in the Costs section above.

6. MINIMIZING ADVERSE IMPACT:

The rule is necessary to implement Education Law section 211-f by establishing criteria for the appointment of receivers to assist low performing schools. Consequently, the major provisions of the rule are statutorily imposed and it is not feasible to establish differing compliance or reporting requirements or timetables, or to exempt school districts from coverage by the rule. Nevertheless, a substantial effort was made to involve school districts and other interested parties in the development of this rule, and their comments were considered in drafting the proposed rule.

The Department intends to take steps to provide sufficient notice of the proposed rule to ensure that school districts are made aware of the rule's

requirements so they may suitably prepare for and implement this requirement. The Department will also take steps to share a variety of resources with school districts to provide guidance with the implementation process.

7. SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION:

With the approval of the Board of Regents at its May 18-19, 2015 meeting, Department staff solicited comments and recommendations from groups that included teams from school districts with one or more eligible priority schools; district superintendents; Statewide representatives of parents, teachers, principals, superintendents, and school boards; educational partnership organizations; representatives of State agencies that provide health, mental health, child welfare, and job services; representatives of organizations involved in and concerned with the education of English language learners, students with disabilities and students in temporary housing; and technical experts in school receivership, expanded learning, and community school models. A meeting of these key stakeholders was held on May 27, 2015, where more than 100 participants provided their feedback on draft express terms that were presented to the Board of Regents in May, and many of their suggestions were incorporated in the proposed rule presented for emergency adoption at the June 15-16, 2015 Regents meeting.

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 rule is necessary to implement Education Law section 211-f, as added by Part EE, Subpart H of Ch. 56 of the Laws of 2015, by establishing criteria for the appointment of receivers to assist low-performing schools to make demonstrable improvement in student performance. Consequently, the major, substantive provisions of the proposed rule are statutorily imposed and cannot be changed without further Legislative action.

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 number 10 of the Notice of Proposed Rule Making published herewith, and must be received within 45 days of the date the Notice is published in the State Register.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed rule applies to those school districts that have:

(1) "Persistently Failing Schools" (identified in the regulation as a "Persistently Struggling Schools"), which are Priority Schools that have been in the most severe accountability status since the 2006-07 school year, and/or

(2) Failing Schools (identified in the regulation as a "Struggling Schools"), which are schools that have been in Priority Schools status since the 2012-13 school year.

There is currently one school district that has one Struggling School located in a rural area (i.e. 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 rule is necessary to implement Education Law section 211-f by establishing criteria for the appointment of receivers to assist low-performing schools to make demonstrable improvement in student performance. In April 2015, Subpart H of Part EE of Ch. 56 of the Laws of 2015 created a new Education Law § 211-f. The statute designates current Priority Schools that have been in the most severe accountability status since the 2006-07 school year as "Persistently Failing Schools" (identified in the proposed regulation as "Persistently Struggling Schools" and vests the superintendent of the district with the powers of an independent receiver. The superintendent is given an initial one-year period to use the enhanced authority of a receiver to make demonstrable improvement in student performance at the Persistently Struggling School or the Commissioner will direct that the school board appoint an independent receiver and submit the appointment for approval by the Commissioner. Independent receivers are appointed for up to three school years and serve under contract with the Commissioner. Additionally, the school will be eligible for a portion of $75 million in State aid to support and implement its turnaround efforts over a two-year period. Failing Schools (identified in the regulation as "Struggling Schools"), schools that have been Priority Schools since the 2012-13 school year, will be given two years under a "superintendent receiver" (i.e., the superintendent of schools of the school district vested with the powers of a receiver under § 211-f) to improve student performance. Should the school fail to make demonstrable improvement in two years then the district will be required to appoint an independent receiver and submit the appointment for approval by the Commissioner. Education Law § 211-f provides persons or entities vested with the powers of a receiver new authority to, among other things, develop a school intervention plan; convert schools to community schools providing wrap-around services; reallocate funds in the school's budget; expand the school day or school year; establish professional development plans; order the conversion of the school to a charter school consistent with applicable state laws; remove staff and/or require staff to reapply for their jobs in collaboration with a staffing committee; and negotiate collective bargaining agreements, with any unresolved issues submitted to the Commissioner for decision.

At the end of the one- or two-year period in which a school designated as Persistently Struggling or as Struggling remains under district control, and annually thereafter, the Commissioner must determine whether the school should be removed from such designation; allowed to continue to be operated by the school district with the superintendent receiver; or be placed under an independent receiver who shall be appointed by the school board with the responsibility to manage and operate the school. Schools operating under an independent receiver must also be annually evaluated by the Commissioner to determine whether the school intervention plan should be continued or modified. At the end of the independent receivership period, the Commissioner must decide whether to end the receivership, continue it, or appoint a new receiver. Additionally, the Commissioner may order the closure of a Struggling or Persistently Struggling School and the Board of Regents may revoke the registration of the school.

Upon the Commissioner's designation of a school as Struggling or Persistently Struggling, the board of education shall conduct at least one public meeting or hearing annually for purposes of discussing the performance of the designated school and receivership. The district shall provide translators and provide reasonable notice to the public of the meeting or hearing.

The superintendent receiver shall provide quarterly written reports regarding implementation of the department-approved intervention model or school comprehensive education plan, and such reports, together with a plain-language summary thereof, shall be publicly available.

No later than twenty days following designation, the school district shall establish a community engagement team, comprised of community stakeholders with direct ties to the school, to develop recommendations for improvement of the school and solicit input through public engagement.

The superintendent receiver shall develop a community engagement plan in such form and format and according to such timeline as may be prescribed by the Commissioner and shall submit such plan to the Commissioner for approval.

The school district shall continue to operate a school identified as Persistently Struggling for one additional school year and a school identified as Struggling for two additional school years, provided there is a Department-approved intervention model or comprehensive education plan in place that includes rigorous performance metrics and goals, as well as a community engagement plan. The superintendent shall be vested with the powers of an independent receiver, except that superintendent is not required to develop a school intervention plan or convert the school to a community school.

In the event the Department revokes the provisional approval or approval of an intervention model or comprehensive education plan, the Commissioner shall require the school district to appoint and submit for the Commissioner's approval an independent receiver to manage and operate the school.

The district shall consult with the community engagement team in accordance with the approved community engagement plan, with respect to modifications to the district's approved intervention model or comprehensive education plan.

Within 60 days of the Commissioner's determination to place a school into receivership, the district shall appoint an independent receiver and submit the appointment to the Commissioner for approval. If the school district fails to appoint an independent receiver that meets the Commissioner's approval, the Commissioner shall appoint the independent receiver.

The school district shall fully cooperate with the independent receiver and willful failure to cooperate with or interfere with the functions of such receiver shall constitute willful neglect of duty under Education Law section 306.

No later than 30 business days prior to the presentation of a school budget at the budget hearing, the school board shall provide the school receiver with a copy of the proposed district budget including any school-based budget, that shall include a specific delineation of all funds and resources the school receiver shall have available to manage and operate the school and the services and resources that the school district shall provide to the school. Upon receipt of the school receiver's proposed budget modifications, the school board shall incorporate the modifications into the proposed budget and present it to the public or return the modifications

for reconsideration for reasons specified in writing. The school receiver shall notify the school board in writing with a decision and that determination shall be incorporated into the budget. The school receiver and the school board shall provide the Commissioner with an electronic copy of all correspondence related to modification of the school budget.

Upon the Commissioner's designation of a school as Struggling or Persistently Struggling, the board of education shall provide written notice of the designation to parents/persons in parental relation no later than 30 days following designation, and by June 30th of each school year the school remains so identified.

The school district shall provide written notice of the public meeting or hearing held annually for purposes of discussing the performance of the designated school and receivership.

Quarterly reports of the independent receiver shall be publicly available in the school district's offices and posted on the school district's website, if one exists.

No later than ten business days after a school board has acted upon an employment decision pertaining to staff assigned to a Struggling or Persistently Struggling School, or a school that the Commissioner has determined shall be placed into receivership, the school board shall provide the school receiver with a copy of the action taken, which shall not go into effect until it has been reviewed by the school receiver. Upon receipt of any proposed modifications to an employment decision, the school board shall adopt the modifications at the next regularly scheduled board meeting or return the modification within 10 days for reconsideration with the reasons specified in writing. The board shall approve modifications required by the receiver at its next regularly scheduled meeting. The receiver and school board shall provide the Commissioner with an electronic copy of all correspondence related to such employment decisions.

The school receiver shall provide the Commissioner with any reports or other information requested, in such form and format and according to such timeline as may be prescribed, in order for the Commissioner to conduct an evaluation of the receivership program.

The rule is necessary to implement Education Law § 211-f by establishing criteria for the appointment of receivers to assist low performing schools, and does not impose any additional professional service requirements upon schools in rural areas beyond those inherent in the statute.

3. COSTS:

The proposed rule is necessary to implement Education Law § 211-f and, consequently, the major mandates of the proposed rule are statutorily imposed. The Department anticipates that because $75 million has been appropriated to support turnaround efforts in Persistently Struggling Schools during the 2015-16 and 2016-17 school years, there will be no costs to local governments for implementing school receivership in these schools during these years.

There are currently 17 schools districts that may potentially have one or more schools identified as Struggling or Persistently Struggling. Annual costs to implement school receivership will vary widely depending on a number of factors, including but not limited to: the size of school enrollment, the demographics of the school population and the grade configuration of the school; whether an independent receiver is assigned to a school and the district is required to convert the school to a community school; and the degree to which the school receiver chooses to use the receiver's authority to take actions such as extending the school day or school year; expanding or modifying curriculum and program offerings; replacing teachers and administrators; increasing salaries of teachers and administrators; improving hiring, induction, teacher evaluation, professional development, teacher advancement, school culture and/or organizational structure; adding kindergarten or pre-kindergarten programs; and/or restaffing the school. The Department estimates that on average it will cost a district approximately $50,000 per school to meet the requirements of the regulations regarding providing written annual notifications to parents of, or persons in parental relation to, students attending a struggling or a persistently struggling school; conducting at least one public meeting or hearing annually for purposes of discussing the performance of the designated school and the construct of receivership; establishing a community engagement team and implementing the provisions of the regulations regarding such teams; providing quarterly written reports to the board of education, the Commissioner and the Board of Regents; amending comprehensive school improvement plans or department approved intervention plans to meet the requirements of the regulations; and submitting information necessary to allow the Commissioner to determine whether a school is making demonstrable improvement. The Department estimates that in the event that a large high school (2,000 plus students) is placed in independent receivership, is implementing a community school program, and the independent receiver chooses to utilize all of the authority of the receiver as specified in subdivision 100.19(g), the annual costs of implementation of receivership could be in the range of $4 million to $5.5 million dollars.

4. MINIMIZING ADVERSE IMPACT:

The rule is necessary to implement Education Law section 211-f by establishing criteria for the appointment of receivers to assist low performing schools. Consequently, the major provisions of the rule are statutorily imposed and it is not feasible to establish differing compliance or reporting requirements or timetables or to exempt schools in rural areas from coverage by the proposed rule. Nevertheless, a substantial effort was made to involve school districts and other interested parties in the development of this rule, and their comments were considered in drafting the proposed rule.

The Department has taken steps to minimize the possible adverse impact of the proposed rule by including stakeholders in the decision making process. The Department also intends to take steps to provide sufficient notice of the proposed rule to ensure that school districts are made aware of the rule's requirements so they may timely prepare for implementation. The Department will also take steps to share a variety of resources with school districts to provide guidance with implementation.

5. RURAL AREA PARTICIPATION:

With the approval of the Board of Regents at its May 18-19, 2015 meeting, Department staff solicited comments and recommendations from groups that included teams from school districts with one or more eligible priority schools; district superintendents; Statewide representatives of parents, teachers, principals, superintendents, and school boards; educational partnership organizations; representatives of State agencies that provide health, mental health, child welfare, and job services; representatives of organizations involved in and concerned with the education of English language learners, students with disabilities and students in temporary housing; and technical experts in school receivership, expanded learning, and community school models. A meeting of these key stakeholders was held on May 27, 2015, where more than 100 participants provided their feedback on draft express terms that were presented to the Board of Regents in May, and many of their suggestions were incorporated in the proposed rule presented for emergency adoption at the June 15-16, 2015 Regents meeting.

6. INITIAL REVIEW OF RULE:

Pursuant to State Administrative Procedure Act § 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 rule is necessary to ensure implementation of Education Law section 211-f, as added by Part EE, Subpart H of Ch. 56 of the Laws of 2015, by establishing criteria for the appointment of receivers to assist low-performing schools to make demonstrable improvement in student performance. Consequently, the major, substantive provisions of the proposed rule are statutorily imposed and cannot be changed without further Legislative action.

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 number 16 of the Notice of Emergency Adoption and Proposed Rule Making published herewith, and must be received within 45 days of the date the State Register publishes the Notice.

Job Impact Statement

The proposed rule relates to public school and school district accountability and is necessary to implement and otherwise conform the Commissioner's Regulations to Education Law section 211-f, as added by Part EE, Subpart H of Ch. 56 of the Laws of 2015, by establishing criteria for the appointment of receivers to assist low performing schools to make demonstrable improvement in student performance. The statute designates current Priority Schools that have been in the most severe accountability status since the 2006-07 school year as "Persistently Failing Schools" (identified in the proposed regulation as "Persistently Struggling Schools") and identifies schools that have been identified as Priority since the 2012-13 school year as "Failing Schools" (identified in the proposed regulation as "Struggling Schools") and vests the superintendent of the district with the powers of an independent receiver.

The proposed rule applies to public schools that are Struggling or Persistently Struggling and placed into receivership and will not result in an adverse impact on jobs or employment opportunities. In accordance with Education Law section 211-f(7)(b) and (c), a school receiver may abolish the positions of all members of the teaching and administrative and supervisory staff assigned to the Struggling or Persistently Struggling School and terminate the employment of any principal assigned to such a school and require staff members to reapply for their positions in the school if they so choose. Although the school receiver may choose not to rehire a maximum of fifty percent of the former staff, it is anticipated that those staff members will be replaced by other individuals and will not cause a net loss in positions at the school.

Furthermore, an apportionment of $75 million in State funds will be available to Persistently Struggling Schools for the implementation of the Receivership process during the 2015-16 and 2016-17 school years. Since

school districts are expected to use a portion of this allocation to implement strategies that may require hiring of new staff for these schools, this will result in a net gain of jobs. It is also possible that to meet the requirements of school receivership in Struggling Schools, which are not eligible for the $75 million grant, districts may choose to hire additional staff to implement the provisions of receivership.

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Foster Youth College Success Initiative

I.D. No. EDU-27-15-00010-EP
Filing No. 543
Filing Date: 2015-06-23
Effective Date: 2015-07-01

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

Proposed Action: Addition of Subpart 152-3 to Title 8 NYCRR.

Statutory authority: Education Law, sections 207 (not subdivided), 210 (not subdivided), 215 (not subdivided), 305(1), (2), 6451(1-6) and 6456(1-7), as added by L. 2015, ch. 56

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

Specific reasons underlying the finding of necessity: The proposed rule is necessary to implement Education Law section 6456, as added by Part X of Chapter 56 of the Laws of 2015, regarding the foster care youth initiative.

Since the Board of Regents meets at fixed intervals, the earliest the proposed rule can be presented for regular (non-emergency) adoption, after expiration of the required 45-day public comment period provided for in the State Administrative Procedure Act (SAPA) sections 201(1) and (5), would be the September 16-17, 2015 Regents meeting. Furthermore, pursuant to SAPA section 203(1), the earliest effective date of the proposed rule, if adopted at the September meeting, would be October 7, 2015, the date a Notice of Adoption would be published in the State Register. However, Chapter 56 of the Laws of 2015 was signed by the Governor on April 13, 2015, and the provisions of Part X become effective July 1, 2015. Therefore, emergency action is necessary at the June 15-16, 2015 Regents meeting for the preservation of the general welfare in order to immediately establish standards for the foster care youth initiative and thus ensure the timely implementation of Education Law 6456, as added by Part X of Ch. 56 of the Laws of 2015.

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

Subject: Foster Youth College Success Initiative.

Purpose: To implement the Foster Youth College Success Initiative, as added by Part X of Chapter 56 of the Laws of 2015.

Text of emergency/proposed rule: 1. Subpart 152-3 of the Regulations of the Commissioner of Education is added, effective July 1, 2015, to read as follows:

Subpart 152-3

FOSTER YOUTH COLLEGE SUCCESS INITIATIVE.

§ 152-3.1 Purpose.

The purpose of the Foster Youth College Success Initiative is to provide funding, subject to an appropriation for such purpose, to support services to assist youth in foster care to apply for, enroll in, and succeed in college.

§ 152-3.2. Definition.

(a) For purposes of this section, foster youth shall mean students who have qualified as an orphan, foster child, or ward of the court for the purposes of federal student financial aid programs authorized by Title IV of the Higher Education Act of 1965, as amended.

§ 152-3.3. Applications.

(a) Eligible applicants. Institutions of the State University of New York ("SUNY"), City University of New York ("CUNY"), and degree-granting institutions in New York that are currently funded by the Arthur O. Eve Higher Education Opportunity Program pursuant to section 6451 of the Education Law for the purposes of providing additional services and expenses to expand opportunities for foster youth may apply for funding pursuant to this Section.

(b) Applications shall be submitted to the Commissioner, on forms prescribed by the Commissioner, for approval by October 1 of each year, and must set forth the need for such funds, including how the funds would be used and the exact number of foster youth that would be assisted with such funds.

(c) Applications from institutions of the State University of New York shall be coordinated through the SUNY System Administration and forwarded to the Department for review and approval by the Commissioner. Applications from institutions in the City University of New York system shall be coordinated through the CUNY Central Administration and forwarded to the Department for review and approval by the Commissioner. Other applications from eligible applicants as set forth in this section shall be submitted directly by the institution to the Department for review and approval by the Commissioner.

§ 152-3.4. Funding.

(a) Funds appropriated for the purposes of this initiative shall be awarded in equal amounts per foster youth to each institution whose application is approved by the Commissioner; pursuant to the sector distribution described in subdivision (b) of this section.

(b) Funds appropriated for the foster care youth initiative shall be allocated among the sectors as follows:

(1) 52% for institutions in the SUNY system;

(2) 30% for institutions in the CUNY system; and

(3) 18% for other degree-granting institutions in New York with current Arthur O. Eve higher education opportunity programs under this Part.

(c) Funds awarded under this Subpart shall be used for the following purposes to transition eligible students into postsecondary education:

(1) to provide additional services and fund expenses to expand opportunities for Foster Youth through existing postsecondary opportunity programs at the SUNY (Education Opportunity Program), CUNY (Search for Elevation, Education and Knowledge Program and College Discovery Program), and other not-for-profit degree granting higher education institutions which have higher education opportunity programs for foster youth;

(2) to provide necessary supplemental financial aid for foster youth, which may include the cost of tuition and fees, books, supplies, transportation, and other expenses determined by the Commissioner to be necessary for such foster youth to attend college;

(3) to conduct a summer college preparation program for foster youth who will be enrolled and attending as first time full time students at such institution awarded funding in an effort to prepare them to navigate on-campus systems, and provide preparation in reading, writing, and mathematics for foster youth who need it; or;

(4) for advisement, tutoring and other academic assistance for Foster Youth who are or will be enrolled and attending such institution awarded funding.

(d) Funds awarded pursuant to this Subpart shall be used for the allowable costs, as determined by the Commissioner, of activities and services needed to support the purposes prescribed in subdivision (c) of this section, which may include, but shall not be limited to, costs of outreach to high schools and community based organizations that serve foster youth to advise potential students and provide information on this initiative.

(e) For the 2015 - 2016 academic year only, the amount of funds to be awarded to each institution under this initiative shall be based on the current number of eligible foster youth at such institution plus the number of eligible students recruited for, and enrolled in, an opportunity program at such institution.

(f) For the 2016 - 2017 academic year and thereafter, all funds under this initiative shall be based on the number of eligible foster youth recruited for and enrolled in the opportunity programs of such institutions for the current year of enrollment.

(g) No funds under this Subpart shall be used to support the regular academic programs of any institution participating in this program or, for programs which are incompatible with the Regents plan for the expansion and development of higher education in New York State.

§ 152-3.5. Reporting

Each institution that receives funds under this Subpart shall file an annual report by August 31 of the calendar year succeeding the year of its successful application for funding using a form prescribed by the Department, and/or within 30 days of any request by the Department, providing any information or documentation as the Commissioner may request relating to this initiative.

This notice is intended: to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire September 20, 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

Data, views or arguments may be submitted to: Peg Rivers, State Educa-

tion Department, Office of Higher Education, Room 979 EBA, 89 Washington Ave., Albany, NY 12234, (518) 486-3633, email: regcomments@nysed.gov

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

Regulatory Impact Statement

STATUTORY AUTHORITY:

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

Education Law section 210 provides that the Regents may register domestic and foreign institutions in terms of New York 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 the professions in this State.

Education Law section 215 authorizes the Board of Regents and the Commissioner of Education to require school districts to prepare and submit reports containing such information as they may prescribe.

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

Education Law section 6451, relating to the Arthur O. Eve Higher Education Opportunity Program (HEOP), provides for State assistance and authorizes the Commissioner, for purposes of advancing the cause of educational opportunity in higher education, to contract with non-public institutions of higher education for the support of special for the screening, testing, counseling, tutoring of, and assistance to economically and educationally disadvantaged State residents who are graduates of an approved high school or who have attained a State high school equivalency diploma or equivalent, and who have potential for successful completion of a postsecondary program.

Education Law section 6456, as added by Part X of Chapter 56 of the Laws of 2015, establishes the Foster Youth College Success Initiative, and directs the Commissioner to allocate funds, subject to an appropriation, for the purpose of providing support services to assist youth in foster care to apply for, enroll in, and succeed in college. The law provides for awards to public institutions, including institutions of the State University of New York (SUNY), and The City University of New York (CUNY), and requires the Commissioner to enter into contracts with degree-granting institutions currently funded by HEOP for the purpose of providing additional services and expenses to expand opportunities for foster youth.

LEGISLATIVE OBJECTIVES:

The proposed rule is consistent with the above statutory authority and is necessary to implement the Foster Youth College Success Initiative, pursuant to Education Law section 6456, as added by Part X of Chapter 56 of the Laws of 2015.

NEEDS AND BENEFITS:

Chapter 56 of the Laws of 2015 added a new section 6456 to the Education Law requiring the Commissioner to allocate funds, subject to an appropriation, for the purpose of providing support services to assist youth in foster care to apply for, enroll in, and succeed in college. The new law defines foster youth to include students who have qualified as an orphan, foster child or ward of the court for the purposes of federal student financial aid programs authorized by Title IV of the Higher Education Act of 1965, as amended.

Pursuant to the new law, funding shall be used for the following purposes:

(a) providing additional services and covering expenses to expand opportunities through existing postsecondary opportunity programs at the SUNY, CUNY, and other degree-granting higher education institutions for foster youth, and

(b) providing necessary supplemental financial aid for foster youth, which may include: the cost of tuition and fees, books, supplies, transportation, and other expenses approved by the Commissioner for such foster youth to attend college, and

(c) summer college preparation programs to help foster youth transition to college, prepare them to navigate on-campus systems, and provide preparation in reading, writing, and mathematics for foster youth who need it, or providing advisement, tutoring and other academic assistance for foster youth.

The proposed regulation would allow expenditure of grant funds for costs needed to carry out those purposes, including but not limited to the costs of outreach to high schools and community based organizations that serve foster youth about this initiative.

COSTS:

(a) Costs to State government: None.

(b) Costs to local government: None.

(c) Cost to private regulated parties. None.

(d) Costs to regulating agency for implementation and continued administration of this rule: None.

The proposed rule is necessary to implement the Foster Youth College Success Initiative pursuant to Education Law section 6456, as added by Part X of Chapter 56 of the Laws of 2015, and will not impose any additional costs beyond those imposed by the statute. SUNY and CUNY Institutions, and degree-granting institutions in New York that are currently funded by the Arthur O. Eve Higher Education Opportunity Program pursuant to section 6451 of the Education Law for the purposes of providing additional services and expenses to expand opportunities for foster youth may, but are not required to, apply for funding under the Foster Youth College Success Initiative.

The 2015 – 2016 State budget appropriated $1.5 million for the Foster Youth College Success Initiative. Education Law section 6456 provides for awards to public institutions, including institutions of the State University of New York (SUNY), and The City University of New York (CUNY), and requires the Commissioner to enter into contracts with degree-granting institutions currently funded by the Arthur O. Eve Higher Education Opportunity Program (HEOP) for the purpose of providing additional services and expenses to expand opportunities for foster youth. The new law allocates funding to these three sectors as follows: 52% to SUNY institutions; 30% to CUNY institutions; and 18% percent to currently funded HEOP institutions. It further requires that funds be in equal amounts per individual foster youth to each institution that applies for funding allocated to by sector that is approved by the Commissioner. It also prohibits funds from being used to support the regular academic programs of any institution participating in this program and/or which are incompatible with the Regents plan for the expansion and development of higher education in New York State.

LOCAL GOVERNMENT MANDATES:

The proposed rule is necessary to implement the Foster Youth College Success Initiative pursuant to Education Law section 6456, as added by Part X of Chapter 56 of the Laws of 2015, and will not impose any program, service, duty or responsibility on school districts beyond those already imposed by State law or regulation. SUNY and CUNY Institutions, and degree-granting institutions in New York that are currently funded by the Arthur O. Eve Higher Education Opportunity Program pursuant to section 6451 of the Education Law for the purposes of providing additional services and expenses to expand opportunities for foster youth may, but are not required to, apply for funding under the Foster Youth College Success Initiative.

PAPERWORK:

Applications shall be submitted to the Commissioner, on forms prescribed by the Commissioner, for approval by October 1 of each year, and must set forth the need for such funds, including how the funds would be used and the exact number of foster youth that would be assisted with such funds.

Applications from institutions of the State University of New York shall be coordinated through the SUNY System Administration and forwarded to the Department for review and approval by the Commissioner. Applications from institutions in the City University of New York system shall be coordinated through the CUNY Central Administration and forwarded to the Department for review and approval by the Commissioner. Other applications from eligible applicants as set forth in this section shall be submitted directly by the institution to the Department for review and approval by the Commissioner.

Each institution that receives funds shall file an annual report by August 31 of the calendar year succeeding the year of its successful application for funding using a form prescribed by the Department, and/or within 30 days of any request by the Department, providing any information or documentation as the Commissioner may request relating to this initiative.

DUPLICATION:

The proposed rule is necessary to implement the Foster Youth College Success Initiative pursuant to Education Law section 6456, as added by Part X of Chapter 56 of the Laws of 2015, and does not duplicate existing State or federal requirements.

ALTERNATIVES:

The proposed rule is necessary to implement the Foster Youth College Success Initiative pursuant to Education Law section 6456, as added by Part X of Chapter 56 of the Laws of 2015. Consequently, the major provisions of the proposed rule are statutorily imposed, and there are no significant alternatives and none were considered.

FEDERAL STANDARDS:

There are no applicable Federal standards.

COMPLIANCE SCHEDULE:

The new law requires eligible institutions to file an application with the Commissioner by October 1st of each year. The application must demon-

strate a need for such funding; including how the funds would be used and how many foster youth will be funded. It is anticipated that parties will be able to achieve compliance with the rule by its effective date.

Regulatory Flexibility Analysis

1. EFFECT OF RULE:

Institutions of the State University of New York ("SUNY"), City University of New York ("CUNY"), and degree-granting institutions in New York that are currently funded by the Arthur O. Eve Higher Education Opportunity Program pursuant to section 6451 of the Education Law for the purposes of providing additional services and expenses to expand opportunities for foster youth may, but are not required to, apply for funding under the Foster Youth College Success Initiative.

2. COMPLIANCE REQUIREMENTS:

The proposed rule is necessary to implement the Foster Youth College Success Initiative pursuant to Education Law section 6456, as added by Part XX of Chapter 56 of the Laws of 2015, and will not impose any program, service, duty or responsibility on school districts beyond those already imposed by State law or regulation. SUNY and CUNY Institutions, and degree-granting institutions in New York that are currently funded by the Arthur O. Eve Higher Education Opportunity Program pursuant to section 6451 of the Education Law for the purposes of providing additional services and expenses to expand opportunities for foster youth may, but are not required to, apply for funding under the Foster Youth College Success Initiative.

Applications shall be submitted to the Commissioner, on forms prescribed by the Commissioner, for approval by October 1 of each year, and must set forth the need for such funds, including how the funds would be used and the exact number of foster youth that would be assisted with such funds.

Applications from institutions of the State University of New York shall be coordinated through the SUNY System Administration and forwarded to the Department for review and approval by the Commissioner. Applications from institutions in the City University of New York system shall be coordinated through the CUNY Central Administration and forwarded to the Department for review and approval by the Commissioner. Other applications from eligible applicants as set forth in this section shall be submitted directly by the institution to the Department for review and approval by the Commissioner.

Funding shall be used for the following purposes:

(a) providing additional services and covering expenses to expand opportunities through existing postsecondary opportunity programs at the SUNY, CUNY, and other degree-granting higher education institutions for foster youth, and

(b) providing necessary supplemental financial aid for foster youth, which may include: the cost of tuition and fees, books, supplies, transportation, and other expenses approved by the Commissioner for such foster youth to attend college, and

(c) summer college preparation programs to help foster youth transition to college, prepare them to navigate on-campus systems, and provide preparation in reading, writing, and mathematics for foster youth who need it, or providing advisement, tutoring and other academic assistance for foster youth.

The proposed rule would allow expenditure of grant funds for costs needed to carry out those purposes, including but not limited to the costs of outreach to high schools and community based organizations that serve foster youth about this initiative.

Each institution that receives funds shall file an annual report by August 31 of the calendar year succeeding the year of its successful application for funding using a form prescribed by the Department, and/or within 30 days of any request by the Department, providing any information or documentation as the Commissioner may request relating to this initiative.

3. PROFESSIONAL SERVICES:

The proposed amendment does not impose any additional professional services requirements.

4. COMPLIANCE COSTS:

The proposed rule is necessary to implement the Foster Youth College Success Initiative pursuant to Education Law section 6456, as added by Part XX of Chapter 56 of the Laws of 2015, and will not impose any additional costs beyond those imposed by the statute. SUNY and CUNY Institutions, and degree-granting institutions in New York that are currently funded by the Arthur O. Eve Higher Education Opportunity Program pursuant to section 6451 of the Education Law for the purposes of providing additional services and expenses to expand opportunities for foster youth may, but are not required to, apply for funding under the Foster Youth College Success Initiative.

The 2015 – 2016 State budget appropriated $1.5 million for the Foster Youth College Success Initiative. Education Law section 6456 provides for awards to public institutions, including institutions of the State University of New York (SUNY), and The City University of New York (CUNY), and requires the Commissioner to enter into contracts with degree-granting institutions currently funded by the Arthur O. Eve Higher Education Opportunity Program (HEOP) for the purpose of providing additional services and expenses to expand opportunities for foster youth. The new law allocates funding to these three sectors as follows: 52% to SUNY institutions; 30% to CUNY institutions; and 18% percent to currently funded HEOP institutions. It further requires that funds be in equal amounts per individual foster youth to each institution that applies for funding allocated to by sector that is approved by the Commissioner. It also prohibits funds from being used to support the regular academic programs of any institution participating in this program and/or which are incompatible with the Regents plan for the expansion and development of higher education in New York State.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The proposed amendment does not impose any new technological requirements or costs.

6. MINIMIZING ADVERSE IMPACT:

The proposed rule is necessary to implement the Foster Youth College Success Initiative pursuant to Education Law section 6456, as added by Part XX of Chapter 56 of the Laws of 2015 and will not impose any additional costs or compliance requirements beyond those inherent in the statute. SUNY and CUNY Institutions, and degree-granting institutions in New York that are currently funded by the Arthur O. Eve Higher Education Opportunity Program pursuant to section 6451 of the Education Law for the purposes of providing additional services and expenses to expand opportunities for foster youth may, but are not required to, apply for funding under the Foster Youth College Success Initiative.

7. LOCAL GOVERNMENT PARTICIPATION:

The Department has submitted copies of the proposed amendment to SUNY and CUNY for comment.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

Institutions of the State University of New York ("SUNY"), City University of New York ("CUNY"), and degree-granting institutions in New York that are currently funded by the Arthur O. Eve Higher Education Opportunity Program pursuant to section 6451 of the Education Law for the purposes of providing additional services and expenses to expand opportunities for foster youth may, but are not required to, apply for funding under the Foster Youth College Success Initiative; including such institutions located in the 44 rural counties with fewer than 200,000 inhabitants and the 71 towns and urban counties with a population density of 150 square miles or less.

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

The proposed rule is necessary to implement the Foster Youth College Success Initiative pursuant to Education Law section 6456, as added by Part X of Chapter 56 of the Laws of 2015, and will not impose any program, service, duty or responsibility on school districts beyond those already imposed by State law or regulation. SUNY and CUNY Institutions, and degree-granting institutions in New York that are currently funded by the Arthur O. Eve Higher Education Opportunity Program pursuant to section 6451 of the Education Law for the purposes of providing additional services and expenses to expand opportunities for foster youth may, but are not required to, apply for funding under the Foster Youth College Success Initiative.

Applications shall be submitted to the Commissioner, on forms prescribed by the Commissioner, for approval by October 1 of each year, and must set forth the need for such funds, including how the funds would be used and the exact number of foster youth that would be assisted with such funds.

Applications from institutions of the State University of New York shall be coordinated through the SUNY System Administration and forwarded to the Department for review and approval by the Commissioner. Applications from institutions in the City University of New York system shall be coordinated through the CUNY Central Administration and forwarded to the Department for review and approval by the Commissioner. Other applications from eligible applicants as set forth in this section shall be submitted directly by the institution to the Department for review and approval by the Commissioner.

Funding shall be used for the following purposes:

(a) providing additional services and covering expenses to expand opportunities through existing postsecondary opportunity programs at the SUNY, CUNY, and other degree-granting higher education institutions for foster youth, and

(b) providing necessary supplemental financial aid for foster youth, which may include: the cost of tuition and fees, books, supplies, transportation, and other expenses approved by the Commissioner for such foster youth to attend college, and

(c) summer college preparation programs to help foster youth transition to college, prepare them to navigate on-campus systems, and provide preparation in reading, writing, and mathematics for foster youth who need it,

or providing advisement, tutoring and other academic assistance for foster youth.

The proposed rule would allow expenditure of grant funds for costs needed to carry out those purposes, including but not limited to the costs of outreach to high schools and community based organizations that serve foster youth about this initiative.

Each institution that receives funds shall file an annual report by August 31 of the calendar year succeeding the year of its successful application for funding using a form prescribed by the Department, and/or within 30 days of any request by the Department, providing any information or documentation as the Commissioner may request relating to this initiative.

The proposed amendment does not impose any additional professional services requirements.

3. COMPLIANCE COSTS:

The proposed rule is necessary to implement the Foster Youth College Success Initiative pursuant to Education Law section 6456, as added by Part X of Chapter 56 of the Laws of 2015, and will not impose any additional costs beyond those imposed by the statute. SUNY and CUNY Institutions, and degree-granting institutions in New York that are currently funded by the Arthur O. Eve Higher Education Opportunity Program pursuant to section 6451 of the Education Law for the purposes of providing additional services and expenses to expand opportunities for foster youth may, but are not required to, apply for funding under the Foster Youth College Success Initiative.

The 2015 – 2016 State budget appropriated $1.5 million for the Foster Youth College Success Initiative. Education Law section 6456 provides for awards to public institutions, including institutions of the State University of New York (SUNY), and The City University of New York (CUNY), and requires the Commissioner to enter into contracts with degree-granting institutions currently funded by the Arthur O. Eve Higher Education Opportunity Program (HEOP) for the purpose of providing additional services and expenses to expand opportunities for foster youth. The new law allocates funding to these three sectors as follows: 52% to SUNY institutions; 30% to CUNY institutions; and 18% percent to currently funded HEOP institutions. It further requires that funds be in equal amounts per individual foster youth to each institution that applies for funding allocated to by sector that is approved by the Commissioner. It also prohibits funds from being used to support the regular academic programs of any institution participating in this program and/or which are incompatible with the Regents plan for the expansion and development of higher education in New York State.

4. MINIMIZING ADVERSE IMPACT:

The proposed rule is necessary to implement the Foster Youth College Success Initiative pursuant to Education Law section 6456, as added by Part X of Chapter 56 of the Laws of 2015 and will not impose any additional costs or compliance requirements beyond those inherent in the statute. SUNY and CUNY Institutions, and degree-granting institutions in New York that are currently funded by the Arthur O. Eve Higher Education Opportunity Program pursuant to section 6451 of the Education Law for the purposes of providing additional services and expenses to expand opportunities for foster youth may, but are not required to, apply for funding under the Foster Youth College Success Initiative. Because the statute applies uniformly throughout the State, it is not possible to establish differing compliance or reporting requirements, timetables or exemptions to entities 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 entities in rural areas.

Job Impact Statement

The purpose of the proposed rule is to implement Education Law section 6456, as added by Part X of Chapter 56 of the Laws of 2015, regarding the foster care youth initiative. Chapter 56 of the Laws of 2015 added a new section 6456 to the Education Law which directs the Commissioner to allocate funds, subject to an appropriation, for the purpose of providing support services to assist youth in foster care to apply for, enroll in, and succeed in college. The law provides for awards to public institutions, including institutions of the State University of New York (SUNY), and The City University of New York (CUNY), and requires the Commissioner to enter into contracts with degree-granting institutions currently funded by the Arthur O. Eve Higher Education Opportunity Program (HEOP) for the purpose of providing additional services and expenses to expand opportunities for foster youth. Because it is evident from the nature of the proposed amendment that it will have no impact on the number of jobs or employment opportunities in New York State, no further steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Opioid Overdose Prevention

I.D. No. EDU-27-15-00009-P

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

Proposed Action: Addition of section 136.8 to Title 8 NYCRR.

Statutory authority: Education Law, sections 207 (not subdivided), 305(1), (2), 922(1), (2); L. 2015, ch. 57, part 5

Subject: Opioid Overdose Prevention.

Purpose: To implement Education Law section 922, as added by Part V of Chapter 57 of the Laws of 2015, by establishing standards for the elective participation by school districts, boards of cooperative educational services, county vocational education and extension boards, charter schools, and non-public elementary and secondary schools in an opioid overdose prevention program pursuant to the provisions of Public Health Law section 3309.

Text of proposed rule: Section 136.8 of the Regulations of the Commissioner of Education is added, effective August 11, 2015, as follows:

§ 136.8 Opioid Overdose Prevention

(a) Definitions. As used in this section:

(1) Opioid antagonist means a drug approved by the Food and Drug Administration that, when administered, negates or neutralizes in whole or in part the pharmacological effects of an opioid, such as heroin, in the body. For use under this section, opioid antagonist shall be limited to naloxone and other medications approved by the Department of Health for such purpose.

(2) Opioid antagonist recipient (or "recipient"), for purposes of this section, means a school district, board of cooperative educational services (BOCES), county vocational education and extension board, charter school, non-public elementary and/or secondary school, or any person employed by such district, board or school who has been authorized by such district, board or school to participate in an opioid prevention program and has received training by a program approved pursuant to Public Health Law section 3309.

(3) Instructional school facility means a building or other facility maintained by a school district, board of cooperative educational services (BOCES), a county vocational education and extension board, charter school, or non-public elementary and secondary school where instruction is provided to students pursuant to its curriculum.

(b) School districts, boards of cooperative educational services, county vocational education and extension boards, charter schools, and non-public elementary and secondary schools may elect to participate as an opioid antagonist recipient pursuant to the provisions of Public Health Law section 3309. For school districts that choose to participate as an opioid antagonist recipient pursuant to the provisions of Public Health Law section 3309, any person employed by such entity who has been trained by a program approved under that section may administer an opioid antagonist in the event of an emergency pursuant to the requirements of Public Health Law section 3309.

(c) School districts, boards of cooperative educational services, county vocational education and extension boards, charter schools, and non-public elementary and secondary schools choosing to participate in the opioid overdose prevention program shall comply with the requirements of Public Health Law section 3309 including, but not limited to, appropriate clinical oversight, record keeping and reporting.

(d) School districts, boards of cooperative educational services, county vocational education and extension boards, charter schools, and non-public elementary and secondary schools who choose to participate in the opioid overdose prevention program pursuant to Public Health Law section 3309 shall provide and maintain on-site in each instructional school facility opioid antagonists. Each such facility shall have sufficient opioid antagonists available to ensure ready and appropriate access for use during emergencies to any student or staff having symptoms of an opioid overdose, whether or not there is a known previous history of opioid abuse in accordance with the provisions of Public Health Law section 3309. In determining the quantities and placement of opioid antagonists to be maintained on-site in an instructional school facility, consideration shall be given to:

(1) the number of students, staff and other individuals that are customarily or reasonably anticipated to be within such facility; and

(2) the physical layout of the facility, including but not limited to:

(i) location of stairways and elevators;

(ii) number of floors in the facility;

(iii) location of classrooms and other areas of the facility where large congregations of individuals may occur; and

(iv) any other unique design features of the facility.

(e) Nothing in this section shall require school districts, boards of cooperative educational services, county vocational education and extension boards, charter schools, and non-public elementary and secondary schools to participate in an opioid overdose prevention program, and any participation by an individual employee shall be voluntary.

(f) Use of an opioid antagonist pursuant to this section and the provisions of Public Health Law section 3309 shall be considered first aid or emergency treatment for the purpose of any statute relating to liability; provided that a school district, board of cooperative educational services (BOCES), county vocational education and extension board, charter school, non-public elementary and/or secondary school, or any person employed by such district, board or school, acting reasonably and in good faith in compliance with the provisions of Public Health Law section 3309, shall not be subject to criminal, civil or administrative liability solely by reason of such action.

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

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

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

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

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.

Part V of Chapter 57 of the Laws of 2015 added a new section 922 of the Education Law, effective August 11, 2015, to authorize, but not obligate, school districts, boards of cooperative educational services (BOCES), county vocational education and extension boards, charter schools, and non-public elementary and secondary schools to participate in the opioid overdose prevention program as an opioid antagonist recipient pursuant to the provisions of Public Health Law section 3309. For school districts who choose to participate as an opioid antagonist recipient pursuant to the provisions of Public Health Law section 3309, any person employed by such entity who has been trained by a program approved under that section may administer an opioid antagonist to any student or staff having symptoms of an opioid overdose in an instructional school facility, in the event of an emergency pursuant to the requirements of Public Health Law section 3309.

2. LEGISLATIVE OBJECTIVES:

The proposed rule is consistent with the above statutory authority and is necessary to implement Education Law section 922, as added by Chapter 57 of the Laws of 2014.

3. NEEDS AND BENEFITS:

The proposed rule is necessary to set forth standards for the elective participation by school districts, boards of cooperative educational services, county vocational education and extension boards, charter schools, and non-public elementary and secondary schools in an opioid overdose prevention program pursuant to the provisions of Public Health Law section 3309. The proposed rule is also necessary to establish standards for the training of persons employed by school districts who choose to participate as an opioid antagonist recipient pursuant to the provisions of Public Health Law section 3309, and to provide that any person employed by such entity who has been trained by a program approved under that section may administer an opioid antagonist in the event of an emergency pursuant to the requirements of Public Health Law section 3309.

4. COSTS:

(a) Costs to State: none.

(b) Costs to local governments: in general, the proposed rule does not impose any costs beyond those inherent in Chapter 57 of the Laws of 2015. Consistent with the statute, school districts, BOCES, county vocational education extension boards, charter schools, and non-public schools may, but are not required to, participate in the opioid overdose prevention program pursuant to Public Health Law section 3309. Any cost to the schools that elect to participate in the opioid overdose prevention program may be borne by either the participating school or through funds made available through an appropriation made to the Department of Health for the purposes of administering the opioid overdose prevention program.

(c) Costs to private regulated parties: none.

(d) Costs to regulating agency for implementation and continued administration of this rule: none.

5. LOCAL GOVERNMENT MANDATES:

The proposed rule does not impose any mandatory program, service, duty, or responsibility upon local government, including school districts or BOCES. Consistent with the statute, school districts, BOCES, county vocational education and extension board, charter schools and non-public schools may, but are not required to, participate in the opioid overdose prevention program pursuant to Public Health Law section 3309.

6. PAPERWORK:

School districts, boards of cooperative educational services, county vocational education and extension boards, charter schools, and non-public elementary and secondary schools who choose to participate in the opioid overdose prevention program are required to comply with any and all record keeping requirements pursuant to Public Health Law section 3309.

7. DUPLICATION:

The proposed rule does not duplicate any existing State or Federal requirements, and is necessary to implement Education Law section 922, as added by Chapter 57 of the Laws of 2014.

8. ALTERNATIVES:

The proposed rule is necessary to implement Education Law section 922, as added by Chapter 57 of the Laws of 2014. The proposed rule also merely provides definitions and otherwise clarifies the circumstances regarding the emergency administration of an opioid overdose antagonist to any student or staff having symptoms of an opioid overdose in an instructional school facility. There were no significant alternatives and none were considered.

9. FEDERAL STANDARDS:

There are no applicable Federal standards

10. COMPLIANCE SCHEDULE:

It is anticipated that regulated parties can achieve compliance with the proposed rule by its effective date. Consistent with the statute, school districts, boards of cooperative educational services, BOCES, county vocational education and extension boards, charter schools, and non-public elementary and secondary schools may, but are not required to, participate in the opioid overdose prevention program. The proposed rule also merely provides definitions and otherwise clarifies the circumstances regarding the emergency administration of an opioid overdose antagonist to any student or staff having symptoms of an opioid overdose in an instructional school facility.

Regulatory Flexibility Analysis

(a) Small businesses:

The purpose of the proposed rule is to establish standards for the elective participation by school districts, boards of cooperative educational services (BOCES), county vocational education and extension boards, charter schools, and non-public elementary and secondary schools in an opioid overdose prevention program pursuant to the provisions of Public Health Law section 3309. Because it is evident from the nature of the proposed rule 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.

(b) Local governments:

1. EFFECT OF RULE:

The rule applies to those school district, BOCES, county vocational education and extension board, charter schools and non-public elementary and secondary schools in the State, that choose to participate in opioid overdose prevention program pursuant to the provisions of Public Health Law 3309.

2. COMPLIANCE REQUIREMENTS:

The proposed rule generally does not impose any compliance requirements upon local governments. Consistent with the statute, school districts, boards of cooperative educational services, county vocational education and extension boards, charter schools, and non-public elementary and secondary schools school districts, BOCES and non-public schools may, but are not required to, participate in the opioid overdose prevention program pursuant to the provisions of Public Health Law 3309. The proposed rule also merely provides definitions and otherwise clarifies the circumstances regarding the emergency administration of an opioid overdose antagonist to any student or staff having symptoms of an opioid overdose in an instructional school facility.

3. PROFESSIONAL SERVICES:

The proposed rule does not impose any additional professional services requirements on local governments.

4. COMPLIANCE COSTS:

In general, the proposed rule does not impose any costs beyond those inherent in Chapter 57 of the Laws of 2015. Consistent with the statute, school districts, boards of cooperative educational services, county vocational education and extension boards, charter schools, and non-public

elementary and secondary schools may, but are not required to, participate in the opioid overdose prevention program. The proposed rule also merely provides definitions and otherwise clarifies the circumstances regarding the emergency administration of an opioid overdose antagonist to any student or staff having symptoms of an opioid overdose in an instructional school facility. Any cost to the schools that elect to participate in the opioid overdose prevention program may be borne by either the participating school or through funds made available through an appropriation made to the Department of Health for the purposes of administering the opioid overdose prevention program.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The proposed rule does not impose any additional costs or technological requirements on local governments.

6. MINIMIZING ADVERSE IMPACT:

Consistent with the statute, school districts, boards of cooperative educational services, county vocational education and extension boards, charter schools, and non-public elementary and secondary schools school districts, BOCES and non-public schools may, but are not required to, participate in the opioid overdose prevention program. The proposed rule also merely provides definitions and otherwise clarifies the circumstances regarding the emergency administration of an opioid overdose antagonist to any student or staff having symptoms of an opioid overdose in an instructional school facility. Any cost to the schools that elect to participate in the opioid overdose prevention program may be borne by either the participating school or through funds made available through an appropriation made to the Department of Health for the purposes of administering the opioid overdose prevention program.

7. SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION:

Comments on the proposed rule were solicited from school districts through the offices of the district superintendents of each supervisory district in the State, from the chief school officers of the five big city school districts and from 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 rule is necessary to implement the statutory requirements of Part V of Chapter 57 of the Laws of 2015, and, therefore, the substantive provisions of the proposed rule cannot be repealed or modified unless there is a further statutory change. Accordingly, there is no need for a shorter review period. The Department invites public comment on the proposed five year review period for this rule. Comments should be sent to the agency contact listed in item 10 of the Notice of 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 rule applies to school districts, boards of cooperative educational services (BOCES), county vocational education and extension board, charter schools, and nonpublic elementary and secondary schools, including those located in the 44 rural counties with fewer than 200,000 inhabitants and the 71 towns and urban counties with a population density of 150 square miles or less.

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

The proposed rule generally does not impose any compliance requirements upon local governments. Consistent with the statute, school districts, boards of cooperative educational services, county vocational education and extension boards, charter schools, and non-public elementary and secondary schools school districts, BOCES and non-public schools may, but are not required to, participate in the opioid overdose prevention program. The proposed rule also merely provides definitions and otherwise clarifies the circumstances regarding the emergency administration of an opioid overdose antagonist to any student or staff having symptoms of an opioid overdose in an instructional school facility.

The proposed rule does not impose any additional professional services requirements on entities in rural areas.

3. COSTS:

In general, the proposed rule does not impose any costs beyond those inherent in Chapter 57 of the Laws of 2015. Consistent with the statute, school districts, boards of cooperative educational services, county vocational education and extension boards, charter schools, and non-public elementary and secondary schools may, but are not required to, participate in the opioid overdose prevention program. The proposed rule also merely provides definitions and otherwise clarifies the circumstances regarding the emergency administration of an opioid overdose antagonist to any student or staff having symptoms of an opioid overdose in an instructional school facility. Any cost to the schools that elect to participate in the opioid overdose prevention program may be borne by either the participating school or through funds made available through an appropriation made to the Department of Health for the purposes of administering the opioid overdose prevention program.

4. MINIMIZING ADVERSE IMPACT:

Consistent with the statute, school districts, boards of cooperative educational services (BOCES), county vocational education and extension boards, charter schools, and non-public elementary and secondary schools may, but are not required to, participate in the opioid overdose prevention program. The proposed rule also merely provides definitions and otherwise clarifies the circumstances regarding the emergency administration of an opioid overdose antagonist to any student or staff having symptoms of an opioid overdose in an instructional school facility. Any cost to the schools that elect to participate in the opioid overdose prevention program may be borne by either the participating school or through funds made available through an appropriation made to the Department of Health for the purposes of administering the opioid overdose prevention program. Because the Regents policy and statute upon which the proposed amendment is based applies to all school districts and BOCES in the State, it is not possible to establish differing compliance or reporting requirements or timetables or to exempt schools in rural areas from coverage by the proposed amendment.

5. RURAL AREA PARTICIPATION:

The proposed rule 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 rule is necessary to implement the statutory requirements of Part V of Chapter 57 of the Laws of 2015, and, therefore, the substantive provisions of the proposed rule cannot be repealed or modified unless there is a further statutory change. Accordingly, there is no need for a shorter review period. The Department invites public comment on the proposed five year review period for this rule. Comments should be sent to the agency contact listed in item 10 of the Notice of 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 purpose of the proposed rule is to establish standards for the elective participation by school districts, boards of cooperative educational services, county vocational education and extension boards, charter schools, and non-public elementary and secondary schools in an opioid overdose prevention program pursuant to the provisions of Public Health Law section 3309. Because it is evident from the nature of the proposed rule that it will have no impact on the number of jobs or employment opportunities in New York State, no further steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Annual Professional Performance Reviews of Classroom Teachers and Building Principals

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

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

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

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

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

Purpose: To Implement Subparts D and E of Part EE of Chapter 56 of the Laws of 2015.

Substance of proposed rule (Full text is posted at the following State website: https://www.engageny.org/resource/the-commissioners-regulations-on-annual-professional-per- formance-review): The Commissioner of Education proposes to amend Subpart 30-2 and add a new Subpart 30-3 of the Commissioner's regulations, relating to the Annual Professional Performance Reviews (APPR) for teachers in New York State. The following is a summary of the substance of the proposed rule.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

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

2. LEGISLATIVE OBJECTIVES:

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

3. NEEDS AND BENEFITS:

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

4. COSTS:

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

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

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

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

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

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

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

Collective Bargaining

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

Required Student Performance Category

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

For a teacher whose course does not end in a State-created or administered test or where less than 50% of the teacher's students are covered under the State-provided growth measure, such teachers shall have a Student Learning Objective ("SLO") consistent with a goal setting process determined by the Commissioner that results in a student growth score; provided that for any teacher whose course ends in a State-created or administered assessment for which there is no State-provided growth model, such assessment must be used as the underlying assessment for such SLO. For a principal where less than 30% of their students are covered under a State-provided growth measure, such principals shall have a SLO consistent with a Commissioner-determined goal setting process that results in a student growth score; provided that for any principal whose course building/program includes courses that ends in a State-

created or administered assessment for which there is no State-provided growth model, such assessment must be used as the underlying assessment for such SLO. The Department estimates a teacher/principal will spend approximately 3 hours to set goals and will take approximately 1 hour/year to work with a teacher/principal/superintendent on the goal setting process. The goal-setting process will cost $226.74 per teacher (3 teacher hours to set goals plus 1 principal hour to review goals with teacher) and $288.19 per principal (3 principal hours to set goals plus 1 superintendent hour to review goals with principal).

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

Optional Student Performance Category

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

Teacher Observation/Principal School Visit Category

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

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

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

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

Reporting and Data Collection

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

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

Vested Interest

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

Scoring

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

Training

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

Teacher and Principal Improvement Plans and Appeal Procedures

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

(c) Costs to private regulated parties: none.

5. LOCAL GOVERNMENT MANDATES:

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

6. PAPERWORK:

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

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

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

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

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

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

7. DUPLICATION:

The rule does not duplicate existing State/Federal requirements.

8. ALTERNATIVES:

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

9. FEDERAL STANDARDS:

None.

10. COMPLIANCE SCHEDULE:

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

Regulatory Flexibility Analysis

(a) Small businesses:

The proposed rule implements, and otherwise conforms the Commis-

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

(b) Local governments:

1. EFFECT OF RULE:

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

2. COMPLIANCE REQUIREMENTS:

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

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

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

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

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

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

3. PROFESSIONAL SERVICES:

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

4. COMPLIANCE COSTS:

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

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

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

6. MINIMIZING ADVERSE IMPACT:

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

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

7. LOCAL GOVERNMENT PARTICIPATION:

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

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

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

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

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

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

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

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

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

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

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

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

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

3. COSTS:

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

4. MINIMIZING ADVERSE IMPACT:

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

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

5. RURAL AREA PARTICIPATION:

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

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

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

Job Impact Statement

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

Department of Environmental Conservation

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Incorporation by Reference of Federal NESHAP and NSPS Rules

I.D. No. ENV-27-15-00004-P

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

Proposed Action: Amendment of Part 200 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 1-0101, 3-0301, 19-0103, 19-0105, 19-0107, 19-0301, 19-0303 and 19-0305

Subject: Incorporation by reference of Federal NESHAP and NSPS rules.

Purpose: Incorporation by reference of Federal NESHAP and NSPS.

Public hearing(s) will be held at: 1:00 p.m., Aug. 24, 2015 at 625 Broadway, Public Assembly Room 129A & B, Albany, NY.

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

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

Substance of proposed rule (Full text is posted at the following State website:http://dec.ny.gov): The Department of Environmental Conservation (Department) is undertaking this rulemaking to accept delegation of new and updated federal New Source Performance Standards (NSPS) and Nation Emission Standards for Hazardous Air Pollutants (NESHAPs). Doing so will provide the Department with the legal authority to implement and enforce these federal regulations on behalf of the United States Environmental Protection Agency (EPA). Updating the list of delegated NSPS and NESHAPs rules will dispel regulatory confusion over which version of the rules the Department has the legal authority to enforce as the primary regulator. This rulemaking will amend Part 200 to incorporate by reference the most recent editions of 40 CFR 60 (2013), Subpart A, Subparts D – FFFF, Subparts KKKK – end; and 40 CFR 63 (2012 and 2013), Subpart A, Subpart B, Subparts F – I, Subparts L – YYYY, Subparts AAAAA – IIIII, Subparts LLLLL – HHHHHH, and Subparts LLLLLL – end. This rulemaking incorporates new and updated NSPS and NSPS test methods as well as new and updated NESHAPs. The Department will not be incorporating 40 CFR 60, Subparts IIII (2013) and JJJJ (2013), and 40 CFR 63 Subpart JJJJJJ (2013) at this time. This rulemaking also removes any references to 40 CFR 63 Subpart ZZZZ (2009) in Part 200. The Department will not be incorporating 40 CFR 63 Subpart ZZZZ (2013) at this time.

There are seven new NSPS. These regulate nitric acid plants, petroleum refineries, equipment leaks of volatile organic compounds in the synthetic organic chemical manufacturing industry, equipment leaks of volatile organic compounds at petroleum refineries, combustion turbines, new sewage sludge incinerators, and crude oil and natural gas production, transmission, and distribution.

Updates to twenty-seven NSPS categories that New York has already been delegated include: list of state plans, hospital/medical/infectious waste incinerators, electric utility steam generators, industrial-commercial-institutional steam generators, small industrial-commercial-institutional steam generators, large municipal waste combustors, Portland cement plants, nitric acid plants, petroleum refineries, volatile organic liquid storage vessels, coal preparation and processing plants, electric arc furnaces, kraft pulp mills, stationary gas turbines, equipment leaks of volatile organic compounds in the synthetic organic chemical manufacturing industry, bulk gasoline terminals, equipment leaks of volatile organic compounds at petroleum refineries, equipment leaks of volatile organic compounds from onshore natural gas processing plants, sulfur dioxide emissions from onshore natural gas processing plants, volatile organic compounds emissions from synthetic organic chemical manufacturing industry distillation operations, nonmetallic mineral processing, municipal solid waste landfills, commercial and industrial solid waste incineration units, and other solid waste incineration units.

There are eight new NSPS test methods and performance specifications. These regulate total reduced sulfur emissions, total vapor phase mercury emissions, and particulate matter continuous emission monitoring systems. This rulemaking also updates twenty-six NSPS test methods and performance specifications that New York has already been delegated including oxygen and carbon dioxide emissions, low level particulate matter emissions, sulfur dioxide emissions, nitrogen oxide emissions, sulfuric acid mist emissions, carbon monoxide emissions, total reduced sulfur emissions, organic compound emissions, surface coatings, nonmethane organic compounds, hydrogen chloride emissions, hydrogen halide and halogen emissions, predictive emission monitoring systems, and gas continuous emission monitoring systems.

This rulemaking also incorporates the NSPS general provisions subpart, which has not previously been incorporated.

Finally, there are nine new NESHAPs. These regulate industrial, commercial, and institutional boilers at major sources of hazardous air pollutants; oil and coal fired electric generating units; chemical manufacturing; asphalt processing and asphalt roofing manufacturing; chemical preparations industry, paints and allied products manufacturing, prepared feeds manufacturing, gold mine ore processing and production, and polyvinyl chloride and copolymers production. Finally this rulemaking updates nineteen other NESHAP categories that New York has already been delegated including the general provisions, chrome electroplating, pulp and paper industry, group I polymers and resins, secondary lead smelting, marine vessel loading operations, petroleum refineries, oil and natural gas production facilities, shipbuilding and ship repair, wood furniture manufacturing, printing and publishing industry, mineral wool production, pharmaceuticals production, natural gas transmission and storage facilities, Portland cement manufacturing, primary lead smelting, gasoline distribution, gasoline dispensing facilities, and plating and polishing operations.

Text of proposed rule and any required statements and analyses may be obtained from: Steve Yarrington, Department of Environmental Conservation, 625 Broadway, Albany NY 12233-1500, (518) 402-8403

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

Public comment will be received until: September 1, 2015.

Additional matter required by statute: Pursuant to Article 8 of the State Environmental Quality Review Act, a Short Environmental Assessment Form, a Negative Declaration and a Coastal Assessment Form have been prepared and are on file.

Summary of Regulatory Impact Statement

The New York State Department of Environmental Conservation (Department or DEC) is proposing to revise 6 NYCRR Part 200, General

Provisions. DEC is proposing this rulemaking because the Clean Air Act (CAA) requires the United State Environmental Protection Agency (EPA) to draft new and update existing environmental regulatory standards. In order to implement these new regulatory requirements, DEC must incorporate these regulatory changes into New York State regulations by reference. Doing so provides the Department the legal authority to implement these regulations, thus effectuating the terms and provisions of the CAA and its associated regulations. This proposed rulemaking incorporates by reference new and updated federal New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAPs). Incorporating the NSPS and NESHAPs into Part 200 allows the Department to implement and enforce the rules on behalf of the EPA.

Currently, Part 200 is outdated. DEC last incorporated NSPS from the July 1, 2003 Code of Federal Regulations (CFR) and NESHAPs from the July 1, 2009 CFR. EPA has since updated a number of these regulations, as well as promulgated new NSPS and NESHAPs for additional source categories. This rulemaking amends Part 200 to incorporate by reference the most recent editions of 40 CFR 60 (2013), Subpart A, Subparts D – FFFF, Subparts KKKK – end; and 40 CFR 63 (2012 and 2013), Subpart A, Subpart B, Subparts F – I, Subparts L – YYYY, Subparts AAAAA – IIIII, Subparts LLLLL – HHHHHH, and Subparts LLLLLL – end. This rulemaking also removes all references to the now outdated 40 CFR 63 Subpart ZZZZ (2009) (reciprocating engines). The Department will not be incorporating 40 CFR 63 Subpart ZZZZ (2013) at this time for reasons discussed in the Alternatives section below. These changes will achieve parity between existing federal requirements and the State's regulatory program. As a result, this incorporation by reference will facilitate a more efficient administration of state and federal environmental regulations, which will ease compliance and eliminate regulatory redundancy for the regulated community.

1. Statutory authority:

The statutory authority for this rulemaking is found in the Environmental Conservation Law (ECL), Sections 1-0101, 3-0301, 19-0103, 19-0105, 19-0301, 19-0303, and 19-0305.

2. Legislative objectives:

Article 19 of the ECL was enacted to safeguard the air resources of New York against pollution and to ensure the protection of the public health and welfare, the natural resources of the State, physical property, and industrial development. New York State's policy requires the use of all available, practical, and reasonable methods to prevent and control air pollution in New York. To facilitate this policy objective, the Legislature granted specific powers and duties to the Department including the authority to adopt and promulgate regulations that prevent, control, and abate air pollution. This authority specifically encourages coordination of state and federal pollution reduction programs. This proposed rulemaking encourages state and federal coordination of regulatory enforcement, because it achieves parity between existing federal requirements and the State's regulatory program by updating the State's incorporations by reference to federal requirement. This will facilitate a more efficient administration of state and federal environmental regulations, which will ease compliance and eliminate regulatory redundancy for the regulated community.

3. Needs and benefits:

The Department is undertaking this rulemaking to accept delegation of new and updated federal NSPS and NESHAPs. Doing so will provide the Department with the legal authority to implement and enforce these federal regulations on behalf of the EPA. Updating the list of delegated NSPS and NESHAPs rules will dispel regulatory confusion regarding whether the Department has the legal authority to enforce NSPS and NESHAPs as the primary regulator. This rulemaking will amend Part 200 to incorporate by reference the most recent editions of 40 CFR 60 (2013), Subpart A, Subparts D – FFFF, Subparts KKKK – end; and 40 CFR 63 (2012 and 2013), Subpart A, Subpart B, Subparts F – I, Subparts L – YYYY, Subparts AAAAA – IIIII, Subparts LLLLL – HHHHHH, and Subparts LLLLLL – end. This rulemaking incorporates a previously unincorporated, NSPS general provisions subpart; seven new NSPS, which regulate nitric acid plants, petroleum refineries, equipment leaks of volatile organic compounds in the synthetic organic chemical manufacturing industry, equipment leaks of volatile organic compounds at petroleum refineries, combustion turbines, new sewage sludge incinerators, and crude oil and natural gas production, transmission, and distribution; updates to twenty-seven NSPS categories that New York has already been delegated; update to one NSPS category that New York has not been delegated; eight new NSPS test methods and performance specifications; updates to twenty-six NSPS test methods and performance specifications that New York has already been delegated; nine new NESHAPs, which regulate industrial, commercial, and institutional boilers at major sources of hazardous air pollutants, oil and coal fired electric generating units, chemical manufacturing, asphalt processing and asphalt roofing manufacturing, chemical preparations industry, paints and allied products manufacturing, prepared feeds manufacturing, gold mine ore processing and production, and polyvinyl chloride and copolymers production; and updates to nineteen other NESHAPs categories that New York has already been delegated.

In addition, the Department will be removing any references to 40 CFR 63 Subpart ZZZZ (2009) in Part 200. EPA has revised Subpart ZZZZ, thus making the 2009 version currently incorporated by reference into Part 200 obsolete. Removing this language will resolve regulatory uncertainty regarding state versus federal implementation and enforcement of Subpart ZZZZ. The Department will not be incorporating the 2013 version of ZZZZ at this time for reasons discussed in the Alternatives section below.

4. Costs:

Section 200 lists delegated federal regulations that the Department may legally implement and enforce. Delegation is achieved through incorporation by reference, a drafting tool used by regulatory agencies to give legal effect to materials published elsewhere. In this instance, the EPA has published NSPS and NESHAPs that, without incorporation by reference into New York State regulations, the Department would lack legal authority to implement and enforce. While the regulated community has largely complied with these regulations since their enactment, incorporating them into State regulation simply provides the Department legal authority to act as the primary regulator over these regulations. As a result, this rulemaking does not create any new or additional costs for the regulated community outside of those costs already described by the EPA upon initial proposal and eventual implementation of the new and revised NSPS and NESHAPs. The regulated community, public, special interest groups, and various regulatory agencies were all provided an opportunity to comment on these federal rules prior to their adoption.

5. Paperwork:

The proposed amendments to Part 200 are not expected to entail any additional paperwork for the Department, industry, the State, or local governments beyond that which is already required to comply with the NSPS and NESHAPs.

6. Local government mandates:

The adoption of the proposed amendments to Part 200 are not expected to result in any additional burdens on industry, the State, or local governments beyond those currently incurred to comply with the requirements of the NSPS and NESHAP rules. This rulemaking is not an unfunded mandate imposed on local governments.

7. Duplication:

This proposal does not duplicate any other federal or State regulations or statutes. This rulemaking only incorporates existing federal regulations so that the Department may legally implement and enforce them.

8. Alternatives:

Accept Delegation:

The Department evaluated whether it should accept delegation of all NSPS and NESHAPs wholesale as they appear in the most recent, available version of the CFR. However, there are two NSPS and two NESHAPs that, if adopted, would be beyond the Department's current implementation and enforcement capacity. For example, EPA has revised 40 CFR 63 Subpart ZZZZ (2013) to regulate all existing engines at area sources for hazardous air pollutants, regardless of engine size. This would require regulation of non-emergency engines in churches, schools, hospitals, malls, and commercial and institutional high-rises. Implementation of Subpart ZZZZ in New York City presents a unique regulatory hurdle, as every commercial high-rise with an elevator would require Departmental oversight in order to demonstrate compliance. Currently, the Department lacks sufficient resources to successfully implement this program. In addition to Subpart ZZZZ, the other NSPS and NESHAPs that DEC lacks the capacity to implement are NSPS IIII and JJJJ and NESHAP JJJJJJ. EPA will enforce these two NSPS and two NESHAPs.

Take No Action:

If the Department does not amend Part 200 to incorporate updated versions of EPA's regulations, this will create confusion for the regulated community regarding which portions of the rules the Department is authorized to implement and enforce. It also affects the Department's ability to grant compliance extensions, and draft and enforce permit terms and conditions, and negatively impacts the Department's ability to protect New York State's air quality and resources.

As a result, the Department has determined that the best option is to amend Part 200 to incorporate by reference the following sections from the most recent editions of 40 CFR 60 (2013), Subpart A, Subparts D – FFFF, Subparts KKKK – end; and 40 CFR 63 (2012 and 2013), Subpart A, Subpart B, Subparts F – I, Subparts L – YYYY, Subparts AAAAA – IIIII, Subparts LLLLL – HHHHHH, an Subparts LLLLLL – end.

9. Federal standards:

The proposed amendments to Part 200 will incorporate federal NSPS and NESHAPs standards so that the Department may act as the primary regulator for implementation and enforcement of these regulations.

10. Compliance schedule:

The majority of the facilities subject to the NSPS and NESHAPs should

either be preparing to comply with or already be in compliance with these regulations. This incorporation by reference does not alter those compliance schedules contained within the NSPS and NESHAPs. The proposed amendments do not involve the establishment of any compliance schedules. The regulation will take effect 30 days after publication in the State Register.

Regulatory Flexibility Analysis

The New York State Department of Environmental Conservation (Department or DEC) is proposing to revise 6 NYCRR Part 200, General Provisions. DEC is proposing this rulemaking because the Clean Air Act (CAA) requires the United State Environmental Protection Agency (EPA) to draft new and update existing environmental, regulatory standards. In order to implement these new regulatory requirements, the New York DEC must incorporate these regulatory changes into New York State law by reference. This grants the Department the legal authority to implement these regulations, thus effectuating the terms and provisions of the CAA and its associated regulations. This proposed rulemaking will incorporate by reference new and updated federal New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP). Incorporating the NSPS and NESHAPs into Part 200 allows the Department to implement and enforce the rules on behalf of the Environmental Protection Agency (EPA).

Currently, Part 200 is outdated. DEC last incorporated NSPS from the July 1, 2003 Code of Federal Regulations (CFR) and NESHAPs from the July 1, 2009 CFR. EPA has since updated a number of these regulations, as well as promulgated new NSPS and NESHAPs for additional source categories. This rulemaking would amend Part 200 to incorporate by reference the most recent editions of 40 CFR 60 (2013), Subpart A, Subparts D – FFFF, Subparts KKKK – end; and 40 CFR 63 (2012 and 2013), Subpart A, Subpart B, Subparts F – I, Subparts L – YYYY, Subparts AAAAA – IIIII, Subparts LLLLL – HHHHHH, and Subparts LLLLLL – end. This rulemaking also removes all references to the now outdated 40 CFR 63 Subpart ZZZZ (2009) (reciprocating engines). The Department will not be incorporating 40 CFR 63 Subpart ZZZZ (2013) at this time. These changes will achieve parity between existing federal requirements and the State's regulatory program. As a result, this incorporation by reference will facilitate a more efficient administration of state and federal environmental regulations, which will ease compliance and eliminate regulatory redundancy for the regulated community.

1. Effect of rule:

The New York State Department of Environmental Conservation (Department or DEC) is proposing to revise 6 NYCRR Part 200, General Provisions. DEC is proposing this rulemaking because the Clean Air Act (CAA) requires the United State Environmental Protection Agency (EPA) to draft new and update existing environmental, regulatory standards. All of environmental regulatory standards have already been vetted through public notice and comment at the federal level, are already in effect, and the regulated community is largely complying with these regulations. However, to implement these new regulatory requirements, the DEC must incorporate these regulatory changes into New York State law by reference. This grants the Department the legal authority to implement these regulations, thus effectuating the terms and provisions of the CAA and its associated regulations. This proposed rulemaking will incorporate by reference new and updated federal NSPS and NESHAP. Incorporating the NSPS and NESHAPs into Part 200 allows the Department to implement and enforce the rules on behalf of the Environmental Protection Agency (EPA). This proposed incorporation by reference is not anticipated to affect small businesses, which are independently owned, located within New York State, and employ one hundred or fewer persons; or local governments differently from any other source subject to this rule.

2. Compliance requirements:

There are no specific requirements in this rulemaking that apply exclusively to small businesses or local governments. As described above, the revisions to Part 200 do not alter the requirements already placed on affected sources at the time of the original, federal rulemakings for these NSPS and NESHAPs. Accordingly, these requirements are not anticipated to place any undue burden of compliance on small businesses and local governments. This proposed rulemaking is not an unfunded mandate imposed on local governments.

3. Professional services:

The professional services for any small business or local government that is subject to a NSPS or NESHAP will not change from the type of services that are currently required as a result of this rulemaking. The need for consulting engineers to address NSPS and NESHAP applicability and permitting requirements for small businesses and local governments will continue to exist.

4. Compliance costs:

Section 200 lists delegated federal regulations that the Department may legally implement and enforce. Delegation is achieved through incorporation by reference, a drafting tool used by regulatory agencies to give legal effect over materials published elsewhere. In this instance, the EPA has published NSPS and NESHAPs that, without incorporation by reference into New York State regulations, the Department would lack legal authority to implement and enforce. While the regulated community has largely complied with these regulations since their enactment, incorporating them into State regulation simply provides the Department legal authority to act as the primary regulator over these regulations. As a result, this rulemaking does not create any new or additional costs for the regulated community outside of those costs already described by the EPA upon initial proposal and eventual implementation of those new and revised NSPS and NESHAPs. The regulated community, public, special interest groups, and various regulatory agencies were all provided an opportunity to comment on these rules prior to enactment.

5. Minimizing adverse impact:

The proposed rulemaking revisions as described above will not create significant adverse impacts on any small business or local government.

6. Small business and local government participation:

The Department will hold public hearings during the public comment period at several locations throughout the State. Small businesses and local governments will have the opportunity to attend these public hearings. Additionally, there will be a public comment period in which interested parties can submit written comments.

7. Economic and technological feasibility:

The proposed revisions do not alter the requirements for subject facilities as compared to those requirements that currently exist. Therefore, there are no additional economic or technological feasibility issues to be addressed by any small business or local government.

8. Cure period:

The Department is not including a cure period in this rulemaking. The purpose of this rulemaking is to update the list of federal NSPS and NESHAP rules incorporated by reference. Delaying the promulgation of the regulation would have no affect on facilities as they would still be subject to the NSPS and NESHAP rules regardless of this rulemaking.

Rural Area Flexibility Analysis

The New York State Department of Environmental Conservation (Department or DEC) is proposing to revise 6 NYCRR Part 200, General Provisions. DEC is proposing this rulemaking because the Clean Air Act (CAA) requires the United State Environmental Protection Agency (EPA) to draft new and update existing environmental regulatory standards. In order to implement these new regulatory requirements, DEC must incorporate these regulatory changes into New York State regulations by reference. Doing so provides the Department the legal authority to implement these regulations, thus effectuating the terms and provisions of the CAA and its associated regulations. This proposed rulemaking incorporates by reference new and updated federal New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAPs). Incorporating the NSPS and NESHAPs into Part 200 allows the Department to implement and enforce the rules on behalf of the EPA.

Currently, Part 200 is outdated. DEC last incorporated NSPS from the July 1, 2003 Code of Federal Regulations (CFR) and NESHAPs from the July 1, 2009 CFR. EPA has since updated a number of these regulations, as well as promulgated new NSPS and NESHAPs for additional source categories. This rulemaking amends Part 200 to incorporate by reference the most recent editions of 40 CFR 60 (2013), Subpart A, Subparts D – FFFF, Subparts KKKK – end; and 40 CFR 63 (2012 and 2013), Subpart A, Subpart B, Subparts F – I, Subparts L – YYYY, Subparts AAAAA – IIIII, Subparts LLLLL – HHHHHH, and Subparts LLLLLL – end. This rulemaking also removes all references to the now outdated 40 CFR 63 Subpart ZZZZ (2009) (reciprocating engines). The Department will not be incorporating 40 CFR 63 Subpart ZZZZ (2013) at this time for reasons discussed in the Alternatives section below. These changes will achieve parity between existing federal requirements and the State's regulatory program. As a result, this incorporation by reference will facilitate a more efficient administration of state and federal environmental regulations, which will ease compliance and eliminate regulatory redundancy for the regulated community.

1. Types and numbers of rural areas:

The New York State Department of Environmental Conservation (Department or DEC) is proposing to revise 6 NYCRR Part 200, General Provisions. DEC is proposing this rulemaking because the Clean Air Act (CAA) requires the United State Environmental Protection Agency (EPA) to draft new and update existing environmental, regulatory standards. All of environmental regulatory standards have already been vetted through public notice and comment at the federal level, are already in effect, and the regulated community is largely complying with these regulations. However, to implement these new regulatory requirements, the DEC must incorporate these regulatory changes into New York State law by reference. This grants the Department the legal authority to implement these regulations, thus effectuating the terms and provisions of the CAA

and its associated regulations. This proposed rulemaking will incorporate by reference new and updated federal NSPS and NESHAP. Incorporating the NSPS and NESHAPs into Part 200 allows the Department to implement and enforce the rules on behalf of the Environmental Protection Agency (EPA). This proposed incorporation by reference is not anticipated to affect small businesses, which are independently owned, located within New York State, and employ one hundred or fewer persons; or local governments differently from any other source subject to this rule.

Rural areas are defined as rural counties in New York State that have populations less than 200,000 people, towns in non-rural counties where the population densities are less than 150 people per square mile and villages within those towns. This rulemaking will not have any additional effects on rural areas. In addition, this rulemaking does not create any new or additional compliance conditions for the regulated community outside of those already implemented by the EPA upon finalization of those new and revised NSPS and NESHAPs. The regulated community, public, special interest groups, and various regulatory agencies were all provided an opportunity to comment on these rules prior to enactment.

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

There are no specific requirements in this rulemaking which apply exclusively to rural areas of the State. The revisions to Part 200 will not alter the requirements for affected sources except for which agency is responsible for determining compliance with the NSPS and NESHAP rules.

3. Costs:

Section 200 lists delegated federal regulations that the Department may legally implement and enforce. Delegation is achieved through incorporation by reference, a drafting tool used by regulatory agencies to give legal effect over materials published elsewhere. In this instance, the EPA has published NSPS and NESHAPs that, without incorporation by reference into New York State regulations, the Department would lack legal authority to implement and enforce. While the regulated community has largely complied with these regulations since their enactment, incorporating them into State regulation simply provides the Department legal authority to act as the primary regulator over these regulations. As a result, this rulemaking does not create any new or additional costs for the regulated community outside of those costs already described by the EPA upon initial proposal and eventual implementation of those new and revised NSPS and NESHAPs. The regulated community, public, special interest groups, and various regulatory agencies were all provided an opportunity to comment on these rules prior to enactment.

Section 200 lists delegated federal regulations that the Department may legally implement and enforce. Delegation is achieved through incorporation by reference, a drafting tool used by regulatory agencies to give legal effect to materials published elsewhere. In this instance, the EPA has published NSPS and NESHAPs that, without incorporation by reference into New York State regulations, the Department would lack legal authority to implement and enforce. While the regulated community has largely complied with these regulations since their enactment, incorporating them into State regulation simply provides the Department legal authority to act as the primary regulator over these regulations. As a result, this rulemaking does not create any new or additional costs for the regulated community outside of those costs already described by the EPA upon initial proposal and eventual implementation of the new and revised NSPS and NESHAPs. The regulated community, public, special interest groups, and various regulatory agencies were all provided an opportunity to comment on these federal rules prior to their adoption.

4. Minimizing adverse impact:

The proposed rulemaking revisions as described above are not expected to create significant adverse impacts on rural areas.

5. Rural area participation:

The Department will hold public hearings during the public comment period at several locations throughout the State. Residents of rural areas of the State will have the opportunity to attend these public hearings. Additionally, there will be a public comment period in which interested parties can submit written comments.

Job Impact Statement

The New York State Department of Environmental Conservation (Department or DEC) is proposing to revise 6 NYCRR Part 200, General Provisions. DEC is proposing this rulemaking because the Clean Air Act (CAA) requires the United State Environmental Protection Agency (EPA) to draft new and update existing environmental regulatory standards. In order to implement these new regulatory requirements, DEC must incorporate these regulatory changes into New York State regulations by reference. Doing so provides the Department the legal authority to implement these regulations, thus effectuating the terms and provisions of the CAA and its associated regulations. This proposed rulemaking incorporates by reference new and updated federal New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAPs). Incorporating the NSPS and NESHAPs into Part 200 allows the Department to implement and enforce the rules on behalf of the EPA.

Currently, Part 200 is outdated. DEC last incorporated NSPS from the July 1, 2003 Code of Federal Regulations (CFR) and NESHAPs from the July 1, 2009 CFR. EPA has since updated a number of these regulations, as well as promulgated new NSPS and NESHAPs for additional source categories. This rulemaking amends Part 200 to incorporate by reference the most recent editions of 40 CFR 60 (2013), Subpart A, Subparts D – FFFF, Subparts KKKK – end; and 40 CFR 63 (2012 and 2013), Subpart A, Subpart B, Subparts F – I, Subparts L – YYYY, Subparts AAAAA – IIIII, Subparts LLLLL – HHHHHH, and Subparts LLLLLL – end. This rulemaking also removes all references to the now outdated 40 CFR 63 Subpart ZZZZ (2009) (reciprocating engines). The Department will not be incorporating 40 CFR 63 Subpart ZZZZ (2013) at this time for reasons discussed in the Alternatives section below. These changes will achieve parity between existing federal requirements and the State's regulatory program. As a result, this incorporation by reference will facilitate a more efficient administration of state and federal environmental regulations, which will ease compliance and eliminate regulatory redundancy for the regulated community.

1. Nature of impact:

This proposed rulemaking has no impact on numbers of jobs or employment opportunities in the State. The purpose of the rulemaking is to update Table 2 of Section 200.10 for the list of New Source Performance Standards as cited in the 2013 Code of Federal Regulations and Table 4 of Section 200.10 for the list of National Emission Standards for Hazardous Air Pollutants as cited in the 2012 and 2013 Code of Federal Regulations. The proposed rulemaking only adopts Federal standards and does not impose additional requirements on regulated entities. This rulemaking does not create any new or additional compliance conditions for the regulated community outside of those already implemented by the EPA upon finalization of those new and revised NSPS and NESHAPs. The regulated community, public, special interest groups, and various regulatory agencies were all provided an opportunity to comment on these rules prior to enactment.

2. Categories and numbers affected:

This proposed rulemaking will not affect specific categories of jobs nor will it affect the number of jobs or employment opportunities. Any new jobs or loss of jobs, or employment opportunities arose as a result of the initial rulemakings by EPA when EPA proposed those new or revised NSPS and NESHAPs.

3. Regions of adverse impact:

There are no regions of the State where the proposed revisions have a disproportionate adverse impact on jobs or employment opportunities.

4. Minimizing adverse impact:

Since this proposed rulemaking will not affect the number of jobs or employment opportunities, there have been no steps taken to minimize the impact on existing jobs.

5. Self-employment opportunities:

This proposed rulemaking will not affect self-employment opportunities.

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Greenhouse Gas (GHG) and Zero Emission Vehicle (ZEV) Vehicle Emission Standards

I.D. No. ENV-27-15-00005-P

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

Proposed Action: Amendment of Parts 200 and 218 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 1-0101, 1-0303, 3-0301, 19-0103, 19-0105, 19-0107, 19-0301, 19-0303, 19-0305, 19-1101, 19-1103, 19-1105, 71-2103 and 71-2105; Federal Clean Air Act, section 177 (42 USC 7507)

Subject: Greenhouse gas (GHG) and zero emission vehicle (ZEV) vehicle emission standards.

Purpose: To incorporate revisions to California's GHG and ZEV standards.

Public hearing(s) will be held at: 1:00 p.m., Aug. 24, 2015 at 625 Broadway, Public Assembly Room 129A & B, Albany, NY.

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

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

Substance of proposed rule (Full text is posted at the following State website:www.dec.ny.gov): The New York State Department of Environmental Conservation (Department) is amending 6 NYCRR Section 200.9, Referenced Material, and 6 NYCRR Part 218, Emission Standards for Motor Vehicles and Motor Vehicle Engines. Section 200.9 is a list that cites Federal and California codes and regulations that have been referenced by the Department in the course of amending Part 218.

Section 200.9 is being repealed and replaced to correct several typographical errors and to update Part 218's incorporation of California's latest greenhouse gas (GHG) and zero emission vehicle (ZEV) standards. New York State last updated the GHG standards in 2012. The GHG revisions will provide vehicle manufacturers the voluntary option of demonstrating compliance with federal GHG emission standards for the 2017 through 2025 model years as an alternative compliance option to the existing California GHG emission standards. These changes will apply to all 2017 through 2025 model year passenger cars, light-duty trucks, and medium-duty passenger vehicles up to 10,000 pounds gross vehicle weight rating (GVWR).

Part 218 is also being revised to update New York's incorporation of amendments to the California ZEV standards. New York State last updated the ZEV standards in 2012. The ZEV amendments include revisions to the optional Section 177 state compliance path adopted in 2012, clarification of the ZEV credit cap that may be used to meet the minimum ZEV requirement in a given model year, and modification of the fast refueling definition to exclude battery exchange. The ZEV amendments will have various effective dates including immediate, 2015 model year, and 2018 model year and will apply to passenger cars, light-duty trucks, and medium-duty vehicles.

Text of proposed rule and any required statements and analyses may be obtained from: Jeff Marshall, P.E., NYSDEC, Division of Air Resources, 625 Broadway, Albany, NY 12233-3255, (518) 402-8292, email: air.regs@dec.ny.gov

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

Public comment will be received until: September 1, 2015.

Additional matter required by statute: Pursuant to Article 8 of the State Environmental Quality Review Act, a Short Environmental Assessment Form, a Negative Declaration and a Coastal Assessment Form have been prepared and are on file.

Summary of Regulatory Impact Statement

INTRODUCTION

6 NYCRR Part 218, Emission Standards for Motor Vehicles and Motor Vehicle Engines (Part 218), contains New York's incorporation of California's new motor vehicle emission standards. 6 NYCRR Section 200.9, Referenced Materials, lists the applicability of specific references the Department of Environmental Conservation (Department) incorporates in Part 218.

The Department is amending Part 218 and the associated provisions in Section 200.9 to incorporate California's latest greenhouse gas (GHG) standards into New York's existing low emission vehicle (LEV) program. Part 218 is also being amended to incorporate California's latest zero emission vehicle (ZEV) standards.

Section 177 of the Federal Clean Air Act requires New York to maintain standards identical to California's in order to maintain the program.

STATUTORY AUTHORITY

The statutory authority for this amendment is the Environmental Conservation Law (ECL) Sections 1-0101, 1-0303, 3-0301, 19-0103, 19-0105, 19-0107, 19-0301, 19-0303, 19-0305, 19-1101, 19-1103, 19-1105, 71-2103, 71-2105 and section 177 of the Federal Clean Air Act (42 USC 7507).

Section 1-0101(1) outlines the policy declaration for the Department regarding the protection of New York State's environment and natural resources including the control of "air pollution, in order to enhance the health, safety and welfare of the people of the state and their overall economic and social well being." Section 1-0101(3)(e) states:

It shall... be the policy of the state to foster, promote, create and maintain conditions under which man and nature can thrive in harmony with each other, and achieve social, economic and technological progress for present and future generations by…[p]roviding that care is taken for the air... and other resources that are shared with the other states of the United States and with Canada in the manner of a good neighbor.

Section 1-0303(19) of the ECL defines "pollution" as:

The presence in the environment of conditions and or contaminants in quantities of characteristics which are or may be injurious to human, plant or animal life or to property or which unreasonably interfere with the comfortable enjoyment of life and property throughout such areas of the state as shall be affected thereby.

Section 3-0301(1)(a) of the ECL gives the Commissioner authority to "[c]oordinate and develop policies, planning and programs related to the environment of the state and regions thereof…" Pursuant to Section 3-0301(1)(b) of the ECL, the Commissioner is charged with promoting and protecting the air resources of New York including providing for the prevention and abatement of air pollution.

Section 3-0301(2)(a) permits the Commissioner to adopt rules and regulations to carry out the purposes and provisions of the ECL. Section 3-0301(2)(g) allows the Commissioner to enter and inspect sources of air pollution and to verify compliance. Section 3-0301(2)(m) gives the Commissioner authority to "adopt rules, regulations, and procedures as may be necessary, convenient, or desirable to effectuate the purposes of this chapter." Under Section 3-0301(2)(n) of the ECL, the Commissioner has the authority to "study, monitor, control and regulate pollution from motor vehicle exhaust emissions." The Commissioner's authority under Section 3-0301(2)(n) is expressly granted to further the State's policy to "[c]onserve, improve and protect its natural resources and environment and control… air pollution, in order to enhance the health, safety and welfare of the people of the state…"

Section 19-0103 is a declaration of the State's policy with specific reference to air pollution.

It is declared to be the policy of the State of New York to maintain a reasonable degree of purity of the air resources of the State… and to that end to require the use of all available practical and reasonable methods to prevent and control air pollution.

Section 19-0105 sets out the purpose of Article 19, "to safeguard the air resources of the State from pollution" consistent with the policy expressed in section 19-0103 and in accordance with other provisions of Article 19.

Under ECL Section 19-0107(2) "air contaminant" is defined as "a dust, fume, gas, mist, odor, smoke, vapor, pollen, noise or any combination thereof." Under ECL Section 19-0107(4) "air contamination" is defined as "the presence in the outdoor atmosphere of one or more air contaminants which contribute or which are likely to contribute to a condition of air pollution." Under ECL Section 19-0107(3) "air pollution" is defined as:

the presence in the outdoor atmosphere of one or more air contaminants in quantities, of characteristics and of a duration which are injurious to human, plant or animal life or to property or which unreasonably interfere with the comfortable enjoyment of life and property throughout the state or throughout such areas of the state as shall be affected thereby...

The definition of "air contamination source" found in ECL 19-0107(5) specifically includes motor vehicles.

Sections 19-0301(1)(a) and (b) of the ECL state that:

1. Consistent with the policy of the state as it is declared in section 19-0103; the department shall have power to:

a. Formulate, adopt and promulgate, amend and repeal codes and rules and regulations for preventing, controlling or prohibiting air pollution in such areas of the state as shall or may be affected by air pollution…

b. Include in any such codes and rules and regulations provisions establishing areas of the state and prescribing for such areas (1) the degree of air pollution or air contamination that may be permitted therein, (2) the extent to which air contaminants may be emitted to the air by any air contamination source...

Section 19-0301(2)(a) of the ECL provides:

2. It shall be the duty and responsibility of the department to:

Prepare and develop a general comprehensive plan for the control or abatement of existing air pollution and for the control or prevention of any new air pollution recognizing various requirements for different areas of the state…

Section 19-0305 provides the Commissioner with general enforcement power. Sections 71-2103 and 71-2105 set forth the civil and criminal penalty structures for violations of Article 19. In addition to the above New York State authority, section 177 of the federal Clean Air Act (42 USC 7507) permits states other than California to adopt emission standards for motor vehicle emissions, provided that such standards are identical to California's standards.

LEGISLATIVE OBJECTIVES

Articles 1 and 3 of the ECL set out the overall state policy goal of reducing air pollution and providing clean, healthy air for the citizens of New York. They provide general authority to adopt and enforce measures to do so, including the regulation of mobile sources of air pollution.

In addition to the general powers and duties of the Department and Commissioner to prevent and control air pollution found in Articles 1 and 3 of the ECL, Article 19 of the ECL was specifically adopted for the purpose of safeguarding the air resources of New York from pollution. To facilitate this purpose, the legislature bestowed specific powers and duties on the Department, including the power to formulate, adopt, promulgate, amend, repeal and enforce regulations for preventing, controlling and prohibiting air pollution. The Department is "expressly authorized to promulgate extensive regulations limiting exhaust emissions from motor vehicles including adoption of California certification standards." (See MVMA v. Jorling, 152 Misc.2d 405 (N.Y. Sup. September 3, 1991.) This

authority also specifically includes promulgating rules and regulations for preventing, controlling or prohibiting air pollution in such areas of the State as shall or may be affected by air pollution, and provisions establishing areas of the State and prescribing for such areas (1) the degree of air pollution or air contamination that may be permitted therein, and (2) the extent to which air contaminants may be emitted to the air by any air contamination source. In addition, this authority also includes the preparation of a general comprehensive plan or the control or abatement of existing air pollution and for the control or prevention of any new air pollution recognizing various requirements for different areas of the State.

Based on the above, the Commissioner has very broad authority to regulate air pollution, including emissions from motor vehicles. The Department is incorporating California's latest GHG standards, which were adopted by California on December 31, 2012, into New York's existing LEV program, as well as incorporating California's latest ZEV standards. This regulation package will further the goals of reducing air pollution from motor vehicles by requiring cleaner vehicles be sold in New York. This is not a mandate on local governments pursuant to Executive Order 17.

In choosing to adopt and implement California standards, states are limited to identical emission standards and may not do anything that would create an undue burden on the manufacturer by either preventing the sale of a car certified to California standards, or by requiring the creation of a "third vehicle." New York has chosen to adopt California's more stringent motor vehicle standards, since the early 1990's, in order to obtain emission reductions from new motor vehicles not provided by federal new motor vehicle standards in furtherance of the Department's mission and obligation to control air pollution.

NEEDS AND BENEFITS

The Department is tasked with mitigating the effects of global climate change. The transportation sector accounts for approximately 37 percent of all GHG emissions in New York State[1]. The Department has the obligation to regulate and mitigate GHG emissions from mobile sources in order to safeguard the health of New York residents and protect the State's environment.

Global warming can have adverse impacts on human health. Intensified and prolonged periods of summertime heat can result in increased mortality and heat illnesses, especially in cities due to the heat island effect. Increased GHG emissions contribute to conditions favorable for the formation of ground-level ozone, specifically by increasing temperature through global warming. Increased temperature and precipitation levels also produce conditions favorable to the introduction or spread of vector-borne illnesses such as Lyme disease, Equine Encephalitis, West Nile Virus, and other diseases spread by mosquitoes, ticks, and rodents.

On-road mobile sources emit a substantial portion of ozone precursors. Ground-level ozone is formed by photochemical reactions when emissions of nitrogen oxides (NO_x) and volatile organic compounds (VOC) mix under sunny, hot conditions. In 2011, passenger cars and light-duty trucks emitted approximately 73,900 tons of VOC and 97,800 tons of NO_x annually[2]. It is essential that the Department continue to adopt stringent mobile source emissions standards to protect human health and the environment.

Increased concentrations of ground-level ozone can promote respiratory illness in children and the elderly, and exacerbate pre-existing respiratory illnesses. This can result in significant hospitalization costs and mortality rates. Hospitalization and mortality rates are higher in New York State than the national average. In 2007, the total cost of asthma related hospitalization in New York State was approximately $535 million[3]. Further, approximately 255 people per year died from asthma during the 2005 to 2007 timeframe[4]. Ground-level ozone can also impair lung function in otherwise healthy people.

Ground-level ozone can also cause severe damage to vegetation. It is estimated that ground-level ozone results in $500 million in reduced crop production annually in the United States alone[5]. The damage caused by ground-level ozone can result in reduced growth, increased susceptibility to diseases or pests, and aesthetic damage to landscaping and natural ecosystems.

New York's shoreline may be adversely affected by global warming. As sea level rises, erosion and flooding due to storm surge can increase. Sea level rise can erode beaches, damage coastal ecosystems, and inundate infrastructure including sanitary and water treatment facilities, subways, and roads resulting in billions of dollars in damages. Salinization of coastal ecosystems in New York, such as the Jamaica Bay National Wildlife Refuge or the Great South Bay for example, would destroy habitat for commercial and game species, migratory birds, and other wildlife.

While not necessarily caused by climate change, Hurricane Irene, Tropical Storm Lee, and Superstorm Sandy are prime examples of the environmental and economic damage that may occur as the result of more frequent extreme weather events. Hurricane Irene (August 2011) and Tropical Storm Lee (September 2011) devastated the Upstate and Central regions of New York State while largely sparing the New York Metropolitan Area. Some Upstate areas recorded more than 13 inches of rain between August 28 and August 31, with many areas recording more than six inches, which led to widespread flooding. Many of these same areas were impacted less than one week later when Tropical Storm Lee dropped up to 15 inches of rain resulting in additional flooding. Entire towns in the Schoharie and Mohawk valleys, the Adirondacks, and the Catskills were virtually destroyed by the floods. More than 390,000 people were forced to evacuate and more than 1 million people lost power.[6] Several state highways, county routes, and local roads were completely cut or made impassable. Several locks and moveable dams on the Erie Canal were also severely damaged or completely destroyed. Storm related damage from Irene and Lee in New York was estimated to be at least $1.5 billion.

Superstorm Sandy (October 2012) devastated the New York Metropolitan Area, specifically New York City and Long Island. The storm killed more than 120 people, destroyed more than 305,000 homes, and knocked out power to more than 2 million people.[7] A maximum wave height of 32.5 feet was recorded and a storm surge of 13.88 feet was recorded in Battery Park.[8] This record surge exceeded the previous record set in 1960 by almost 4 feet. Critical infrastructure including underground utilities, water and sewage treatment facilities, subways, tunnels, and airports were flooded or destroyed. Storm related damage estimates in New York State range from $15 billion to more than $41 billion.

New York's water supply could also be stressed by changes in temperature and precipitation. The majority of water is obtained from surface flow, which can be highly variable. According to data obtained from the NYS Department of Health (NYSDOH)[9], approximately 16.1 million people obtain drinking water from surface water sources. The remaining population, approximately 4.9 million people, obtains drinking water from ground water sources. The total of approximately 21 million people is greater than the actual population of the state since exchanges of water between systems results in counting the same population multiple times.

The Great Lakes are a critical water source to New York State which would be threatened by global warming. New York relies on the Great Lakes for drinking water, hydroelectric power, commercial shipping, and recreation including boating and fishing. Global warming is likely to lower the water levels of the Great Lakes through increased evaporation. Each loss of one inch in draft in the Great Lakes shipping channels causes the ships used for inter-lake transportation to lose 270 tons of cargo capacity[10].

Agriculture and forests in New York will also be affected by global warming. The majority of crops grown in New York should be able to withstand the changing climate with the exception of cold weather crops. These cold weather crops include apples, potatoes, and others that would shift to the north or have reduced growing seasons which would eventually result in a different crop mix. Forest mix in New York is also likely to change from the current mixed forest to a temperate deciduous forest. Distribution of wildlife is also likely to change due to increased temperature and changes in precipitation along with loss or changes in habitat.

Section 200.9 is being revised to update Part 218's incorporation of California's amendments to the GHG program. The Department is adopting GHG standards and credit mechanisms that are identical to those adopted by CARB. New York State last updated the GHG requirements in 2012. The amendments will allow compliance with federal GHG emission standards for the 2017 through 2025 model years as an alternative compliance option to the existing CARB GHG emission standards. The GHG revisions will apply to all 2017 through 2025 model year passenger cars, light-duty trucks, and medium-duty passenger vehicles.

In New York's 2012 rulemaking to adopt California's Advanced Clean Car (ACC) Standards, the Department estimated that by 2035 the California ACC standards will reduce CO_2e emissions in New York by approximately 14 million metric tons (MMT) per year. New York State's estimated GHG emissions benefits resulting from the California ACC standards adopted in the 2012 rulemaking are shown in Table 1.

Table 1. New York CO_2-Equivalent (CO_2e) Emission Benefits from Advanced Clean Car Regulations

New York Statewide CO_2e Emissions (Million Metric Tons/Year)

Calendar Year	Adjusted Baseline with Rebound	Regulation with Rebound	Benefits	Percent Reduction
2020	50.0	48.6	1.4	3%
2025	49.5	43.3	6.2	12%
2035	51.7	37.4	14.3	27%
2050	59.0	39.7	19.3	33%

The federal GHG emission standards are not as stringent as the California GHG standards. It is estimated that compliance using the federal stan-

dards will result in approximately a 4.5 percent loss of CO_2 emission reductions in 2025 that would otherwise be achieved under the California standards. The minor reduction in stringency is primarily due to differences in how CARB and EPA treat incentives for ZEV and transitional zero emission vehicles (TZEV), as well as incentives for low leak air conditioning systems and disincentives for air conditioning systems with high leak rates. California and the Section 177 states have determined that this slight decrease in stringency is more than offset by the additional GHG emission reductions that will be achieved by nationwide implementation of the federal GHG standards.

Part 218 is also being revised to update New York's incorporation of California's amendments to the ZEV program. New York State last updated the ZEV requirements in 2012. The ZEV revisions to Part 218 apply to all 2012 and subsequent model year passenger cars, light-duty trucks, and medium-duty vehicles. The ZEV amendments include revisions to the optional Section 177 state compliance path adopted in 2012, clarification of the ZEV credit cap that may be used to meet the minimum ZEV requirement in a given model year, and modification of the fast refueling definition to exclude battery exchange.

The optional Section 177 state compliance path is a voluntary compliance mechanism intended to alleviate the compliance burden for manufacturers while ensuring that ZEVs are actually placed in service in Section 177 states prior to model year 2018. The revisions to the optional Section 177 state compliance path consist of the following:

1. Restrictions on the use of transportation system credits. Transportation system credits are earned for projects that involve the shared use of ZEVs and other advanced technology vehicles, application of intelligent new technologies, and often links to mass transit. The use of transportation system credits to offset part of the ZEV and TZEV percentages required percentages under the optional path will be prohibited. The intent of the optional path is to ensure that ZEVs are actually placed in service in Section 177 states prior to model year 2018. Vehicles placed in a Section 177 state under the optional compliance path may still be used in a transportation system program, however, the credits may not be used towards compliance with the optional path requirements.

2. Clarification of pooling language. Manufacturers selecting the optional Section 177 state compliance path will be allowed to demonstrate compliance with the ZEV requirements by pooling regional ZEV sales. The previous pooling language for the optional Section 177 state compliance path stated that the trade and transfer of credits within and between regional pools was only permitted in a single model year to meet that particular model year's obligation. For example, manufacturers were allowed to trade 2015 model year credits to meet the 2015 model year obligations. The pooling language has been clarified to state that manufacturers will be allowed to trade and transfer credits earned between model years 2012 and 2017 to meet a particular model year requirement. For example, manufacturers will be allowed to trade or transfer 2012 through 2015 model year credits to meet a 2015 model year obligation.

3. Clarification of compliance requirements for intermediate volume manufacturers. CARB added language to clarify the compliance requirements for intermediate volume manufacturers (IVM) choosing the optional compliance path. IVMs choosing to demonstrate compliance using the optional compliance path will be required to meet the same additional ZEV percentage for model years 2016 and 2017 as large volume manufacturers (LVM). The additional ZEV percentages are 0.75 percent in 2016 and 1.50 percent in 2017. However, unlike LVMs, IVMs will be allowed to fulfill the remainder of their ZEV obligation for the 2016 and 2017 model years using partial zero emission vehicles (PZEVs). The percentage requirements for the 2015 through 2017 model years for IVMs are shown in Table 2.

Table 2. Intermediate Volume Manufacturer Annual Percentage Obligations under the Section 177 State Optional Compliance Path

Years	Total ZEV Percent Requirement for Optional Compliance Path	Additional ZEV Percentage	Percent Requirement That May Be Met With PZEVs
2015	11.25%	0%	11.25%
2016	12.15%	0.75%	11.40%
2017	13.05%	1.50%	11.55%

Source: CARB. Appendix A Proposed Regulation Order. Amendments to Sections 1962.1 and 1962.2 Title 13, California Code of Regulations. September 4, 2013. Page A-6.

4. Requirements for vehicle identification number reporting. CARB revised the reporting requirements to ease the compliance burden on vehicle manufacturers. Manufacturers were previously required to submit the vehicle identification number (VIN) for each ZEV and TZEV delivered for sale and placed in service in a Section 177 state prior to model year 2018. Under the revised reporting requirement, manufacturers will only be required to provide the VINs for ZEVs and TZEVs for which they are seeking pooled credit upon request from a Section 177 state. This will enable Section 177 states to confirm the placement of ZEVs and TZEVs within the regional pools. This change is similar to an existing requirement contained in Section 218-2.2(a) which covers all of Part 218.

5. Consequences for failure to comply. The language dealing with a manufacturer's failure to comply with the Section 177 state optional compliance path has been clarified. A manufacturer that chooses this voluntary option and fails to comply with the requirements will be prohibited from using this option going forward from the date of noncompliance. They will lose the ability to pool regional sales to demonstrate compliance with the ZEV requirements and will also be prohibited from trading or transferring credits within and between regional compliance pools. These actions will not be retroactive and will not undo trades completed prior to the demonstration of noncompliance with the optional path.

Additional revisions to the ZEV requirements include:

1. Revised cap on credits used to offset minimum ZEV requirement. The ZEV program has long included various caps on the amount of credits that could be used to comply with the minimum ZEV requirement in a given model year. However, previous ZEV revisions never specified how to apply the various caps in combination. Examples of the various credit caps include no more than 50 percent of the minimum ZEV requirement using credits from battery electric vehicle (BEV) with range extenders, referred to as BEVx; no more than 50 percent of the minimum ZEV requirement using GHG overcompliance credits; and no more than 10 percent of the minimum ZEV requirement using transportation system credits. CARB is revising the credit cap to clarify that use of credits will be capped at a combined 50 percent of the minimum ZEV requirement. None of the individual caps will change. Therefore, a manufacturer may use BEVx, GHG overcompliance, and transportation system credits in any combination as long as the total does not exceed 50 percent of the minimum ZEV requirement for a given model year.

2. Modification of the fast refueling definition. CARB defines fast refueling for ZEVs as the ability to refuel the vehicle to 95 percent of full capacity within 15 minutes. ZEVs meeting these criteria are classified as Types IV and V and are eligible to earn increased ZEV credits. Some BEV have been certified as ZEV Types IV and V based on the ability to exchange, or swap, battery packs in order to achieve full range in less than 15 minutes. However, CARB states that there is no evidence that battery exchanges are actually taking place with in-use BEVs. As a result, CARB is eliminating battery exchanges from the fast refueling definition and BEV relying on this technology will not be allowed to earn increased ZEV credit granted to Types IV and V.

The Department also intends to disclose ZEV credit information for each manufacturer on an annual basis identical to the information released by California pursuant to California Code of Regulations (CCR), Title 13, Section 1962.1(l). New York State adopted this section by reference in a previous revision of Part 218, but opted to release ZEV credit information in accordance with New York State's freedom of information law (FOIL) requirements. This practice has become burdensome for the Department due to an increasing volume of FOIL requests for ZEV credit information and limited staff resources to respond to such requests. Similar information is published annually by California and other states that have adopted the California standards.

As a result, the Department will publish manufacturer ZEV credit information on an annual basis pursuant to the requirements of CCR, Title 13, Section 1962.1(l) starting with 2013 model year. This information will be posted on the Department's public website. The information will be identical to the information published by CARB. For the 2009 through 2017 model years this includes each manufacturer's annual production data and credits earned per vehicle for ZEVs, TZEVs, ATPZEVs, and PZEVs. For the 2010 through 2017 model years this information includes each manufacturer's annual credit balances for: ZEVs, NEVs, TZEVs, ATPZEVs, and PZEVs; advanced technology demonstration programs; transportation systems; and credits acquired from or traded to another entity. No additional information will be published beyond that specified in Section 1962.1(l).

COSTS

Potential Impact on Consumers.

The GHG and ZEV amendments are not expected to have any impact on consumers. The GHG amendments are intended to minimize manufacturers' compliance costs by granting them the option of demonstrating compliance with federal GHG emission standards in lieu of California GHG standards. The same technologies used to comply with the California GHG standards will be utilized to comply with the federal GHG standards. The intent of the ZEV amendments is to offer vehicle manufacturers an alternative option that eases the compliance burden while ensuring ZEV and TZEV vehicles are actually delivered to, and placed in, Sec-

tion 177 states prior to model year 2018. There should be no costs associated with the GHG and ZEV amendments that will be passed along to consumers in the form of higher prices.

Potential Impact on Business Competitiveness.

Currently there is no automotive manufacturing in New York involving the final assembly of vehicles. Affiliated businesses, such as dealerships and engineering and design facilities, are local businesses which compete within the state and generally are not subject to competition from out-of-state businesses. New York dealerships will be able to sell California certified vehicles to states bordering New York, as is currently the case. New York residents will not be able to buy noncompliant vehicles out of state since vehicles must be California certified in order to be registered in New York. This is currently the case with the existing LEV program and will not change with the proposed requirements. The amendments apply equally to all large volume manufacturers delivering new vehicles for sale in New York. Several of the surrounding states have adopted, or will adopt, similar requirements. Therefore, the regulation is not expected to impose a competitive disadvantage on dealerships.

Potential Impact on Dealerships.

There are no costs associated with these amendments that will be passed along to dealerships. The intent of the GHG regulation is to provide vehicle manufacturers with the voluntary option to demonstrate compliance with federal GHG emission standards in lieu of California's GHG standards. This would enable manufacturers to lower compliance costs by producing and selling a fleet of vehicles built to a single national standard. The intent of the ZEV regulation is to offer vehicle manufacturers an alternative option that eases the compliance burden while ensuring ZEV and TZEV vehicles are actually delivered to and placed in Section 177 states prior to model year 2018.

Potential Impact on Employment.

The amendments are not expected to cause a noticeable change in New York employment.

Potential Impact on Business Creation, Elimination or Expansion.

The GHG and ZEV amendments are not expected to have any impact on business creation, elimination, or expansion.

Potential Costs to Local and State Agencies.

The amendments are not expected to result in any additional costs for local and state agencies. No additional paperwork or staffing requirements are expected.

LOCAL GOVERNMENT MANDATES

The amendments do not impose a local government mandate. No additional paperwork or staffing requirements are expected. This is not a mandate on local governments pursuant to Executive Order 17. Local governments have no additional compliance obligations as compared to other subject entities.

PAPERWORK

The amendments should not result in any new significant paperwork requirements for New York vehicle suppliers, dealers or government. New York relies on materials submitted to California for certification, while manufacturers must submit to New York annual sales and corporate fleet average reports to show compliance with the fleet average requirements. While dealers must ensure that the vehicles they sell are California certified, the Department believes that most manufacturers currently include provisions in their ordering mechanisms to ensure that only California certified vehicles are shipped to New York dealers. This has been the case since New York first adopted the California LEV program in 1992. The implementation of the GHG and ZEV regulations is not expected to be burdensome in terms of paperwork to owners/operators of vehicles.

DUPLICATION

There is no duplication.

ALTERNATIVES

The Department could maintain the current LEV program without adopting CARB's GHG and ZEV amendments. This option was reviewed and rejected. The primary basis for this decision was that the Department believes this is not permitted under Section 177 due to the identicality requirement. Further, the severity of New York State's air quality problems means New York State must maintain compliance with recent improvements in the California standards in order to achieve reductions necessary for the attainment and maintenance of the ozone and carbon monoxide standards, as well as reductions of GHG emissions.

FEDERAL STANDARDS

Federal GHG standards will be available as an alternative for the 2017 through 2025 model years. There are no equivalent federal ZEV standards available as an alternative.

COMPLIANCE SCHEDULE

The GHG regulatory amendment will take effect for 2017 through 2025 model year passenger cars, light-duty trucks, and medium-duty passenger vehicles. The ZEV amendments will have various effective dates including immediate, 2015 model year, and 2018 model year and will apply to passenger cars, light-duty trucks, and medium-duty vehicles. Annual publication of manufacturer ZEV credit balances will commence with 2013 model year data.

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[3] New York State Department of Health. New York State Asthma Surveillance Summary Report. October 2009. Pg 10. http://www.health.ny.gov/statistics/ny__asthma/

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[6] New York State Responds. Hurricane Irene and Tropical Storm Lee: One Year Later. August 2012. www.governor.ny.gov/assets/documents/Irene-Lee-One-Year-Report.pdf

[7] Hilary Russ. Reuters. MSNBC.com. New York, New Jersey Put $71B Price Tag on Sandy. November 27, 2012. http://news.msn.com/us/new-york-new-jersey-put-dollar71b-price-tag-on-sandy

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[9] New York State Department of Health. Drinking water program: Facts and Figures, www.health.state.ny.us/environmental/water/drinking/facts__figures.htm

[10] Climate Change and Water Quality in the Great Lakes Basin 2003: Report of the Great Lakes Water Quality Board to the International Joint Commission. Chapter 3.2 page 18.

Regulatory Flexibility Analysis

1. Effect of rule:

The New York State Department of Environmental Conservation (Department) is amending 6 NYCRR Section 200.9 and 6 NYCRR Part 218 to incorporate California's latest greenhouse gas (GHG) standards, which were adopted by California on December 31, 2012, into New York's existing low emission vehicle (LEV) program. Part 218 is also being amended to incorporate California's latest zero emission vehicle (ZEV) standards. These changes apply to vehicles purchased by consumers, businesses, and government agencies in New York and may impact businesses involved in manufacturing, selling, leasing, or purchasing passenger cars or trucks.

State and local governments are also consumers of vehicles that will be regulated under the proposed GHG amendments. Therefore, local governments who own or operate vehicles in New York State are subject to the same requirements as owners of private vehicles in New York State; i.e., they must purchase California certified vehicles. This rulemaking is not a local government mandate pursuant to Executive Order 17.

The changes are an addition to the current LEV standards. The new motor vehicle emissions program has been in effect in New York State since model year 1993 for passenger cars and light-duty trucks, with the exception of the 1995 model year, and the Department is unaware of any significant adverse impact to small businesses or local governments as a result of previous revisions.

2. Compliance requirements:

There are no specific requirements in the regulation which apply exclusively to small businesses or local governments. Reporting, record keeping and compliance requirements are effective statewide. Automobile dealers (some of which may be small businesses) selling new cars are required to sell or offer for sale only California certified vehicles. These proposed amendments will not result in any additional reporting requirements to dealerships other than the current requirements to maintain records demonstrating that vehicles are California certified. This documentation is the same documentation already required by the New York State Department of Motor Vehicles for vehicle registration. If local governments are buying new fleet vehicles they should make sure that the vehicles are California certified.

3. Professional services:

There are no professional services needed by small business or local government to comply with the proposed rule.

4. Compliance costs:

New York State currently maintains personnel and equipment to administer the LEV program. It is expected that these personnel will be

retained to administer the revisions to this program. Therefore, no additional costs will be incurred by the State of New York for the administration of this program.

5. Minimizing adverse impact:

The GHG and ZEV amendments are not expected to have any impact on automobile dealers. Dealerships will be required to ensure that the vehicles they sell are California certified. Starting with the 1993 model year, most manufacturers have included provisions in their ordering mechanisms to ensure that only California certified vehicles are shipped to New York dealers. Implementation of the GHG and ZEV regulations is not expected to be burdensome in terms of additional reporting requirements for dealers.

There will be no adverse impact on local governments who own or operate vehicles in the state because they are subject to the same requirements as those imposed on owners of private vehicles. In other words, state and local governments will be required to purchase California certified vehicles. This rulemaking is not a local government mandate pursuant to Executive Order 17.

This regulation contains exemptions for emergency vehicles, and military tactical vehicles and equipment.

6. Small business and local government participation:

The Department plans on holding public hearings at various locations throughout New York State after the amendments are proposed. Small businesses and local governments will have the opportunity to attend these public hearings. Additionally, there will be a public comment period in which interested parties can submit written comments.

7. Economic and technological feasibility:

The GHG and ZEV amendments are not expected to have any adverse impacts on automobile dealers. Dealerships will be required to ensure that the vehicles they sell are California certified. Starting with the 1993 model year, most manufacturers have included provisions in their ordering mechanisms to ensure that only California certified vehicles are shipped to New York dealers. Implementation of the regulations is not expected to be burdensome in terms of additional reporting requirements for dealers. As stated previously, there would be no change in the competitive relationship with out-of-state businesses.

The GHG amendments attempt to minimize adverse impacts on automobile manufacturers by offering them the voluntarily option of demonstrating compliance based on the federal GHG emission standards for the 2017 through 2025 model years as an alternative compliance option to the existing CARB GHG emission standards. The GHG revisions to Part 218 will apply to all 2017 through 2025 model year passenger cars, light-duty trucks, and medium-duty passenger vehicles.

The ZEV amendments consist of revised credit mechanisms and clarifying changes intended to simplify the program. The ZEV revisions to Part 218 will apply to all passenger cars, light-duty trucks, and medium-duty vehicles. There are various effective dates for the ZEV revisions including immediate, model year 2015, and model year 2018.

8. Cure period:

In accordance with NYS State Administrative Procedures Act (SAPA) Section 202-b, this rulemaking does not include a cure period because the Department is undertaking this rulemaking to comply with changes California has made to its vehicle emissions program in order to maintain identicality with section 177 of the Clean Air Act.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:

The New York State Department of Environmental Conservation (Department) is amending 6 NYCRR Section 200.9 and 6 NYCRR Part 218 to incorporate California's latest greenhouse gas (GHG) standards, which were adopted by California on December 31, 2012, into New York's existing low emission vehicle (LEV) program. Part 218 is also being amended to incorporate California's latest zero emission vehicle (ZEV) standards.

There are no requirements in the regulation which apply only to rural areas. These changes apply to vehicles purchased by consumers, businesses, and government agencies in New York. The changes to these regulations may impact businesses involved in manufacturing, selling, purchasing, or repairing passenger cars or trucks.

The changes are additions to the current LEV standards. The new motor vehicle emission program has been in effect in New York State since model year 1993 for passenger cars as well as light-duty trucks, with the exception of model year 1995, and the Department is unaware of any adverse impact to rural areas as a result. The beneficial emission reductions from the program accrue to all areas of the state.

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

There are no specific requirements in the proposed regulations which apply exclusively to rural areas. Reporting, record keeping and compliance requirements apply primarily to vehicle manufacturers, and to a lesser degree to automobile dealerships. Manufacturers reporting requirements mirror the California requirements, and are thus not expected to be burdensome. Dealerships do not have reporting requirements, but must maintain records to demonstrate that vehicles are California certified. This documentation is the same as documentation already required by the New York State Department of Motor Vehicles for vehicle registration.

Professional services are not anticipated to be necessary to comply with the rules.

3. Costs:

The proposed amendments to the GHG and ZEV standards are not expected to have any impact on consumers. The GHG amendments are intended to provide manufacturers with compliance flexibility by offering them the voluntarily option of demonstrating compliance based on the proposed federal GHG emission standards for the 2017 through 2025 model years.

The ZEV amendments consist of revised credit mechanisms and clarifying changes intended to simplify the program. The ZEV revisions to Part 218 will apply to all passenger cars, light-duty trucks, and medium-duty vehicles. There are various effective dates for the ZEV revisions including immediate, model year 2015, and model year 2018.

There are no costs associated with this change that would be passed along to consumers in the form of higher prices.

4. Minimizing adverse impact:

The changes will not adversely impact rural areas.

5. Rural area participation:

The Department plans on holding public hearings at various locations throughout New York State once the regulation is proposed. Some of these locations will be convenient for persons from rural areas to participate. Additionally, there will be a public comment period in which interested parties can submit written comments.

Job Impact Statement

1. Nature of impact:

The New York State Department of Environmental Conservation (Department) is amending 6 NYCRR Section 200.9 and 6 NYCRR Part 218 to incorporate California's latest greenhouse gas (GHG) standards, which were adopted by California on December 31, 2012, into New York's existing low emission vehicle (LEV) program. Part 218 is also being amended to incorporate California's latest zero emission vehicle (ZEV) standards.

The amendments to the regulations are not expected to adversely impact jobs and employment opportunities in New York State. New York State has had a LEV program in effect since model year 1993 for passenger cars and light-duty trucks, with the exception of model year 1995, and the Department is unaware of any significant adverse impact to jobs and employment opportunities as a result of previous revisions.

2. Categories and numbers affected:

The changes to this regulation will not adversely impact businesses involved in manufacturing, selling or purchasing passenger cars or trucks. Automobile manufacturers are not expected to incur costs in order to comply with the regulation. Dealerships will be able to sell California certified vehicles to buyers from states bordering New York. Since vehicles must be California certified in order to be registered in New York, New York residents will not be able to buy non-complying vehicles out-of-state, but may be able to buy complying vehicles out-of-state. These businesses compete within the state and generally are not subject to competition from out-of-state businesses. Therefore, the proposed regulation is not expected to impose a competitive disadvantage on affiliated businesses, and there would be no change from the current relationship with out-of-state businesses.

3. Regions of adverse impact:

None.

4. Minimizing adverse impact:

The regulations are not expected to have adverse impacts on automobile dealers. Dealerships will be required to ensure that the vehicles they sell are California certified. Starting with the 1993 model year, most manufacturers have included provisions in their ordering mechanisms to ensure that only California certified vehicles are shipped to New York dealers. The implementation of the regulations is not expected to be burdensome in terms of additional reporting requirements for dealers. There would be no change in the competitive relationship with out-of-state businesses.

The GHG amendments attempt to minimize adverse impacts on automobile manufacturers by offering them the voluntarily option of demonstrating compliance based on the proposed federal GHG emission standards for the 2017 through 2025 model years as an alternative compliance option to the existing CARB GHG emission standards. The GHG revisions to Part 218 will apply to all 2017 through 2025 model year passenger cars, light-duty trucks, and medium-duty passenger vehicles.

The ZEV amendments consist of revised credit mechanisms and clarifying changes intended to simplify the program. The ZEV revisions to Part 218 will apply to all passenger cars, light-duty trucks, and medium-duty vehicles. There are various effective dates for the ZEV revisions including immediate, model year 2015, and model year 2018.

5. Self-employment opportunities:
None that the Department is aware of at this time.

Department of Financial Services

EMERGENCY RULE MAKING

Assessment of Entities Regulated by the Banking Division of the Department of Financial Services

I.D. No. DFS-27-15-00003-E
Filing No. 538
Filing Date: 2015-06-19
Effective Date: 2015-06-21

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

Action taken: Addition of Part 501 to Title 3 NYCRR.

Statutory authority: Banking Law, section 17; and Financial Services Law, section 206

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

Specific reasons underlying the finding of necessity: Pursuant to the Financial Services Law ("FSL"), the New York State Banking Department ("Banking Department") and the New York State Insurance Department were consolidated, effective October 3, 2011, into the Department of Financial Services ("Department").

Prior to the consolidation, assessments of institutions subject to the Banking Law ("BL") were governed by Section 17 of the BL; effective on October 3, 2011, assessments are governed by Section 206 of the Financial Services Law, provided that Section 17 continues to apply to assessments for the fiscal year which commenced April 1, 2011.

Both Section 17 of the Banking Law and Section 206 of the Financial Services Law provide that all expenses (compensation, lease costs and other overhead) of the Department in connection with the regulation and supervision (including examination) of any person or entity licensed, registered, incorporated or otherwise formed pursuant to the BL are to be charged to, and paid by, the regulated institutions subject to the supervision of in the Banking Division of the Department (the "Banking Division"). Under both statutes, the Superintendent is authorized to assess regulated institutions in the Banking Division in such proportions as the Superintendent shall deem just and reasonable.

Litigation commenced in June, 2011 challenged the methodology used by the Banking Department to assess mortgage bankers. On May 3, 2012, the Appellate Division invalidated this methodology for the 2010 State Fiscal Year, finding that the former Banking Department had not followed the requirements of the State Administrative Procedures Act.

In response to this ruling, the Department has determined to adopt this new rule setting forth the assessment methodology applicable to all entities regulated by the Banking Division for fiscal years beginning with fiscal year 2011.

The emergency adoption of this regulation is necessary to implement the requirements of Section 17 of the Banking Law and Section 206 of the Financial Services Law in light of the determination of the Court and the ongoing need to fund the operations of the Department without interruption.

Subject: Assessment of entities regulated by the Banking Division of the Department of Financial Services.

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

Text of emergency rule: *Superintendent's Regulations*

Part 501

§ 501.1 Background.

Pursuant to the Financial Services Law ("FSL"), the New York State Banking Department ("Banking Department") and the New York State Insurance Department were consolidated on October 3, 2011 into the Department of Financial Services ("Department").

Prior to the consolidation, assessments of institutions subject to the Banking Law ("BL") were governed by Section 17 of the BL. Effective October 3, 2011, assessments are governed by Section 206 of the FSL, provided that Section 17 of the BL continues to apply to assessments for the fiscal year commencing on April 1, 2011.

Both Section 17 of the BL and Section 206 of the FSL provide that all expenses (including, but not limited to, compensation, lease costs and other overhead costs) of the Department attributable to institutions subject to the BL are to be charged to, and paid by, such regulated institutions. These institutions ("Regulated Entities") are now regulated by the Banking Division of the Department. Under both Section 17 of the BL and Section 206 of the FSL, the Superintendent is authorized to assess Regulated Entities for its total costs in such proportions as the Superintendent shall deem just and reasonable.

The Banking Department has historically funded itself entirely from industry assessments of Regulated Entities. These assessments have covered all direct and indirect expenses of the Banking Department, which are activities that relate to the conduct of banking business and the regulatory concerns of the Department, including all salary expenses, fringe benefits, rental and other office expenses and all miscellaneous and overhead costs such as human resource operations, legal and technology costs.

This regulation sets forth the basis for allocating such expenses among Regulated Entities and the process for making such assessments.

§ 501.2 Definitions.

The following definitions apply in this Part:

(a) "Total Operating Cost" means for the fiscal year beginning on April 1, 2011, the total direct and indirect costs of operating the Banking Division. For fiscal years beginning on April 1, 2012, "Total Operating Cost" means (1) the sum of the total operating expenses of the Department that are solely attributable to regulated persons under the Banking Law and (2) the proportion deemed just and reasonable by the Superintendent of the other operating expenses of the Department which under Section 206(a) of the Financial Services Law may be assessed against persons regulated under the Banking Law and other persons regulated by the Department.

(b) "Industry Group" means the grouping to which a business entity regulated by the Banking Division is assigned. There are three Industry Groups in the Banking Division:

(1) The Depository Institutions Group, which consists of all banking organizations and foreign banking corporations licensed by the Department to maintain a branch, agency or representative office in this state;

(2) The Mortgage-Related Entities Group, which consists of all mortgage brokers, mortgage bankers and mortgage loan servicers; and

(3) The Licensed Financial Services Providers Group, which consists of all check cashers, budget planners, licensed lenders, sales finance companies, premium finance companies and money transmitters.

(c) "Industry Group Operating Cost" means the amount of the Total Operating Cost to be assessed to a particular Industry Group. The amount is derived from the percentage of the total expenses for salaries and fringe benefits for the examining, specialist and related personnel represented by such costs for the particular Industry Group.

(d) "Industry Group Supervisory Component" means the total of the Supervisory Components for all institutions in that Industry Group.

(e) "Supervisory Component" for an individual institution means the product of the average number of hours attributed to supervisory oversight by examiners and specialists of all institutions of a similar size and type, as determined by the Superintendent, in the applicable Industry Group, or the applicable sub-group, and the average hourly cost of the examiners and specialists assigned to the applicable Industry Group or sub-group.

(f) "Industry Group Regulatory Component" means the Industry Group Operating Cost for that group minus the Industry Group Supervisory Component and certain miscellaneous fees such as application fees.

(g) "Industry Financial Basis" means the measurement tool used to distribute the Industry Group Regulatory Component among individual institutions in an Industry Group.

The Industry Financial Basis used for each Industry Group is as follows:

(1) For the Depository Institutions Group: total assets of all institutions in the group;

(2) For the Mortgage-Related Entities Group: total gross revenues from New York State operations, including servicing and secondary market revenues, for all institutions in the group; and

(3) For the Licensed Financial Services Providers Group: (i.) for budget planners, the number of New York customers; (ii.) for licensed lenders, the dollar amount of New York assets; (iii.) for check cashers, the dollar amount of checks cashed in New York; (iv.) for money transmitters, the dollar value of all New York transactions; (v.) for premium finance companies, the dollar value of loans originated in New York; and (vi.) for sales finance companies, the dollar value of credit extensions in New York.

(h) "Financial Basis" for an individual institution is that institution's portion of the measurement tool used in Section 501.2(g) to develop the Industry Financial Basis. (For example, in the case of the Depository Institutions Group, an entity's Financial Basis would be its total assets.)

(i) "Industry Group Regulatory Rate" means the result of dividing the Industry Group Regulatory Component by the Industry Financial Basis.

(j) "Regulatory Component" for an individual institution is the product of the Financial Basis for the individual institution multiplied by the Industry Group Regulatory Rate for that institution.

§ 501.3 Billing and Assessment Process.

The New York State fiscal year begins April 1 and ends March 31 of the following calendar year. Each institution subject to assessment pursuant to this Part is billed five times for a fiscal year: four quarterly assessments (each approximately 25% of the anticipated annual amount) based on the Banking Division's estimated annual budget at the time of the billing, and a final assessment (or "true-up"), based on the Banking Division's actual expenses for the fiscal year. Any institution that is a Regulated Entity for any part of a quarter shall be assessed for the full quarter.

§ 501.4 Computation of Assessment.

The total annual assessment for an institution shall be the sum of its Supervisory Component and its Regulatory Component.

§ 501.5 Penalties/Enforcement Actions.

All Regulated Entities shall be subject to all applicable penalties, including late fees and interest, provided for by the BL, the FSL, the State Finance law or other applicable laws. Enforcement actions for nonpayment could include suspension, revocation, termination or other actions.

§ 501.6 Effective Date.

This Part shall be effective immediately. It shall apply to all State Fiscal Years beginning with the Fiscal Year starting on April 1, 2011.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire September 16, 2015.

Text of rule and any required statements and analyses may be obtained from: Hadas A. Jacobi, Esq., Department of Financial Services, One State Street, New York, NY 10004, (212) 480-5890, email: hadas.jacobi@dfs.ny.gov

Regulatory Impact Statement

1. Statutory Authority

Pursuant to the Financial Services Law ("FSL"), the New York State Banking Department (the "Banking Department") and the New York State Insurance Department were consolidated, effective October 3, 2011, into the Department of Financial Services (the "Department").

Prior to the consolidation, assessments of institutions subject to the Banking Law ("BL") were governed by Section 17 of the BL; effective on October 3, 2011, assessments are governed by Section 206 of the Financial Services Law, provided that Section 17 continues to apply to assessments for the fiscal year which commenced April 1, 2011.

Both Section 17 of the BL and Section 206 of the FSL provide that all expenses (compensation, lease costs and other overhead) of the Department in connection with the regulation and supervision of any person or entity licensed, registered, incorporated or otherwise formed pursuant to the BL are to be charged to, and paid by, the regulated institutions subject to the supervision of the Banking Division of the Department (the "Banking Division"). Under both statutes, the Superintendent is authorized to assess regulated institutions in the Banking Division in such proportions as the Superintendent shall deem just and reasonable.

In response to a court ruling, In the Matter of Homestead Funding Corporation v. State of New York Banking Department et al., 944 N.Y.S. 2d 649 (2012) ("Homestead"), that held that the Department should adopt changes to its assessment methodology for mortgage bankers through a formal assessment rule pursuant to the requirements of the State Administrative Procedures Act ("SAPA"), the Department has determined to adopt this new regulation setting forth the assessment methodology applicable to all entities regulated by the Banking Division for fiscal years beginning with fiscal year 2011.

2. Legislative Objectives

The BL and the FSL make the industries regulated by the former Banking Department (and now by the Banking Division of the new Department) responsible for all the costs and expenses of their regulation by the State. The assessments have covered all direct and indirect expenses of the Banking Department, which are activities that relate to the conduct of banking business and the regulatory concerns of the Department, including all salary expenses, fringe benefits, rental and other office expenses and all miscellaneous and overhead costs such as human resource operations, legal and technology costs.

This reflects a long-standing State policy that the regulated industries are the appropriate parties to pay for their supervision in light of the financial benefits it provides to them to engage in banking and other regulated businesses in New York. The statute specifically provides that these costs are to be allocated among such institutions in the proportions deemed just and reasonable by the Superintendent.

While this type of allocation had been the practice of the former Banking Department for many decades, Homestead found that a change to the methodology for mortgage bankers to include secondary market and servicing income should be accomplished through formal regulations subject to the SAPA process. Given the nature of the Banking Division's assessment methodology - - the calculation and payment of the assessment is ongoing throughout the year and any period of uncertainty as to the applicable rule would be extremely disruptive - - the Department has determined that it is necessary to adopt the rule on an emergency basis so as to avoid any possibility of disrupting the funding of its operations.

3. Needs and Benefits

The Banking Division regulates more than 250 state chartered banks and licensed foreign bank branches and agencies in New York with total assets of over $2 trillion. In addition, it regulates a variety of other entities engaged in delivering financial services to the residents of New York State. These entities include: licensed check cashers; licensed money transmitters; sales finance companies; licensed lenders; premium finance companies; budget planners; mortgage bankers and brokers; mortgage loan servicers; and mortgage loan originators.

Collectively, the regulated entities represent a spectrum, from some of the largest financial institutions in the country to the smallest, neighborhood-based financial services providers. Their services are vital to the economic health of New York, and their supervision is critical to ensuring that these services are provided in a fair, economical and safe manner.

This supervision requires that the Banking Division maintain a core of trained examiners, plus facilities and systems. As noted above, these costs are by statute to be paid by all regulated entities in the proportions deemed just and reasonable by the Superintendent. The new regulation is intended to formally set forth the methodology utilized by the Banking Division for allocating these costs.

4. Costs

The new regulation does not increase the total costs assessed to the regulated industries or alter the allocation of regulatory costs between the various industries regulated by the Banking Division. Indeed, the only change from the allocation methodology used by the Banking Department in the previous state fiscal years is that the regulatory costs assessed to the mortgage banking industry will be divided among the entities in that group on a basis which includes income derived from secondary market and servicing activities. The Department believes that this is a more appropriate basis for allocating the costs associated with supervising mortgage banking entities.

5. Local Government Mandates

None.

6. Paperwork

The regulation does not change the process utilized by the Banking Division to determine and collect assessments.

7. Duplication

The regulation does not duplicate, overlap or conflict with any other regulations.

8. Alternatives

The purpose of the regulation is to formally set forth the process employed by the Department to carry out the statutory mandate to assess and collect the operating costs of the Banking Division from regulated entities. In light of Homestead, the Department believes that promulgating this formal regulation is necessary in order to allow it to continue to assess all of its regulated institutions in the manner deemed most appropriate by the Superintendent. Failing to formalize the Banking Division's allocation methodology would potentially leave the assessment process open to further judicial challenges.

9. Federal Standards

Not applicable.

10. Compliance Schedule

The emergency regulations are effective immediately. Regulated institutions will be expected to comply with the regulation for the fiscal year beginning on April 1, 2011 and thereafter.

Regulatory Flexibility Analysis

1. Effect of the Rule:

The regulation does not have any impact on local governments.

The regulation simply codifies the methodology used by the Banking Division of the Department of Financial Services (the "Department") to assess all entities regulated by it, including those which are small businesses. The regulation does not increase the total costs assessed to the regulated industries or alter the allocation of regulatory costs between the various industries regulated by the Banking Division.

Indeed, the only change from the allocation methodology used by the Banking Department in the previous state fiscal years is that the regulatory costs assessed to the mortgage banking industry will be divided among the entities in that group on a basis which includes income derived from secondary market and servicing activities. The Department believes that this is a more appropriate basis for allocating the costs associated with

supervising mortgage banking entities. It is expected that the effect of this change will be that larger members of the mortgage banking industry will pay an increased proportion of the total cost of regulating that industry, while the relative assessments paid by smaller industry members will be reduced.

2. Compliance Requirements:

The regulation does not change existing compliance requirements. Both Section 17 of the Banking Law and Section 206 of the Financial Services Law provide that all expenses (compensation, lease costs and other overhead) of the Department in connection with the regulation and supervision of any person or entity licensed, registered, incorporated or otherwise formed pursuant to the Banking Law are to be charged to, and paid by, the regulated institutions subject to the supervision of the Banking Division. Under both statutes, the Superintendent is authorized to assess regulated institutions in the Banking Division in such proportions as the Superintendent shall deem just and reasonable.

3. Professional Services:

None.

4. Compliance Costs:

All regulated institutions are currently subject to assessment by the Banking Division. The regulation simply formalizes the Banking Division's assessment methodology. It makes only one change from the allocation methodology used by the Banking Department in the previous state fiscal years. That change affects only one of the industry groups regulated by the Banking Division. Regulatory costs assessed to the mortgage banking industry are now divided among the entities in that group on a basis which includes income derived from secondary market and servicing activities. Even within the one industry group affected by the change, additional compliance costs, if any, are expected to be minimal.

5. Economic and Technological Feasibility:

All regulated institutions are currently subject to the Banking Division's assessment requirements. The formalization of the Banking Division's assessment methodology in a regulation will not impose any additional economic or technological burden on regulated entities which are small businesses.

6. Minimizing Adverse Impacts:

Even within the mortgage banking industry, which is the one industry group affected by the change in assessment methodology, the change will not affect the total amount of the assessment. Indeed, it is anticipated that this change may slightly reduce the proportion of mortgage banking industry assessments that is paid by entities that are small businesses.

7. Small Business and Local Government Participation:

This regulation does not impact local governments.

This regulation simply codifies the methodology which the Banking Division uses for determining the just and reasonable proportion of the Banking Division's costs to be charged to and paid by each regulated institution, including regulated institutions which are small businesses. The overall methodology was adopted in 2005 after extensive discussion with regulated entities and industry associations representing groups of regulated institutions, including those that are small businesses.

Thereafter, the Banking Department applied assessments against all entities subject to its regulation. In addition, for fiscal 2010, the Banking Department changed its overall methodology slightly with respect to assessments against the mortgage banking industry to include income derived from secondary market and servicing activities. Litigation was commenced challenging this latter change, and in a recent decision, In the Matter of Homestead Funding Corporation v. State of New York Banking Department et al., 944 N.Y.S. 2d 649 (2012), the court determined that the Department should adopt a change to its assessment methodology for mortgage bankers through a formal assessment rule promulgated pursuant to the requirements of the State Administrative Procedures Act. The challenged change in methodology had the effect of increasing the proportion of assessments against the mortgage banking industry paid by its larger members, while reducing the assessments paid by smaller participants, including those which are small businesses.

Rural Area Flexibility Analysis

Types and Estimated Numbers. There are entities regulated by the New York State Department of Financial Services (formerly the Banking Department) located in all areas of the State, including rural areas. However, this rule simply codifies the methodology currently used by the Department to assess all entities regulated by it. The regulation does not alter that methodology, and thus it does not change the cost of assessments on regulated entities, including regulated entities located in rural areas.

Compliance Requirements. The regulation would not change the current compliance requirements associated with the assessment process.

Costs. While the regulation formalizes the assessment process, it does not change the amounts assessed to regulated entities, including those located in rural areas.

Minimizing Adverse Impacts. The regulation does not increase the total amount assessed to regulated entities by the Department. It simply codifies the methodology which the Superintendent has chosen for determining the just and reasonable proportion of the Department's costs to be charged to and paid by each regulated institution.

Rural Area Participation. This rule simply codifies the methodology which the Department currently uses for determining the just and reasonable proportion of the Department's costs to be charged to and paid by each regulated institution, including regulated institutions located in rural areas. The overall methodology was adopted in 2005 after extensive discussion with regulated entities and industry associations representing groups of regulated institutions, including those located in rural areas. It followed the loss of several major banking institutions that had paid significant portions of the former Banking Department's assessments.

Thereafter, the Department applied assessments against all entities subject to its regulation. In addition, for fiscal 2010, the Department changed this overall methodology slightly with respect to assessments against the mortgage banking industry to include income derived from secondary market income and servicing income. This latter change was challenged by a mortgage banker, and in early May, the Appellate Division determined that the latter change should have been made in conformity with the State Administrative Procedures Act. The challenged part of the methodology had the effect of increasing the proportion of assessments against the mortgage banking industry paid by its larger members, while reducing the assessments paid by smaller participants.

Job Impact Statement

The regulation is not expected to have an adverse effect on employment.

All institutions regulated by the Banking Division (the "Banking Division") of the Department of Financial Services are currently subject to assessment by the Department. The regulation simply formalizes the assessment methodology used by the Banking Division. It makes only one change from the allocation methodology used by the former Banking Department in the previous state fiscal years.

That change affects only one of the industry groups regulated by the Banking Division. It somewhat alters the way in which the Banking Division's costs of regulating mortgage banking industry are allocated among entities within that industry. In any case, the total amount assessed against regulated entities within that industry will remain the same.

Office of General Services

NOTICE OF ADOPTION

Procurement of New York State Food Products

I.D. No. GNS-36-14-00001-A

Filing No. 539

Filing Date: 2015-06-22

Effective Date: 2015-07-08

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

Action taken: Amendment of section 250.2 of Title 9 NYCRR.

Statutory authority: Executive Law, section 200; and State Finance Law, section 165(4)(d)

Subject: Procurement of New York State food products.

Purpose: To provide guidance to State Agencies as to how they procure food.

Text of final rule: § 250.2 General provisions for purchasing commodities.

(d) All solicitations for the purchase of food products shall include a list developed by the commissioner of agriculture and markets of food products that are grown, produced or harvested in New York State or that were processed in facilities located in New York State. All solicitations shall also include a notice about whether such New York State food products are available in sufficient quantities for competitive purchasing. Guidelines for assisting in increasing agencies' use and purchase of New York food products and established by the commissioner and commissioner of agriculture and markets shall be located on the Office of General Services' website.

Final rule as compared with last published rule: Nonsubstantive changes were made in section 250.2(d).

Text of rule and any required statements and analyses may be obtained from: Paula B. Hanlon, Esq., New York State Office of General Services, 41st Floor, Corning Tower, Empire State Plaza, Albany, New York 12242, (518) 474-5607, email: RegsReceipt@ogs.ny.gov

Revised Job Impact Statement

The Office of General Services projects no substantial adverse impact on jobs or employment opportunities in the State of New York as a result of the amendment of this rule. The amendment simply amends 9 NYCRR 250.2 to add a new subsection (d) requiring that all solicitations for the purchase of food products include a list developed by the commissioner of agriculture and markets, of food products that are grown, produced or harvested in New York State or that were processed in facilities located in New York State. Additionally, the amendment requires that guidelines be developed to assist in increasing agencies' use and purchase of New York food products. There will be no change in the number of agency employees as a result of these regulations. Nothing in the proposed regulations will increase or decrease the number of jobs in New York State, have an adverse impact on specific regions in New York State or negatively impact jobs in New York State.

Assessment of Public Comment

The only comments received were joint comments from New York State Assemblymen Englebright, Magee and Zebrowski.

Comment: The Assemblymen proposed that OGS make certain revisions to add references in Part 250.2 that were present in Part 250.5. This would maintain consistency.

Response: Corrective changes are being made to these references, which will be put into place with an additional consensus rulemaking.

Comment: The Assemblymen proposed that OGS address an interpretation issue in the rule which could be misinterpreted in execution of the rule.

Response: A revision was made to remove the phrase "if applicable" and the sentence was changed to conform with the statute.

Department of Labor

NOTICE OF ADOPTION

Repeal and Removal of Fees

I.D. No. LAB-17-15-00013-A
Filing No. 544
Filing Date: 2015-06-23
Effective Date: 2015-07-08

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

Action taken: Repeal of sections 82.2, 82.5 and 82.7; amendment of sections 59-1.10, 59-1.12, 60-1.5, 60-1.6, 60-1.17, 82.4 and 82.6 of 12 NYCRR.

Statutory authority: Labor Law, sections 21(11) and 204(3); Workers Compensation Law, section 134(5)

Subject: Repeal and removal of fees.

Purpose: To repeal and remove certain safety and health fees without amending or repealing the safety and health protections.

Text or summary was published in the April 29, 2015 issue of the Register, I.D. No. LAB-17-15-00013-EP.

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

Text of rule and any required statements and analyses may be obtained from: Michael Paglialonga, New York State Department of Labor, State Office Campus, Building 12, Room 590, Albany, NY 12240, (518) 485-2191, email: Regulations@labor.ny.gov

Initial Review of Rule

As a rule that does not require a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2020, which is no later than the 5th year after the year in which this rule is being adopted.

Assessment of Public Comment

The agency received no public comment.

Department of Motor Vehicles

NOTICE OF ADOPTION

Designation of Authorized Emergency Vehicles for Certain State Leaders

I.D. No. MTV-17-15-00012-A
Filing No. 546
Filing Date: 2015-06-24
Effective Date: 2015-07-08

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

Action taken: Amendment of section 101.5 of Title 15 NYCRR.

Statutory authority: Vehicle and Traffic Law, sections 215(a) and 218

Subject: Designation of authorized emergency vehicles for certain State leaders.

Purpose: Designates motor vehicles owned or operated by certain State leaders as authorized emergency vehicles.

Text or summary was published in the April 29, 2015 issue of the Register, I.D. No. MTV-17-15-00012-EP.

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. 526, Albany, NY 12228, (518) 474-0871, email: heidi.bazicki@dmv.ny.gov

Assessment of Public Comment

The Department of Motor Vehicles received 16 comments. We express our appreciation to those who submitted these comments.

Comment: The Department received several comments from former and current first responders and from other citizens who expressed concern that the Governor and the heads of the Division of Homeland Security & Emergency Services (DHSES), Department of Transportation (DOT), and Department of Environmental Conservation (DEC), the Secretary to the Governor, Director of State Operations, and Lieutenant Governor do not have training to operate an authorized emergency vehicle. A former firefighter wrote that not only do operators of authorized emergency vehicles need training, but they need to use such training frequently or else they "will forget the training and make mistakes."

Response: On the occasions that the aforementioned individuals use an authorized emergency vehicle, they will exercise due care in the operation of such vehicles as is required by all operators of such vehicles. It is anticipated that the use of authorized emergency vehicles will be used only in the most dire circumstances, when the public will benefit from an immediate response from the Governor and other State officials.

Comment: Most of the persons submitting comments stated that the State's political leaders should not operate authorized emergency vehicles. Several commenters noted that the Governor is escorted by law enforcement officials to the scene of an emergency and, therefore, does not need access to such a vehicle. Several commenters noted that this rule was a "power grab" and "political posturing." Others noted that there is no reason for these State officials to race to the scene of a disaster; that is the job for first responders.

Response: The Department recognizes the excellent and courageous work performed every day by first responders. The proposed rule in no way intends to supplant or interfere with their invaluable work. The purpose of the rule is to save State resources by minimizing the need for a law enforcement escort to the scene of an emergency, by allowing certain State officials to operate authorized emergency vehicles. It is often critical for certain State officials to be at the scene of an emergency in its early stages, so the official may assess the damage in order to determine what resources are needed, and to mobilize State resources in an efficient and timely manner for the public's benefit.

Public Service Commission

NOTICE OF ADOPTION

Authorizing NYSERDA to Reallocate $11 Million of SBC3 Funds to the EEPS EmPower Gas Program

I.D. No. PSC-41-14-00010-A
Filing Date: 2015-06-19
Effective Date: 2015-06-19

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

Action taken: On 6/17/15, the PSC adopted an order authorizing New York State Energy Research and Development Authority (NYSERDA) to reallocate $11 million of System Benefits Charge (SBC3) funds to the Energy Efficiency Portfolio Standard (EEPS) EmPower Gas Program.

Statutory authority: Public Service Law, sections 4(1), 5(2) and 66(1)

Subject: Authorizing NYSERDA to reallocate $11 million of SBC3 funds to the EEPS EmPower Gas Program.

Purpose: To authorize NYSERDA to reallocate $11 million of SBC3 funds to the EEPS EmPower Gas Program.

Substance of final rule: The Commission, on June 17, 2015, adopted an order authorizing New York State Research and Development Authority (NYSERDA) to reallocate $11 million of uncommitted System Benefits Charge (SBC3) funds to fully satisfy the gas budget previously authorized for the EmPower New York program (EmPower), subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Elaine Agresta, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2660, email: elaine.agresta@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(14-M-0094SA1)

NOTICE OF ADOPTION

Allowing CB Frontier LLC to Submeter Electricity at 200 East 39th Street, New York, NY

I.D. No. PSC-45-14-00004-A
Filing Date: 2015-06-22
Effective Date: 2015-06-22

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

Action taken: On 6/17/15, the PSC adopted an order allowing CB Frontier LLC to submeter electricity at 200 East 39th Street, New York, NY.

Statutory authority: Public Service Law, sections 2, 4(1), 30, 32-48, 52, 53, 65(1), 66(1), (2), (3), (4), (12) and (14)

Subject: Allowing CB Frontier LLC to submeter electricity at 200 East 39th Street, New York, NY.

Purpose: To allow CB Frontier LLC to submeter electricity at 200 East 39th Street, New York, NY.

Substance of final rule: The Commission, on June 17, 2015, adopted an order authorizing CB Frontier LLC to submeter electricity at 200 East 39th Street, New York, NY in the Territory of Consolidated Edison Company of New York, Inc. subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Elaine Agresta, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2660, email: elaine.agresta@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(14-E-0452SA1)

NOTICE OF ADOPTION

Major Gas Rate Increase

I.D. No. PSC-48-14-00010-A
Filing Date: 2015-06-17
Effective Date: 2015-06-17

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

Action taken: On 6/17/15, the PSC adopted an order approving the terms of a joint proposal dated April 22, 2015, that establishes a three-year rate plan for Central Hudson Gas and Electric Corporation.

Statutory authority: Public Service Law, sections 5, 65 and 66

Subject: Major gas rate increase.

Purpose: To approve a three-year rate plan for Central Hudson Gas and Electric Corporation.

Substance of final rule: The Commission, on June 17, 2015, adopted an order approving the terms of a joint proposal by Central Hudson Gas and Electric Corporation (Central Hudson), Department of Public Service Trial Staff, and four other parties, dated April 22, 2015, that establishes a three-year rate plan for Central Hudson, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Elaine Agresta, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2660, email: elaine.agresta@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(14-G-0319SA1)

NOTICE OF ADOPTION

Major Electric Rate Increase

I.D. No. PSC-48-14-00011-A
Filing Date: 2015-06-17
Effective Date: 2015-06-17

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

Action taken: On 6/17/15, the PSC adopted an order approving the terms of a joint proposal dated April 22, 2015, that establishes a three-year rate plan for Central Hudson Gas and Electric Corporation.

Statutory authority: Public Service Law, sections 5, 65 and 66

Subject: Major electric rate increase.

Purpose: To approve a three-year rate plan for Central Hudson Gas and Electric Corporation.

Substance of final rule: The Commission, on June 17, 2015, adopted an order approving the terms of a joint proposal by Central Hudson Gas and Electric Corporation (Central Hudson), Department of Public Service Trial Staff, and four other parties, dated April 22, 2015, that establishes a three-year rate plan for Central Hudson, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Elaine Agresta, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2660, email: elaine.agresta@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(14-E-0318SA1)

NOTICE OF ADOPTION

Denying NYSEG's Request for Waivers of Certain Commission Regulations in Connection with a Licensing Proceeding

I.D. No. PSC-01-15-00015-A
Filing Date: 2015-06-22
Effective Date: 2015-06-22

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

Action taken: On 6/17/15, the PSC adopted an order denying New York State Electric & Gas Corporation's (NYSEG) request for waivers of certain Commission regulations in connection with a licensing proceeding.

Statutory authority: Public Service Law, sections 4(1) and 66(1)

Subject: Denying NYSEG's request for waivers of certain Commission regulations in connection with a licensing proceeding.

Purpose: To deny NYSEG's request for waivers of certain Commission regulations in connection with a licensing proceeding.

Substance of final rule: The Commission, on June 17, 2015, adopted an order denying New York State Electric & Gas Corporation's (NYSEG) request for waivers of certain Commission regulations in connection with a licensing proceeding, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Elaine Agresta, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2660, email: elaine.agresta@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(14-G-0197SA1)

NOTICE OF ADOPTION

Directing NYSEG to Start Construction of Gas Distribution and Service Lines in Clinton County

I.D. No. PSC-04-15-00009-A
Filing Date: 2015-06-22
Effective Date: 2015-06-22

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

Action taken: On 6/17/15, the PSC adopted an order directing New York State Electric & Gas Corporation (NYSEG) to start construction of gas distribution and service lines in Clinton County.

Statutory authority: Public Service Law, sections 4(1), 5(1)(b), 66(1) and (2)

Subject: Directing NYSEG to start construction of gas distribution and service lines in Clinton County.

Purpose: To direct NYSEG to start construction of gas distribution and service lines in Clinton County.

Substance of final rule: The Commission, on June 17, 2015, adopted an order approving New York State Electric & Gas Corporation's (NYSEG) Petition to amend its Certificate of Public Convenience and Necessity for gas franchises in the Towns of Dannemora, Peru, Saranac and Champlain, the Villages of Dannemora and Champlain, and in the City of Plattsburgh, and directed NYSEG to begin construction of gas service lines in 2015 to customers who have already requested service in Clinton County, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Elaine Agresta, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2660, email: elaine.agresta@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(13-G-0092SA1)

NOTICE OF ADOPTION

Approving Amendments to PSC 4—Gas to Revise Section 6.6—Late Payment Charge

I.D. No. PSC-09-15-00005-A
Filing Date: 2015-06-17
Effective Date: 2015-06-17

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

Action taken: On 6/17/15, the PSC adopted an order approving a tariff filing by Orange and Rockland Utilities, Inc. (O&R) to revise Section 6.6 — Late Payment Charge, contained in P.S.C. No. 4 — Gas.

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

Subject: Approving amendments to PSC 4—Gas to revise section 6.6 — Late Payment Charge.

Purpose: To approve amendments to PSC 4—Gas to revise section 6.6 — Late Payment Charge.

Substance of final rule: The Commission, on June 17, 2015, the PSC adopted an order approving a tariff filing by Orange and Rockland Utilities, Inc. (O&R) to revise Section 6.6 - Late Payment Charge, contained in P.S.C. No. 4 – Gas, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Elaine Agresta, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2660, email: elaine.agresta@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(15-G-0093SA1)

NOTICE OF ADOPTION

Approving Amendments to PSC 3—Electricity to Revise Section 7.6 — Late Payment Charge

I.D. No. PSC-09-15-00007-A
Filing Date: 2015-06-17
Effective Date: 2015-06-17

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

Action taken: On 6/17/15, the PSC adopted an order approving a tariff filing by Orange and Rockland Utilities, Inc. (O&R) to revise Section 7.6 — Late Payment Charge, contained in P.S.C. No. 3 — Electricity.

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

Subject: Approving amendments to PSC 3—Electricity to revise section 7.6 — Late Payment Charge.

Purpose: To approve amendments to PSC 3—Electricity to revise section 7.6 — Late Payment Charge.

Substance of final rule: The Commission, on June 17, 2015, adopted an order approving a tariff filing by Orange and Rockland Utilities, Inc. (O&R) to revise Section 7.6 — Late Payment Charge, contained in P.S.C. No. 3 — Electricity, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Elaine Agresta, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2660, email: elaine.agresta@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(15-E-0092SA1)

NOTICE OF ADOPTION

Allowing Queens Fresh Meadow LLC to Terminate Submetered Electric Service to Residents for Nonpayment

I.D. No. PSC-10-15-00006-A
Filing Date: 2015-06-22
Effective Date: 2015-06-22

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

Action taken: On 6/17/15, the PSC adopted an order amending its prior order and allowing Queens Fresh Meadow LLC to terminate submetered electric service to residents for nonpayment of electric charges.

Statutory authority: Public Service Law, sections 2, 4(1), 30, 32-48, 52, 53, 65(1), 66(1), (2), (3), (4), (12) and (14)

Subject: Allowing Queens Fresh Meadow LLC to terminate submetered electric service to residents for nonpayment.

Purpose: To allow Queens Fresh Meadow LLC to terminate submetered electric service to residents for non payment.

Substance of final rule: The Commission, on July 17, 2015, adopted an order amending its March 22, 2004 order to allow Queens Fresh Meadow LLC to terminate submetered electric service to residents for nonpayment of electric service to residents for nonpayment of electric charges, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Elaine Agresta, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2660, email: elaine.agresta@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(03-E-0889SA1)

NOTICE OF ADOPTION

Authorizing the Implementation of Gas Energy Efficiency Programs Beginning in 2016

I.D. No. PSC-11-15-00021-A
Filing Date: 2015-06-19
Effective Date: 2015-06-19

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

Action taken: On 6/17/15, the PSC adopted an order authorizing the implementation of gas energy efficiency programs beginning in 2016.

Statutory authority: Public Service Law, sections 4(1), 5(2) and 66(1)

Subject: Authorizing the implementation of gas energy efficiency programs beginning in 2016.

Purpose: To authorize the implementation of gas energy efficiency programs beginning in 2016.

Substance of final rule: The Commission, on June 17, 2015, adopted an order authorizing the implementation of gas energy efficiency programs beginning in 2016 for Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., KeySpan Gas East Corporation, The Brooklyn Union Gas Company, National Fuel Gas Distribution Corporation, New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation d/b/a National Grid, Orange and Rockland Utilities, Inc., and Rochester Gas and Electric Corporation, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Elaine Agresta, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2660, email: elaine.agresta@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(07-M-0548SA81)

NOTICE OF ADOPTION

Allowing Renaissance Corporation to Convert Student Housing from Direct Metering to Master Metering with Submetering

I.D. No. PSC-11-15-00023-A
Filing Date: 2015-06-17
Effective Date: 2015-06-17

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

Action taken: On 6/17/15, the PSC adopted an order allowing Renaissance Corporation of Albany to convert a 148 unit student housing building from direct metering to master metering with submetering.

Statutory authority: Public Service Law, sections 2, 4(1), 30, 32-48, 52, 53, 65(1), 66(1), (2), (3), (4), (12) and (14)

Subject: Allowing Renaissance Corporation to convert student housing from direct metering to master metering with submetering.

Purpose: To allow Renaissance Corporation to convert student housing from direct metering to master metering with submetering.

Substance of final rule: The Commission, on June 17, 2015, adopted an order allowing Renaissance Corporation of Albany to convert a 148 unit student housing building from direct metering to master metering with submetering, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Elaine Agresta, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2660, email: elaine.agresta@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(14-E-0217SA2)

NOTICE OF ADOPTION

Approving East River to Refinance Up to a Maximum Amount of $28.5 Million

I.D. No. PSC-14-15-00011-A
Filing Date: 2015-06-17
Effective Date: 2015-06-17

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

Action taken: On 6/17/15, the PSC adopted an order approving a petition by East River Housing Corporation (East River) to refinance up to a maximum amount of $28.5 million.

Statutory authority: Public Service Law, section 82

Subject: Approving East River to refinance up to a maximum amount of $28.5 million.

Purpose: To approve East River to refinance up to a maximum amount of $28.5 million.

Substance of final rule: The Commission, on June 17, 2015, adopted an order approving a petition by East River Housing Corporation for refinancing of its first mortgage in the amount of $23.5 million and authorization to obtain a line of credit up to $5 million, for a maximum amount of $28.5 million, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Elaine Agresta, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2660, email: elaine.agresta@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(15-S-0150SA1)

NOTICE OF ADOPTION

Commercial System Relief Program, Direct Load Control Program

I.D. No. PSC-15-15-00009-A
Filing Date: 2015-06-18
Effective Date: 2015-06-18

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

Action taken: On 6/17/15, the PSC adopted an order approving a tariff filing by Central Hudson Gas and Electric Corporation to effectuate distribution-level Demand Response Programs in compliance with Commission order issued December 15, 2014 in Case 14-E-0423.

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

Subject: Commercial System Relief Program, Direct Load Control Program.

Purpose: To establish the Commercial System Relief Program and Direct Load Control Program.

Substance of final rule: The Commission, on June 17, 2015, adopted an order approving dynamic load management filings, with modifications, and directed Central Hudson Gas and Electric Corporation to file tariff amendments, with an effective date of July 1, 2015, to effectuate the programs, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Elaine Agresta, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2660, email: elaine.agresta@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(15-E-0186SA1)

NOTICE OF ADOPTION

Distribution Load Relief Program, Commercial System Load Relief Program, and Direct Load Control Program

I.D. No. PSC-15-15-00010-A
Filing Date: 2015-06-18
Effective Date: 2015-06-18

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

Action taken: On 6/17/15, the PSC adopted an order approving a tariff filing by New York State Electric & Gas Corporation to effectuate distribution-level Demand Response Programs in compliance with Commission order issued December 15, 2014 in Case 14-E-0423.

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

Subject: Distribution Load Relief Program, Commercial System Load Relief Program, and Direct Load Control Program.

Purpose: To establish the Distribution Load Relief Program, Commercial System Load Relief Program, and Direct Load Control Program.

Substance of final rule: The Commission, on June 17, 2015, adopted an order approving dynamic load management filings, with modifications, and directed New York State Electric and Gas Corporation to file tariff amendments, with an effective date of July 1, 2015, to effectuate the programs, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Elaine Agresta, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2660, email: elaine.agresta@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(15-E-0188SA1)

NOTICE OF ADOPTION

Distribution Load Relief Program, Peak Shaving Load Relief Program, and Direct Load Control Program

I.D. No. PSC-15-15-00011-A
Filing Date: 2015-06-18
Effective Date: 2015-06-18

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

Action taken: On 6/17/15, the PSC adopted an order approving a tariff filing by Niagara Mohawk Power Corporation d/b/a National Grid to effectuate distribution-level Demand Response Programs in compliance with Commission order issued December 15, 2014 in Case 14-E-0423.

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

Subject: Distribution Load Relief Program, Peak Shaving Load Relief Program, and Direct Load Control Program.

Purpose: To establish the Distribution Load Relief Program, Peak Shaving Load Relief Program, and Direct Load Control Program.

Substance of final rule: The Commission, on June 17, 2015, adopted an order approving dynamic load management filings, with modifications, and directed Niagara Mohawk Power Corporation d/b/a National Grid to file tariff amendments, with an effective date of July 1, 2015, to effectuate the programs, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Elaine Agresta, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2660, email: elaine.agresta@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(15-E-0189SA1)

NOTICE OF ADOPTION

Distribution Load Relief Program, Commercial System Relief Program, and Direct Load Control Program

I.D. No. PSC-15-15-00012-A
Filing Date: 2015-06-18
Effective Date: 2015-06-18

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

Action taken: On 6/17/15, the PSC adopted an order approving a tariff filing by Orange and Rockland Utilities, Inc. to effectuate distribution-level Demand Response Programs in compliance with Commission order issued December 15, 2014 in Case 14-E-0423.

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

Subject: Distribution Load Relief Program, Commercial System Relief Program, and Direct Load Control Program.

Purpose: To establish the Distribution Load Relief Program, Commercial System Relief Program, and Direct Load Control Program.

Substance of final rule: The Commission, on June 17, 2015, adopted an order approving dynamic load management filings, with modifications, and directed Orange and Rockland Utilities, Inc. to file tariff amendments, with an effective date of July 1, 2015, to effectuate the programs, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Elaine Agresta, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2660, email: elaine.agresta@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(15-E-0191SA1)

NOTICE OF ADOPTION

Distribution Load Relief Program, Commercial System Relief Program, and Direct Load Control Program

I.D. No. PSC-15-15-00013-A

Filing Date: 2015-06-18

Effective Date: 2015-06-18

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

Action taken: On 6/17/15, the PSC adopted an order approving a tariff filing by Rochester Gas and Electric Corporation to effectuate distribution-level Demand Response Programs in compliance with Commission order issued December 15, 2014 in Case 14-E-0423.

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

Subject: Distribution Load Relief Program, Commercial System Relief Program, and Direct Load Control Program.

Purpose: To establish the Distribution Load Relief Program, Commercial System Relief Program, and Direct Load Control Program.

Substance of final rule: The Commission, on June 17, 2015, adopted an order approving dynamic load management filings, with modifications, and directed Rochester Gas and Electric Corporation to file tariff amendments, with an effective date of July 1, 2015, to effectuate the programs, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Elaine Agresta, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2660, email: elaine.agresta@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(15-E-0190SA1)

NOTICE OF ADOPTION

Approving an Extension to Con Ed's Electric Rate Plan for One-Year Starting January 1, 2016

I.D. No. PSC-16-15-00004-A

Filing Date: 2015-06-19

Effective Date: 2015-06-19

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

Action taken: On 6/17/15, the PSC adopted an order approving an extension of Consolidated Edison Company of New York, Inc.'s (Con Ed) Electric Rate Plan for a one-year period starting January 1, 2016.

Statutory authority: Public Service Law, sections 5, 65 and 66

Subject: Approving an extension to Con Ed's Electric Rate Plan for one-year starting January 1, 2016.

Purpose: To approve an extension to Con Ed's Electric Rate Plan for one-year starting January 1, 2016.

Substance of final rule: The Commission, on June 17, 2015, adopted an order approving a joint proposal that extends Consolidated Edison Company of New York, Inc.'s (Con Ed) Electric Rate Plan for a one-year period starting January 1, 2016, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Elaine Agresta, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2660, email: elaine.agresta@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(13-E-0030SA8)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Repowering Options for the Cayuga Generating Facility Located in Lansing, New York, and Other Alternatives

I.D. No. PSC-27-15-00011-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 adopt, modify, or reject, in whole or in part, the proposals filed by Cayuga Operating Company LLC, and New York State Electric & Gas Corporation on February 6, 2015.

Statutory authority: Public Service Law, sections 4(1), 5(1)(b), (2), 65(1), 66(1), (2), (4), (5), (9) and (12)

Subject: Repowering options for the Cayuga Generating Facility located in Lansing, New York, and other alternatives.

Purpose: To establish whether utility plans should include repowering the Cayuga Generating Facility, or other alternatives.

Substance of proposed rule: The Public Service Commission (Commission) is considering the Revised Repowering Proposal filed by Cayuga Operating Company LLC (Cayuga) on February 6, 2015, concerning the repowering of the Cayuga Generating Facility located in Lansing, New York. The Commission is also considering the recommendations filed on February 6, 2015, by New York State Electric & Gas Corporation (NYSEG) concerning the repowering of the Cayuga Generating Facility and NYSEG's transmission reinforcement projects. The Commission is considering whether to adopt, modify, or reject, in whole or in part, the proposals filed by Cayuga and NYSEG on February 6, 2015, and may address other related matters, including, but not limited to, the Joint Proposal filed on June 22, 2015 in Case 13-T-0235, concerning planned transmission projects.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website http://www.dps.ny.gov/f96dir.htm. For questions, contact: John Pitucci, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: john.pitucci@dps.ny.gov

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

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

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

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

(12-E-0577SP5)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Consideration of The Brooklyn Union Gas Company's Petition Seeking Authority to Issue Long-Term Debt Up to $2.22 Billion

I.D. No. PSC-27-15-00012-P

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

Proposed Action: The Commission is considering the petition of The Brooklyn Union Gas Company d/b/a National Grid NY for authority to issue long-term debt up to $2.22 billion of new long-term debt to finance construction, refinance debt and for general corporate purposes.

Statutory authority: Public Service Law, section 69

Subject: Consideration of The Brooklyn Union Gas Company's petition seeking authority to issue long-term debt up to $2.22 billion.

Purpose: To consider the petition of The Brooklyn Gas Company seeking authority to issue long-term debt up to $2.22 billion.

Substance of proposed rule: The Public Service Commission is considering whether to approve, deny, or modify, in whole or in part, a petition by The Brooklyn Union Gas Company d/b/a National Grid NY to issue long-term debt up to $2.22 billion. The proposed action would allow The Brooklyn Union Gas Company to fund construction expenditures,

refinance maturing and/or redeemed issues of debt, refinance callable debt, refinance short-term debt with long-term debt, finance the capital needs of Brooklyn Union Gas Company and for other general corporate purposes. In considering the petition, the Commission may 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-G-0309SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Waiver of PSC Regulations, 16 NYCRR Section 86.3(a)(2) and (b)(2)

I.D. No. PSC-27-15-00013-P

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

Proposed Action: The Commission is considering a waiver of certain provisions of 16 NYCRR regarding applications under PSL Article VII for Certificates of Environmental Compatibility and Public Need, requested by Niagara Mohawk Power Corporation d/b/a National Grid.

Statutory authority: Public Service Law, sections 4 and 122

Subject: Waiver of PSC regulations, 16 NYCRR section 86.3(a)(2) and (b)(2).

Purpose: To consider a waiver of certain regulations relating to the content of an application for transmission line siting.

Substance of proposed rule: The Public Service Commission is considering a motion by Niagara Mohawk Power Corporation d/b/a National Grid (Niagara Mohawk) for a waiver or partial waiver of certain requirements for the content of its application, pursuant to Public Service Law Article VII, with respect to the proposed relocation and selective reconductoring and reconstruction of certain of Niagara Mohawk's existing 115 kilovolt (''kV'') electric transmission lines located in Onondaga County, New York. The Niagara Mohawk application was filed on May 29, 2015 and has been assigned case number 15-T-0305. The application addresses work that Niagara Mohawk intends to do on its Clay to DeWitt Line 3 and on its Clay to Teall Line 10. Niagara Mohawk's motion for waivers was filed with this application. Specifically, this motion seeks waivers of 16 NYCRR sections 86.3(a)(2) and 86.3(b)(2), relating to maps and to aerial photographs. The Commission may grant, deny, or modify the relief requested or provide an alternate resolution proposed in responses to the motion or otherwise related to the motion.

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-T-0305SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Authorization for NYAW to Accrue Interest on Internal Reserve Debit Balances

I.D. No. PSC-27-15-00014-P

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

Proposed Action: The PSC is considering a petition filed by New York American Water Company, Inc. (NYAW) seeking authority to accrue interest on the debit balances of its internal reserves for Pension and Other Post Employment Benefits (OPEB) effective Jan. 1, 2015.

Statutory authority: Public Service Law, section 89-c(7)

Subject: Authorization for NYAW to accrue interest on internal reserve debit balances.

Purpose: To allow NYAW to accrue interest on internal reserve debit balances.

Substance of proposed rule: New York American Water Company (NYAW or Company) has requested permission to accrue interest on the debit balances of its internal reserves for Pension and Other Post Employment Benefits (OPEB) of the former New York Water Service Corporation (NYWSC) effective January 1, 2015. If the Commission approves this request, there is a reasonable assurance the company will be allowed to recover these costs. The Commission may adopt, reject or modify, in whole or in part, NYAW's request, and may also consider any 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-W-0325SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Consideration of KeySpan Gas East Corporation's Petition Seeking Authority to Issue Long-Term Debt Up to $1.35 Billion

I.D. No. PSC-27-15-00015-P

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

Proposed Action: The Commission is considering the petition of KeySpan Gas East Corporation d/b/a National Grid authority to issue long-term debt up to $1.35 billion to fund construction expenditures projects, refinance debt and for other general corporate purposes.

Statutory authority: Public Service Law, section 69

Subject: Consideration of KeySpan Gas East Corporation's petition seeking authority to issue long-term debt up to $1.35 billion.

Purpose: To consider the petition of KeySpan Gas East Corporation seeking authority to issue long-term debt up to $1.35 billion.

Substance of proposed rule: The Public Service Commission is considering whether to approve, deny, or modify, in whole or in part, a petition by KeySpan Gas East Corporation d/b/a National Grid to issue long-term debt up to $1.35 billion. The proposed action would allow KeySpan Gas East Corporation to fund construction projects, refinance maturing and/or redeemed issues of debt, refinance callable debt, refinance short-term debt with long-term debt, finance the capital needs of KeySpan Gas East Corporation and for other general corporate purposes. In considering the petition, the Commission may 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-G-0308SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Initial Tariff Schedule, P.S.C. No. 1—Water and Waiver of Rate Setting Authority

I.D. No. PSC-27-15-00016-P

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

Proposed Action: The Public Service Commission is considering a tariff filing by Bloomingburg Water Transportation Company, Inc. for approval of its Initial Tariff Schedule, P.S.C. No. 1—Water, effective November 1, 2015.

Statutory authority: Public Service Law, sections 4(1), 5(1)(f), (4), 89-c(1), (10), 89-e(2) and 89-h

Subject: Initial Tariff Schedule, P.S.C. No. 1—Water and waiver of rate setting authority.

Purpose: Approval of Initial Tariff Schedule, P.S.C. No. 1—Water and waiver of rate setting authority.

Substance of proposed rule: The Commission is considering whether to approve, modify or reject, in whole or in part, an electronic Initial Tariff Schedule, P.S.C. No. 1—Water, filed by Bloomingburg Water Transportation Company, Inc. (Bloomingburg or the Company) for water service in "The Villages of Chestnut Ridge" housing development in the Village of Bloomingburg and Town of Mamakating, Sullivan County. Because the Company's water plant and waterworks will be controlled by "The Villages of Chestnut Ridge Homeowners' Association, Inc." (Association) for the purpose of distributing water only to customers having an interest and voice in the Association's operation, Bloomingburg requests approval of its initial tariff schedule and exemption from the rate setting provisions of Public Service Law Section 5(4). The Association proposes an unmetered rate with operation and maintenance expenses divided equally among all Association members. The tariff defines when a bill will be delinquent and establishes a late payment charge. The restoration of service charge will be a rate agreed upon by the Association members and will appear on all written notices of discontinuation of service. Details of the filing are available on the Commission's Home Page on the World Wide Web (www.dps.ny.gov) located under Commission Documents. The proposed initial tariff schedule has an effective date of November 1, 2015. The Commission may consider any 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) 486-2600, 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-W-0363SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

To Issue Long-Term Indebtedness, Preferred Stock and Hybrid Securities and to Enter into Derivative Instruments

I.D. No. PSC-27-15-00017-P

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

Proposed Action: The Public Service Commission is considering a petition of Rochester Gas and Electric Corporation authorizing the issuance of approximately $628 million of long—term securities and to enter into derivative instruments.

Statutory authority: Public Service Law, section 69

Subject: To issue long-term indebtedness, preferred stock and hybrid securities and to enter into derivative instruments.

Purpose: To allow or disallow Rochester Gas and Electric Corporation to finance transactions for purposes authorized under Public Service Law, section 69.

Substance of proposed rule: The Commission is considering whether to approve or reject in whole or in part or modify a request sought in a petition filed by Rochester Gas and Electric Corporation authorizing the issuance of approximately $628 million of long-term indebtedness, preferred stock and hybrid securities and to enter into derivative instruments. In considering the Company's petition, the Commission may 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-0326SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Authorization of a Proposed Transfer of Certain Property Located on the Verplanck Peninsula to the Town of Cortlandt

I.D. No. PSC-27-15-00018-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, modify or reject, in whole or in part, a petition filed by Consolidated Edison Company of New York, Inc. to transfer certain real property located on the Verplanck Peninsula, in Cortlandt, New York.

Statutory authority: Public Service Law, section 70

Subject: Authorization of a proposed transfer of certain property located on the Verplanck Peninsula to the Town of Cortlandt.

Purpose: Whether to authorize the proposed transfer of certain property located on the Verplanck Peninsula to the Town of Cortlandt.

Substance of proposed rule: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition of Consolidated Edison Company of New York, Inc. (Con Edison) for authority to transfer to the Town of Verplanck certain non-utility real property, consisting of an aggregation of parcels totaling approximately 99 acres located on the Verplanck Peninsula in the Town of Verplanck.

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-0316SP1)

Office of Temporary and Disability Assistance

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Child Support Federal Incentive Payments

I.D. No. TDA-27-15-00002-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 347.16 of Title 18 NYCRR.

Statutory authority: Social Services Law, sections 20(3)(d), 34(3)(f), 111-a; 42 U.S.C., section 658a; 45 CFR, sections 302.55, 303.52, 305.2, 305.31 and 305.33

Subject: Child support federal incentive payments.

Purpose: To update State procedures to distribute federal child support incentives and allocate portions thereof to local districts.

Text of proposed rule: Section 347.16 of Title 18 of the NYCRR is amended to read as follows:

§ 347.16 Federal incentive payments.

(a) For purposes of this section, [ADC] *support* collections [means] *include* all [child] support collections retained in [ADC and foster care] cases *receiving child support services* from all sources: [(] within *a social services district* [county], from other New York State *social services districts* [counties]*,* and from other states, as well as [ADC and foster care] collections made in the reporting social services district and forwarded to other states. [Non-ADC collections means child support collections retained in non-ADC cases from all such sources, as well as non-ADC collections made in the reporting social services district and forwarded to other states.]

(b) *The* [Statewide] incentive payment[s] *made to a state in a federal fiscal year* [for ADC and non-ADC child support collections] will be [estimated] *determined* by *the* U.S. Department of Health and Human Services [(HHS)] based on statewide *performance* [effectiveness and efficiency] in each [area] *of the following five performance measures* of the child support enforcement program (*Title* IV-D) [, which shall be determined as follows]: *paternity establishment; support order establishment; current support payments; arrearage payments; and cost-effectiveness.*

[(1) ADC-statewide ratio of ADC collections to total IV-D administrative costs; and

(2) Non-ADC-statewide ratio of non-ADC collections to total IV-D administrative costs.

(c) The ADC and the non-ADC ratios of collections to administrative expenditures will be rounded to one decimal place and will result in statewide incentives based on the following chart:

Ratio of collections to total IV-D administrative costs	Percent of collection paid as an incentive
Less than 1.4 collected to 1.0 expended	6.0
At least 1.4 collected to 1.0 expended	6.5
At least 1.6 collected to 1.0 expended	7.0
At least 1.8 collected to 1.0 expended	7.5
At least 2.0 collected to 1.0 expended	8.0
At least 2.2 collected to 1.0 expended	8.5
At least 2.4 collected to 1.0 expended	9.0
At least 2.6 collected to 1.0 expended	9.5
At least 2.8 collected to 1.0 expended	10.0

These rates will be applied to estimated collections as determined by HHS.]

(c) [(d)] *States receive federal incentives based upon their respective percentage of the maximum incentive base for all states as applied against the total capped incentive payment pool available to all states. The incentive payment for a state for a federal fiscal year will be equal to the incentive payment pool for the federal fiscal year, multiplied by the state's incentive payment share for the federal fiscal year.* [Statewide incentives earned for non-ADC collections will be limited to the percentage of ADC-incentives in accordance with the following schedule:

(1) 100 percent in Federal fiscal years 1986 and 1987;

(2) 105 percent in Federal fiscal year 1988;

(3) 110 percent in Federal fiscal year 1989;

(4) 115 percent in Federal fiscal year 1990 and thereafter.]

(d) [(e) Estimated statewide] *The Office will allocate an amount of the federal* incentive payment[s] *made to the State in a federal fiscal year* [will be passed through] to the [local] social services districts based on *the following* [a] methodology [which takes into consideration the total ADC and non-ADC incentives earned by the State and each local district's effectiveness and efficiency in its administration of the local child support enforcement program. That methodology is set forth as follows]:

(1) determine each *social services* district's total [ADC collections and total IV-D expenditures] *collections for the federal fiscal year;*

(2) *determine the portion of the incentive payment made to the State that is available to be allocated to the social services districts; and*

(3) allocate to each social services district a share of the available incentive payment based upon its respective percentage of the total statewide collections during the federal fiscal year. [calculate the ADC cost benefit ratio for each district, by dividing total ADC collections for such district by total IV-D expenditures for such district;

(3) the incentive rate chart set forth in subdivision (c) of this section to determine the ADC incentive rate for each district, based on its ADC cost benefit ratio;

(4) multiply each district's ADC incentive rate as determined in paragraph (3) of this subdivision, by each district's total ADC collections to calculate each district's ADC incentive amount; and

(5) when totaling the incentive amounts for all districts, the State's total ADC incentives may be more or less than the amount eligible for distribution based on the statewide cost benefit ratio. Therefore, the amount available to the State will be divided by the total amount of the districts' incentives to obtain a proration factor. This factor is then multiplied by the incentive amount calculated in paragraph (4) of this subdivision. The sum of these individual prorated amounts will then equal the state wide total incentives available.]

(e) [(f) Estimated statewide non-ADC incentive payments will be distributed to the local districts using the same methodology described in subdivision (e) of this section except that the statewide non-ADC incentive amounts calculated pursuant to subdivision (d) of this section shall be substituted for the ADC incentive amounts.

(g) At the close of each Federal fiscal year, actual incentives earned will be provided to each local district. Each local district will then submit a supplemental monthly ADC collection report to the department to adjust the incentives from estimated to actual payments, in accordance with department guidelines.] *During each federal fiscal year, the Office will advise each social services district of its respective child support incentive amount. Each social services district will report its child support incentive amount in accordance with Office guidelines.*

Text of proposed rule and any required statements and analyses may be obtained from: Jeanine S. Behuniak, New York State Office of Temporary and Disability Assistance, 40 North Pearl Street, 16C, Albany, New York 12243, (518) 474-9779, email: Jeanine.Behuniak@otda.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:

Social Services Law (SSL) § 20(3)(d) authorizes the Office of Temporary and Disability Assistance (OTDA) to promulgate regulations to carry out its powers and duties.

SSL § 34(3)(f) requires the Commissioner of the OTDA to establish regulations for the administration of public assistance and care within the State.

SSL § 111-a requires the OTDA to promulgate regulations necessary to obtain and retain approval of its child support state plan, which is required to be submitted to the federal Department of Health and Human Services by Part D of Title IV of the federal Social Security Act.

Title 42 of the United States Code (42 USC) § 658a, also known as section 458 of the federal Social Security Act, governs incentive payments to states. The Child Support Performance and Incentive Act (CSPIA) of 1998, P.L. 105-200, inserted a new § 458 of the federal Social Security Act defining a new federal incentive payment system, which allocates incentives based on the available incentive payment pool and the state's performance level in five areas of the child support enforcement program (paternity establishment, support order establishment, current support payments, arrearage payments, and cost-effectiveness).

45 CFR § 302.55 requires the child support state plan to provide that political subdivisions (i.e., local social services districts) which participate in the costs of carrying out the activities under the child support state plan receive an appropriate share of any incentive payments made to the state, as determined by the state.

45 CFR § 303.52 regulates the calculation and allocation of incentives to political subdivisions by the State IV-D agency. The State IV-D agency must develop a standard methodology for allotment of incentives to political subdivisions, taking into account the efficiency and effectiveness of the activities carried out under the state plan by those political subdivisions.

45 CFR Part 305 governs child support program performance measures, standards, and financial incentives. Specifically, 45 CFR § 305.2 defines the five performance measures used in the child support incentive system and the weight given to each measure; 45 CFR § 305.31 identifies the amount of the incentive payment for a state for a federal fiscal year; and 45 CFR § 305.33 describes the determination of applicable percentages based on performance levels.

2. Legislative objectives:

It was the intent of the Legislature in enacting the state statutes mentioned above that OTDA establish rules, regulations and policies so that child support enforcement services are provided to eligible persons to ensure that, to the greatest extent possible, parents provide financial support for their children, and that the State obtain and retain approval of its child support state plan.

3. Needs and benefits:

The amendment to 18 NYCRR § 347.16 is being made as a result of changes to the federal incentive payment process under CSPIA. These changes relate to section 458 of the federal Social Security Act. The regulatory amendment will establish the procedures by which the State will distribute child support incentives received from the U.S. Department of Health and Human Services and allocate portions of those incentives to local social service districts.

4. Costs:

There are no new costs associated with the amendments to the regulations.

5. Local government mandates:

The DCSE and local social services districts have followed the federal procedural rules regarding incentive payments that became fully operational with the 2002 federal fiscal year. No new or additional requirements will be imposed on local social service districts.

6. Paperwork:

No new or additional requirements will result from the amendments to the regulations.

7. Duplication:

The proposed amendments do not duplicate, overlap or conflict with any existing State or federal statutes or regulations.

8. Alternatives:

No alternatives were considered since the proposed amendments are in accordance with the aforementioned federal statutes and requirements.

9. Federal standards:

The proposed amendments do not exceed federal minimum standards for the same subject.

10. Compliance schedule:

The requirements under the proposed amendments are currently operational within the DCSE and the local social services districts. The State and local social services districts are in compliance with the proposed amendments.

Regulatory Flexibility Analysis

1. Effect of rule:

Each of the 58 local social service districts will be affected by the proposed regulatory amendments.

2. Compliance requirements:

Local social services districts will be required to comply with the proposed amendment. Given that the changes make State regulation consistent with federal regulations regarding incentive payments and are primarily of an administrative nature meant to clarify requirements that became fully operational with the 2002 federal fiscal year, local social services districts will have no new reporting or recordkeeping obligations.

3. Professional services:

The NYS Division of Child Support Enforcement (DCSE) within the Office of Temporary and Disability Assistance (OTDA) continues to assume the responsibility for the systematic programming of the methodology used to determine the actual incentive allocated to each local social services district. For this reason, the local social services districts will not need to hire additional staff.

4. Compliance costs:

This regulation will not result in increased administrative costs for local social services districts. The amendment to this regulation is being made to update State regulation in light of changes to federal rules which determine the amount of federal incentives received by states. The DCSE continues to assume the administrative costs and responsibility for the systematic programming of the methodology used to determine the actual incentive allocated to each local social services district.

5. Economic and technological feasibility:

The DCSE continues to assume all administrative costs and responsibility for implementing the proposed amendment. Technological feasibility is not a concern for the local social services districts.

6. Minimizing adverse impact:

Approaches for minimizing adverse economic impact were not considered since no adverse economic impact is present under the proposed amendment.

7. Small business and local government participation:

The performance-based incentive funding system is federally mandated. The proposed amendments will update the State regulation to be consistent with the current federal incentive system.

The changes to the federal incentive payment system were discussed with local social services districts when they went into effect. No specific concerns were raised by the local social services districts about the federal requirements.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:

The proposed regulations will affect the 44 rural social services districts in the State.

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

Local social services districts, including those in rural areas, will not be affected by the proposed amendment. The changes are of an administrative nature managed by the NYS Division of Child Support Enforcement (DCSE) within the Office of Temporary and Disability Assistance (OTDA). Given that the changes are administrative in nature and managed by the State, local social services districts will not be required to hire additional staff or provide training.

3. Costs:

This regulation will not result in increased administrative costs for social services districts. The DCSE continues to assume the administrative costs and responsibility for the systematic programming of the methodology used to determine the actual incentive allocated to each local social services district.

4. Minimizing adverse impact:

The proposed regulation makes State regulations consistent with federal requirements for the payment of incentives that were enacted as part of the Child Support Performance and Incentive Act of 1998 (CSPIA) and were clarified by final rule in December 2000. Maximizing performance in the collection of current support payments and arrearage payments, as well as the associated paternity establishment, support order establishment, and cost-effectiveness performance measures mandated by the U.S. Department of Health and Human Services does not adversely impact social services districts, including those in rural areas.

5. Rural area participation:

The performance-based incentive funding system is federally-mandated. The proposed amendments will update State regulation to be consistent with the current federal incentive system. Local districts have been aware of the amendments to procedural rules regarding federal incentive payments since their effective date in December 2000. OTDA annually publishes a memorandum to local social services districts to advise them of their respective incentive amount for that year.

The statutes on which these regulatory changes are predicated were discussed with the local social services districts in rural areas when they went into effect. No specific concerns about the federal requirements were raised by the local social services districts in rural areas.

Job Impact Statement

A job impact statement has not been prepared for the proposed regulatory amendment. It is apparent from the nature and the purpose of the proposed rule that it will not have a substantial adverse impact on jobs and employment opportunities in the State. The proposed amendments to 18 NYCRR 347.16 will have no impact on jobs and employment opportunities in either the public or private sectors of the State. Furthermore, child support enforcement jobs will not be impacted by the proposed amendment.